

BEFORE THE PERSONNEL RESOURCES BOARD  
STATE OF WASHINGTON

DAVID SCANTLIN,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

Case No. R-DEMO-14-002

FINDINGS, CONCLUSIONS AND  
ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** This matter came before the Personnel Resources Board, NANCY HOLLAND YOUNG, Chair, SUSAN MILLER, Vice Chair, and VICKY BOWDISH, Member. The hearing was held on May 20-21, 2015; August 25-27, 2015; and October 27-28, 2015, at the Red Lion Rivers Inn, in Spokane, WA. Appellant and Respondent submitted their closing arguments on January 15, 2016.

1.2 **Appearances.** Appellant David Scantlin was present and was represented by Stephen Matthews and Douglas Dick, Attorneys at Law. Valerie Petrie, Senior Assistant Attorney General, and Kelley Woodward, Assistant Attorney General, represented the Respondent, Department of Corrections (DOC).

1.3 **Nature of Appeal.** This is an appeal of a demotion. Respondent alleges Appellant's mismanagement of his subordinate, Marcalene (Marcee) Westerfield, Office Assistant 3 (OA3), created a backlog of offender disciplinary documents. Respondent further alleges the backlog of documents and documents found at Ms. Westerfield's residences were the result of malfeasance in managing his assigned portion of the Disciplinary Hearings program, which violated WAC 137-28 Prison-Discipline and DOC Policy 460.000, Disciplinary Process for Prisons.

1  
2  
3 **II. MOTIONS**  
4

5 **Motion in Limine.** On May 20, 2015, Appellant submitted a Motion in Limine. The motion  
6 requested the hearing be limited to the validity of imposing a demotion after Appellant declined  
7 signing a last chance agreement. Appellant asserted the last chance agreement waived his appeal  
8 rights, violating RCW 41.06.170. Appellant contended a two day hearing on a demotion is not  
9 sufficient time and extending the hearing would prove economic hardship.  
10

11 Respondent opposed Appellant's request to limit the scope of the appeal asserting the last chance  
12 agreement was not signed and should not be the subject of this appeal. Respondent further asserted  
13 a demotion is before the Board and the Board's authority is to issue decisions on disciplinary  
14 matters. Respondent argued Appellant did not request an extension of the two day hearing and  
15 filing a motion 24 hours before this proceeding is objectionable.  
16

17 The Board denied Appellant's Motion in Limine. In addition to the motion being untimely, the last  
18 chance agreement was not signed by Appellant and was not the subject of the appeal. The Board  
19 was prepared to hear testimony, review evidence and rule on the relevant action, which was  
20 Appellant's demotion from a Corrections Specialist 3 to a Classification Counselor 2.  
21

22 **Motion and Memorandum for Judgment as a Matter of Law or Fact.** On October 27, 2015,  
23 Appellant filed a motion to end the hearing contending Respondent failed to meet its burden of  
24 proof. In his motion, Appellant again challenged the legality of the last chance agreement.  
25

26 Respondent argued the Board should strike the written motion, as it was not served and filed at  
27 least 30 days before the hearing date. Furthermore, Respondent asserts the Motion in Limine  
28 presented at the beginning of the hearing also addressed the last chance agreement. Respondent  
29

1 contends last chance agreements are legal and accepted, evident in *Gerry Baum v the Department*  
2 *of Social and Health Services*, PAB Case number DISM-01-0026.

3 The Board denied the Motion and Memorandum for Judgement as a Matter of Law or Fact.  
4 The motion suggests Respondent has not met its burden of proof. However, the Board required  
5 time to review and consider the evidence and testimony to determine whether or not the State  
6 has met its burden of proof. Therefore, the Board cannot justify granting this motion.

### 8 **III. FINDINGS**

9 Appellant has been a permanent employee for Respondent DOC for 15 years. At the time of his  
10 demotion, Appellant was a Corrections Specialist 4 (CS 4) at Coyote Ridge Corrections Center  
11 (CRCC). Since the time of his demotion, as a result of State HR retitling the class series, the CS  
12 4 was retitled to CS 3.

13  
14 By letter dated April 7, 2014, Jeffrey Uttecht, Superintendent, notified Appellant of his demotion  
15 to Classification Counselor 2 with an effective date of May 1, 2014.

16  
17 Appellant filed a timely appeal with the Personnel Resources Board on May 21, 2014. Appellant  
18 and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder, Title  
19 357 WAC.

