BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

JULIE SAIZ Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	)	Case No. R-DEMO-17-002 FINDINGS, CONCLUSIONS AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, NANCY HOLLAND YOUNG, Chair, and VICKY BOWDISH, Vice-Chair. The hearing was held on January 17 and 18, 2018, at 1116 West Riverside Avenue, Spokane, WA. Appellant and Respondent delivered their closing arguments on January 25, 2018.

1.2 **Appearances.** Present was Appellant Julie Saiz, represented by Larry Kuznetz, Attorney at Law. Charlynn Hull, Assistant Attorney General, represented the Respondent, Department of Corrections (DOC). Also for the Respondent present was James Key, Superintendent of Airway Heights Correction Center (AHCC).

1.3 **Nature of Appeal.** This is an appeal of a demotion. Respondent alleges that Appellant, Julie Saiz, Custody Unit Supervisor (CUS), failed to attend month Place Safety Musters (PSMs) for all shifts. Respondent further alleges Appellant was rightfully demoted after several months of discussions regarding her failure to attend all shift Place Safety Musters (PSMs) and two letters of reprimand (LOR).

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WITNESSES

1.4 **For Appellant.** Julie Saiz, David Alcala, Sergeant; Jack Richardson, Sergeant; Rhett Brown, Corrections Officer (CO) 2; Chris Fitzpatrick, CUS; Mike Klemke, Corrections Program Manager (CPM); Kerry Lawrence, CUS; John Long, spouse; Julia Porter, Classification Counselor (CC) 3; Jack Richardson, Nichoel Rickard, CUS; and James Watkins, CUS.

1.5 **For Respondent**. James Key, Superintendent, AHCC; Kay Heinrich, Associate Superintendent, AHCC; Terry Propeck, CPM; Barb Arnett, Correctional Industries Manager, AHCC; Sheri Hardwiger, Investigator, Workplace Investigation Services; and Jim Riley, Human Resource Consultant (HRC).

II. PRELIMINARY MATTERS

Motion in Limine.

2.1 On January 12, 2017, Respondent submitted a Motion in Limine. The motion requested to exclude proposed exhibits submitted by Appellant after the date of demotion and to limit testimony from witnesses outside the relevant timeframe.

2.2 Respondent opposed Appellant's request to limit the documents, asserting consideration should be given to any documents showing lack of merit for Appellant's demotion.

2.3 The Board granted Appellant's Motion in Limine, stating the admittance of Exhibit 43 did not pertain to the Appellant's demotion. The Board further limited testimony relating to any claim by the Appellant that her demotion was a direct or indirect result of discrimination.

III. FINDINGS

3.1 The Washington State Department of Corrections operates the state's correctional facilities and its community corrections program, which manages offenders once they are

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released as well as those who serve their sentence under supervision within their communities.[1] There are four stand-alone minimum custody level facilities, while the other facilities have offender populations with a mixture of custody levels: maximum, close, medium and minimum. There are over 10,000 offenders housed at the various institutions throughout the state.

3.2 Appellant has been an employee for Respondent, DOC, for approximately 25 years. At the time of her demotion, Appellant was the Custody Unit Supervisor of the "N" Unit, or the Nora Unit at Airway Heights Correction Center located in Airway Heights, Washington. Appellant has been employed as a CUS at AHCC for approximately 16 years; however, most of those years were spent as the CUS over the "L" Unit, or the Lincoln Unit. At the time of her demotion, Appellant reported to Terry Propeck, CPM.

3.3 On June 1, 2015, James Key was appointed as the Superintendent of AHCC. Since his appointment, and as the appointing authority, Superintendent Key has made several changes including, but not limited to, an institutional-wide reorganization, rotating assignments, requirements for CUSs to attend all shift PSMs and updating Operational Memoranda.

3.4 By letter dated May 1, 2017, Superintendent Key notified Appellant of her demotion to Correctional Counselor 3 with an effective date of May 16, 2017.

3.5 Appellant filed a timely appeal with the Personnel Resources Board on May 17, 2017. Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder, Title 357 WAC.

3.6 In 2011, an inmate in the chapel at the Monroe Correction Complex murdered Officer Jayme Biendl. Her death spurred DOC and the state, in connection with the National Institute of Corrections (NIC), into an in depth investigation that led to a safety initiative. The initiative was

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[1] See *Performance Audit, Improving Staff Safety's Prisons*, dated March 22, 2016.

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twofold, one to ensure the death of Ms. Biendl was not in vain, and two, to ensure all DOC staff and offenders are safe at all times. On March 21, 2011, then Governor Christine Gregoire announced a safety initiative and during that announcement stated, "… [W]e resolved to find out what happened and to take whatever steps are necessary to prevent another such attack on our corrections officers. Jayme's legacy will be enhanced protection of her co-workers, who face inherent dangers while on the job." The initiative focused on five key areas that included staffing, technology, policy and procedure, staff training and offender capacity. Because of the initiative and NIC findings, the introduction and passing of Engrossed Senate Bill 5907 (ESB 5907) directed the DOC to:

Establish Local and Statewide Security Advisory Committees.

- Establish teams composed of staff from many disciplines at each prison to evaluate offender placement in job assignments and custody promotions.
- Develop training curriculum on staff safety issues in prisons.
- Develop a comprehensive plan for the use of oleoresin capsicum aerosol products (pepper spray).
- Submit annual reports to the Governor and Legislature that include:
    - Security recommendations raised by the Security Advisory Committees;
    - Recommendations for additional resources or legislation to address security concerns in prisons;
    - Recommendations for improving the ability of nonsupervisory classified employees to provide input on safety concerns and the inclusion of safety issues in collective bargaining.

3.7 As part of the initiative and legislation, DOC implemented *Restricted* Policy 420.010, Place Safety Muster.[2] Policy 402.010(2) gives direction to the Superintendent or designee of each institution to work with the Facility Security Specialist to "Designate supervisors to facilitate the

[2] DOC often uses the term "Restricted" within their policies. The policy is restricted for safety concerns, and although this policy serves as a basis for the case in chief, it is not appropriate to fully set forth the contents of the policy in a public document.

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musters." The result of Policy 402.010 allowed Superintendent Key to revise AHCC *Restricted Operational Memorandum* on August 1, 2015. (Appellant's Exhibit 5) The *Restricted Operational Memorandum* again directed "supervisors" to facilitate PSMs.

3.8 As a result of Superintendent Key's *Restricted Operational Memorandum*, each CUS within AHCC was given new performance expectations as part of their annual Performance Development Plan (PDP). The first such PDP containing the specific language "Attend and participate in all Monthly Place Safety Musters for all shifts[3] in your living unit" was signed and dated by Appellant on February 1, 2016. (Appellant's Exhibit 36)

3.9 Appellant failed to attend all shift PSMs. As a result, Appellant's failure to attend all shift PSMs, CPM Propeck held a supervisory conference on March 10, 2016, and followed the conference with a letter of expectations dated April 28, 2016. (Appellant's Exhibit 8) CPM Propeck followed his April 28, 2016, letter of expectations with another letter dated May 11, 2016. The subsequent letter was a direct result of Appellant's continued failure to attend all shift PSMs for her living unit. (Appellant's Exhibit 9)

3.10 Appellant continued not attending all shift PSMs for the Nora Unit. On August 23, 2016, Appellant was personally delivered a "Letter of Reprimand – Failure to attend place safety muster" signed by Superintendent Key. (Appellant's Exhibit 9) The letter outlined Superintendent Key's expectation that Appellant was to attend all shift PSMs for the Nora Unit as the CUS. A second letter of reprimand dated September 7, 2016, again for the same failure to attend all shift PSMs was issued to Appellant. (Appellant's Exhibit 10)

3.11 On November 30, 2016, DOC and more particularly, Superintendent Key requested that an Investigation be completed pursuant to DOC Policy 850.010. Investigator Sheri Hadwiger, Investigator 3 with Workplace Investigation Services conducted an investigation and submitted

[3] Each DOC institution is a 24-hour operation; therefore, there are three shifts. First, Second and Third shifts. First shift is considered graveyard while second and third shifts are considered days and swing respectively.