20  
21 On August 16, 2010, Eric Biviano was hired as a Hearings Officer (Corrections Specialist 4)  
22 reporting to Mr. Bailey, Associate Superintendent.

23  
24 On September 1, 2010, Appellant was promoted to the position of Hearings Officer (Corrections  
25 Specialist 4), reporting to Mr. Bailey.  
26  
27  
28  
29

1 Rachel Powell was hired as a Hearings Clerk (Office Assistant 3) on March 1, 2012 and Ms.  
2 Westerfield was hired as a Hearings Clerk on June 18, 2012. They were both employed during  
3 the timeframe of June 18, 2012 through January 28, 2013. Ms. Powell reported to Mr. Biviano  
4 and Ms. Westerfield reported to Appellant.

5  
6 Prior to the action giving rise to this appeal, Appellant received no disciplinary actions or  
7 reprimands. On Appellant's signed Performance and Development Plan covering the period from  
8 July 1, 2010 to July 1, 2011, Appellant's supervisor, David Bailey, Assistant Superintendent,  
9 states: "He has a staff member (referring to Ms. Westerfield) that is challenging to supervise  
10 when the supervised employee is here to be supervised (referring to frequent absences)."

11  
12 Appellant took "Disciplinary Hearing Officer Training" in November 2007, April 2009, April  
13 2010, and May 2012. The training objectives were, in relevant part:

14 ...  
15 Have an understanding of Offender Management Network Information (OMNI) for  
16 Prison-Discipline information and reports.

17  
18 Appellant completed "Supervision and Leadership" training in May 2011 and another class  
19 called, "Supervisor Success Skills" in April 2012. Included in these trainings were, in relevant  
20 part:

21 ...  
22 Performance and Development Plan

23  
24 In April 2013, unheard infraction reports, offender kites and other appeal paperwork were found  
25 in the shred bin. An incident report dated August 24 2013, indicated the following documents  
26 were found in the home of Ms. Westerfield by CRCC staff that were helping her move and clean:

- Envelope containing 12 Serious Infractions Reports and eight Disciplinary Hearing Appeal Decisions.
- Envelope containing Disciplinary Hearing Appeal Decisions, some signed by Associate Superintendent Sawyer; and a doctor's note releasing Officer Lacie Gossage to duty.

An incident report dated August 25, 2013, indicated appeals, infractions and kites were found in the home of Lacie Gossage while she was cleaning out the room in her home previously occupied by Ms. Westerfield.

Incident Reports dated August 28, 2013, and August 29, 2013, indicated documents similar to those found on August 24, 2013, were found in the home of Lucia Telleria when she was cleaning out the room in her home previously occupied by Ms. Westerfield.

Sarah Pruett, Classification Counselor 2, was an OA 3 in the Hearings Unit for part of the investigation period. She testified papers were piled on Ms. Westerfield's desk and stuffed in drawers and filing cabinets. The documents were eventually put into a bin for Ms. Pruett's processing. Ms. Pruett credibly testified she was one of two who reviewed and processed offender appeal documents that had not been entered into OMNI. Ms. Pruett stated she did not process documents that came from outside the prison, i.e., those found in Ms. Westerfield's residences and was not sure who processed those.

Marcia McMahon, Disciplinary Process Hearings Coordinator, testified she found a significant amount of data missing in OMNI between 2012 and 2014. When she ran reports, Ms. McMahon found several infractions past the timeframe for processing. Ms. McMahon testified and emails confirmed she contacted Appellant, Mr. Biviano and Ms. Westerfield about the data in OMNI. When Ms. McMahon did not receive a response, she alerted Mr. Bailey.

1 Cindy Greenslitt, Workplace Investigator, DOC Human Resources, was assigned to conduct an  
2 investigation of Ms. Westerfield. However, because Ms. Westerfield did not come to work after  
3 August 23, 2013, and resigned effective September 25, 2013, the investigation was  
4 administratively closed.

5  
6 On October 8, 2013, Ms. Greenslitt was assigned to investigate Appellant's actions. Her  
7 Investigation Report stated Appellant failed to manage the Disciplinary Hearings program at  
8 CRCC from June 18, 2012, through September 25, 2013, and failed to recognize state property  
9 and/or official time sensitive documents were removed from the CRCC premises.