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her final report on February 9, 2017. (Respondent's Exhibit 4, pages 047-053) The investigation found that although Appellant was not attending and all shift PSMs, the sergeants in the unit were still facilitating the PSMs and all PSMs were being held in accordance with Policy 402.010.

3.12 After the completion of the investigation, on February 23, 2017, Superintendent Key provided Appellant with "Notice of Potential Disciplinary Action." (Appellant's Exhibit 14) The notice outlined various allegations, including Appellant's alleged lack of presence at Nora Unit's PSMs. The notice also set out the pre-disciplinary meeting date (February 28, 2017) and gave instructions for Appellant to respond in writing should she choose.

3.13 Prior to the completion of the investigation, Appellant received her annual PDP (Appellant's Exhibit 37), and again, the PDP outlined the expectation for Appellant to "Attend and participate in all Monthly Place Safety Musters for all shifts in your living unit." Appellant, prior to signing, provided written comments that state, "As previously discussed I cannot physically attend 1st shift place safety musters." Up to and during the investigation several conversations occurred between Appellant and her supervisor, human resources and Superintendent Key regarding Appellant's failure to attend all shift PSMs.

3.13 In March of 2017, Superintendent Key decided the appropriate action due to Appellant's continued insubordination for her failure to attend all shift PSMs was to demote her to CC3. Superintendent Key and human resources began working on the Notice of Reprimand in mid-March and continued to make edits as outlined in Appellant's Exhibit 18. The Notice of Disciplinary Action was not finalized until May 1, 2017, and in the interim, Appellant provided Respondent with a medical note on April 10, 2017. The medical note provided by Appellant asks that Appellant be excused from "first shift muster meeting because of nausea and vomiting and dizziness when she gets up at that hour." (Appellant's Exhibit 19) The medical note continued by stating Appellant is capable of performing all other job duties. Although in receipt of a medical note, Respondent continued with and eventually disciplined Appellant by demotion to CC3 effective May 16, 2017.

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3.14 Until Appellant's issues with attending all shifts PSMs for Nora Unit and her subsequent demotion, Appellant had no prior performance issues, counselling, letters of reprimand or other disciplinary actions during the 25 plus years' employment with DOC.

IV. ARGUMENTS OF THE PARTIES

Appellant.

4.1 Appellant seeks reinstatement to Custody Unit Supervisor, and further contends the permanent demotion to CC3 is excessive and lacks merit. Appellant alleges the medical note gave rise for DOC to initiate a reasonable accommodation process. She further alleges Superintendent Key and CPM Propeck have targeted her and have varying requirements depending on the CUS.

4.2 Appellant states the investigation lacks merit because it failed to investigate any other CUSs attendance at all shift PSMs. Appellant further alleges that no other CUS at AHCC attends all shift PSMs, and she therefore should not be disciplined "because she is not the only one." Appellant states she was targeted and that other than her inability to attend all shift PSMs, which only constitutes a very small portion of her overall duties, she has been a model employee for 25-years. Appellant alleges she cannot be insubordinate of *Restricted Operational Memorandum* AHCC 420.010, Place Safety Muster because the *Restricted Operational Memorandum* does not specifically state the CUS will facilitate all shift PSMs. Rather, the *Restricted Operational Memorandum* only uses the terminology "supervisor."

4.3 Appellant further alleges that the charges against her are overblown because some of the PSMs she missed were a direct result of her covering hearings. Appellant contends that emaila asking for hearing coverage would be sent, that no one would respond and that her only option, as a leader, was to cover numerous hearings. The covereage of hearings would take her from the Nora Unit, and on a rare occasion, away from PSMs. Appellant alleges that even though offender movement is restricted during PSMs, in most cases the hearings will occur because of specialized movement of offenders in the hearings areas or within their living units.

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4.4 Appellant argues she was not acting insubordinate, and that her being unable to attend all shift PSMs is not an act of insubordination. Appellant opposes Respondent's assertion that her inability to attend all shift PSMs limited her ability to act as the Nora Unit CUS. Appellant alleges that she ensured PSMs occurred on all shifts because she delegated the responsibility to her sergeants. She further alleges the issue of her not attending all shift PSMs only began after the appointment of Superintendent Key and the reorganization of AHCC when CPM Propeck became her supervisor.

Respondent.

4.5 Respondent believes the permanent demotion of Appellant is appropriate and alleges the Appellant acted in an insubordinate manner by not attending all shift PSMs which was a directive from the appointing authority. Respondent further alleges that simply saying "I cannot do …." does not carry enough weight for Appellant to be relieved of her duties and directives from her superiors.

4.6 Furthermore, Respondent asserts the PSMs are an integral part of the operations at AHCC. The PSMs allow for an open dialogue with Correction Officers that are "on the front line" to discuss any safety concerns or issues they may be having with their supervisors, CUSs, etc. The PSMs are extremely important to all DOC facilities, therefore, Superintendent Key, as the appointing authority for AHCC, has instituted a directive that all CUSs must attend and/or facilitate all shift PSMs for their living units. Superintendent Key asserts "the death of Jayme Biendl is one of those things you remember where you were when you heard about it," he didn't want anyone to go through that again so as the appointing authority, he directed all CUSs to attend all shift PSMs. Respondent alleges Appellant failed to attend all shift PSMs for her living unit.

4.7 Respondent alleges that for a period of approximately 15-months, the staff at AHCC attempted, through many avenues, to correct Appellant's behavior. Respondent alleges they held

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impromptu discussions, official meetings, discussed AHCC expectations, provided two LORs and even discussed the Family Medical Leave Act, yet, not until the "11th hour" did Appellant submit a medical.

4.8 Respondent further contends that because of Appellant's position within the Washington Management Service (WMS), she must be held to a higher standard of professionalism and has a duty to act as a role model. Respondent asserts that due to Appellant's failure to attend and/or facilitate all shift PSMs, she was not performing her duties to the higher standard and care of a WMS employee. Respondent further contends Appellant's absences at all shift PSMs resulted in some of her subordinates never having a face-to-face meeting or meeting Appellant even once.

4.9 Respondent argues the permanent demotion of Appellant is justified because she acted insubordinately and showed a blatant disregard for her superiors' directives.

V. CONCLUSIONS

5.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.

5.2 In a hearing of an appeal for a disciplinary action,[4] Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. (WAC 357-52-110)

5.3 When considering whether there was just cause for a disciplinary action, we consider factors such as whether the employee was aware of the expectations, rules, or policies allegedly violated, whether the employee was aware of the need to comply with the rule or policy or to improve performance, whether the employee had an opportunity to demonstrate compliance or improvement, whether the discipline was imposed for good reason, whether the disciplinary process

[4] The matter before this Board is limited to only the disciplinary action. Reasonable Accommodation is a joint effort between the parties in which each party must be an active participant, with those seeking the accommodation making an initial request.

and procedures followed were appropriate, and whether the sanction imposed was sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program.[5]

5.4 There are also numerous decisions that address conduct and professionalism of Washington Management Service (WMS) employees. One example that is relevant to the facts before us in this case is *Ahearn v Dept. of Corrections*, PAB Case No. DEMO-02-0016 (2003). In Ahearn, the Personnel Appeals Board (PAB) upheld the demotion of the WMS employee and concluded that a WMS employee is held to a higher standard of conduct and professionalism and has a duty to act as a role mode.