10  
11 A pre-disciplinary meeting with Appellant was held on January 31, 2014. Those in attendance  
12 were Jeffrey Uttecht, Superintendent; Cynthia Benton, Human Resources Manager; and  
13 Appellant. At the meeting Appellant admitted the situation with Ms. Westerfield would not have  
14 been so severe if he had been supervising her more closely. He also admitted he trusted Ms.  
15 Westerfield to handle the complaints from Ms. McMahon on documentation and database  
16 entries.

17  
18 Upon conclusion of the investigation, Appointing Authority Jeffrey Uttecht, decided to take  
19 disciplinary action on Appellant's misconduct. The misconduct included malfeasance in  
20 managing his assigned portion of the Disciplinary Hearing program; failing to meet DOC  
21 supervisor expectations which lead to due process violations; violating WAC 137-28 concerning  
22 prison discipline; and violating DOC Policy 460.000 concerning the disciplinary process.

23  
24 By letter dated April 7, 2014, Appellant was notified of his demotion to a Classification  
25 Counselor 2 (CC 2), a non-supervisory classification. Mr. Uttecht testified a lesser disciplinary  
26 action was considered, however said Appellant's actions were severe enough to warrant  
27 permanent removal from his position to keep this type of behavior from happening in the future.

1 The Board heard testimony from many of Appellant's co-workers, managers and subordinates.  
2 The Board believes the witnesses were forthright in their testimony and were credible. As a  
3 result, the Board finds a preponderance of the credible testimony that Appellant was aware of the  
4 need to improve performance; aware of job expectations, rules and policies allegedly violated  
5 and the need to comply with the rules and policies.

6  
7 The Board also heard testimony Appellant was cooperative with management after learning  
8 about the severity of the situation. Testimony included Appellant suggesting ways to help solve  
9 the paperwork problems by installing cameras, making a drop box for paperwork and by making  
10 process changes.

#### 11 12 **IV. ARGUMENTS OF THE PARTIES**

13 **Appellant.** Appellant asserts his behavior was not as severe as Mr. Uttecht described, as  
14 evidenced in Mr. Uttecht's offer for a last chance agreement that would have reduced Appellant's  
15 salary 5% for six months. Appellant further asserts the last chance agreement prevented his right  
16 to appeal and was in violation of RCW 41.06. Appellant contends no attempt was made to  
17 remove him from his position during the months of the investigation, further demonstrating the  
18 behavior under investigation was not serious enough to receive a permanent demotion.

19  
20 Appellant asserts placing all responsibility on him for Ms. Westerfield's unacceptable  
21 performance is not justified given his supervisor, Mr. Bailey, also knew about the problems.  
22 Appellant contends his Performance Development Plan signed by Mr. Bailey on July 19, 2012,  
23 stated, "This position also shares supervision responsibility for the Evidence system and  
24 Evidence Custodian and one Hearings Clerk." As such, Appellant asserts this clearly shows it  
25 was not only his responsibility to oversee Ms. Westerfield's performance and states Mr. Biviano  
26 should have been interviewed during the investigation. Appellant says he has called Mr. Biviano  
27 on occasion and, contrary to Ms. Greenslitt's testimony, his phone number was the same even  
28 though he moved out of state.

1 Appellant maintains he had limited supervisory authority, as evidenced by Mr. Bailey directing  
2 him to omit negative comments in Ms. Westerfield's performance evaluation. Evidence shows  
3 Appellant endeavored to have Ms. Westerfield sign a Letter of Expectations dated March 6,  
4 2013, but she declined to do so. Appellant asserts he had other failed attempts to discipline the  
5 Escort Officer, Mr. Boursaw and Ms. Westerfield as a result of Mr. Bailey's direction.

6  
7 Appellant argues the hearings unit was not in a secure location. The night staff used the unit's  
8 cubicles and, as such, missing paperwork could have been due to those workers. Appellant states  
9 often he found candy wrappers and pop cans on his desk or in his trash and noticed his desk in  
10 disarray compared to the previous day.

11  
12 Appellant maintains his job requires him to spend most or all of a work day in hearings.  
13 Appellant contends this did not give him needed time to handle much of the office duties, forcing  
14 him to rely on Ms. Westerfield to complete this work.

15  
16 **Respondent.** Respondent argues the last chance agreement was never signed, agreed upon and is  
17 not the subject of this hearing. Respondent asserts they reserve the right to make decisions they  
18 deem appropriate and decided upon a permanent demotion because Appellant failed to rectify Ms.  
19 Westerfield's poor performance, ultimately causing due process violations and unrest among  
20 offenders. Respondent maintains, although Appellant had a satisfactory work history and could  
21 continue as an employee of CRCC, he could no longer be trusted to supervise the hearings unit.