5.5 Appellant was aware of the expectations of the job, outlined in the PD and PDP. Appellant was also aware of the expectations of her immediate supervisor, CPM Propeck, and the Superintendent of the facility, James Key, that she attend all shift PSMs. Appellant's PDP of February 1, 2016, states, "Attend and participate in all Monthly Place Safety Musters for all shifts in your living unit." Appellant was expected to attend all shifts of the PSMs (First, Second and Third).

5.6 Appellant was given ample time to correct her deficiencies of not attending all staff PSMs, and Appellant was counseled numerous times on her insubordination and failure to attend. Even though a period of 15 months transpired from the notice of expectation to the effective date of the demotion, Appellant disobeyed the direct order of superiors. The Board finds the Respondent's expectations to a reasonable expectation of the Appellant, and for a CUS of a living unit.

5.7 The Board agrees with Respondent's assertion that Appellant's position as a CUS for the Nora Unit, carries a high standard of conduct, particularly in the operational safety standards set

[5] *Gill v. University of Washington*, PRB Case No. R-DISM-10-008 (2011) and *Oliver v. Employment Security Department*, PRB Case No. R-DEMO-08-006 (2009).

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forth by Superintendent Key and Appellant should have attempted to attend all shift PSMs regardless, or sought to be excused other than simply stating "I cannot attend."

5.8 Appellant was aware of the expectations as the CUS of the Nora Unit, outlined in her PDP. Appellant was also aware that safety within all DOCs facilities is one of the most important standards of care anyone working in a DOC facility must be keenly aware of and is a critical expectation of a CUS. The Board finds Appellant did not carry out the critical expectations of the Nora Unit's CUS position and correlating PDP, causing a potential impact to the safety of those working within the unit. As such, the Board concludes discipline is warranted.

5.9 When determining whether the discipline was reasonable, the Board considered additional factors brought forth during the hearing. These factors included:

- The investigation showed Appellant failed to attend all shift PSMs for the Nora Unit;
- Appellant made no attempts to fix her behavior through open communication and proven actions;
- The standard to attend all shift PSMs is bound to all CUSs throughout AHCC; and
- Appellant understands the directive(s) of the appointing authority.

5.10 Appellant was directed to attend all shift PSMs during the relevant period and understood the PSMs to be a critical part of the safe operation AHCC. However, the Board learned throughout the course of the hearing that Appellant was not the only CUS that had not attended all PSMs and that not all PSMs received excused absences for their failure to attend PSMs.

5.11 Appellant had no prior verbal warnings, counseling, letters of reprimand, or other disciplinary actions in the 25 years of employment with DOC. Discipline needs to be such that it is reasonable for the misconduct and sufficient to prevent recurrence, to deter others from similar misconduct and to maintain the safety at AHCC. In light of the information presented at this

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hearing, the Board finds a 12-month temporary demotion to CC 3 is reasonable and sufficient to prevent recurrence, and to maintain the integrity of the program.

5.12 Respondent has not met the burden of proof and did not establish just cause for Appellant's permanent demotion. Therefore, Appellant's discipline should be modified to a temporary 12-month demotion and restored to a permanent position as a CUS effective May 16, 2018.

VI. ORDER

6.1 NOW, THEREFORE, IT IS HEREBY ORDERED the appeal of Julie Saiz is granted in part and the disciplinary sanction is modified to a 12-month temporary demotion to Corrections Counselor 3 for the period of May 16, 2017 to May 15, 2018. Appellant is to be restored to a Corrections Unit Supervisor effective May 15, 2018.

DATED this _____ day of _____, 2018.

WASHINGTON PERSONNEL RESOURCES BOARD

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NANCY HOLLAND YOUNG, Chair

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VICKY BOWDISH, Vice-Chair

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