22  
23 Respondent asserts Appellant's position description clearly shows he was Ms. Westerfield's sole  
24 supervisor. Respondent further asserts Appellant took responsibility for his supervisory failures in  
25 the pre-disciplinary meeting with Mr. Uttecht and Ms. Benton, stating if he had supervised Ms.  
26 Westerfield more closely, the situation would not have become so severe.



1 Respondent disagrees Appellant had limited supervisory authority. Respondent contends one of Ms.  
2 Westerfield's evaluations was past due and standard practice called for a more positive narrative.  
3 Respondent asserts when asked if Appellant had one-on-one meetings with Ms. Westerfield, he said  
4 he did not and indicated she didn't like being around him. However, Respondent points to an email  
5 Ms. Westerfield wrote on February 20, 2013, which states, "...I feel it is imperative that a meeting  
6 is scheduled this week, as this is not the first time (but I believe the 3<sup>rd</sup>) that I have requested a  
7 meeting since the first of the year."

8  
9 Respondent disagrees with Appellant's belief Mr. Bailey should be held partially responsible for the  
10 problems in the hearings unit and states it was not Mr. Bailey's responsibility to handle the day-to  
11 day-operations of the hearings unit. Regarding Mr. Biviano not being included in the investigation,  
12 Respondent asserts they were unable to contact him at the phone number in their file and he had  
13 moved out of state.

14  
15 Respondent contends Mr. Bailey expected Appellant to create a hearings program at CRCC in line  
16 with policy and laws governing prison discipline. Respondent further contends Appellant received  
17 the training needed to perform his job, including a 40 hour class on supervision and leadership in  
18 2008 and 2011. This training covered topics such as how to be a supervisor; writing expectations  
19 and evaluations; addressing performance problems; taking corrective or disciplinary actions; and  
20 administering leave. Respondent maintains Appellant was fully trained to perform his duties as a  
21 supervisor and to oversee the hearings unit.

## 22 23 **V. CONCLUSIONS**

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

25  
26 In a hearing of an appeal for a disciplinary action, Respondent has the burden of supporting the  
27 charges upon which the action was initiated by proving by a preponderance of the credible evidence  
28  
29

1 Appellant committed the offenses set forth in the disciplinary letter and that the sanction was  
2 appropriate under the facts and circumstances (WAC 357-52-110).

3  
4 Appellant argued the last chance agreement should be included in this hearing. The Board's  
5 purview, according to the original appeal, was to determine whether there was just cause for a  
6 permanent demotion. As such, the unsigned last chance agreement was not considered in the  
7 Board's final decision.

8  
9 When considering whether there was just cause for a disciplinary action, the Board considers  
10 factors such as whether the employee was aware of the job expectations, rules or policies allegedly  
11 violated, whether the employee was aware of the need to comply with the rules or policies or to  
12 improve performance, whether the employee had an opportunity to demonstrate compliance or  
13 improvement, whether the discipline was imposed for good reason, whether the disciplinary process  
14 and procedures followed were appropriate and whether the sanction imposed was sufficient to  
15 prevent recurrence, to deter others from similar misconduct and to maintain the integrity of the  
16 program.

17  
18 Appellant was aware of the expectations, rules and policies of his position. In the pre-disciplinary  
19 hearing held on January 31, 2014, Appellant admitted he could have provided more supervision to  
20 Ms. Westerfield to prevent the unit from reaching a disorganized state. Ms. Westerfield emailed  
21 Appellant on numerous occasions attempting to meet about process improvement but had difficulty  
22 scheduling meeting times with him. Appellant had training on pertinent subjects including  
23 supervision and leadership; OMNI; and the Performance Development Plan process.

24  
25 Ms. Westerfield's actions resulted in violations related to offender appeal rights and due process.  
26 Missing OMNI information and other lost and unprocessed documents created offender mistrust  
27 and unrest which resulted in other staff having to start processes over and contend with aggravated  
28  
29

1 offenders. This created an environment of mistrust and unrest among the prison population, which  
2 in turn could have caused dangerous situations for staff and offenders.

3  
4 The Board finds Appellant failed to provide sufficient supervisory oversight to Ms. Westerfield,  
5 resulting in problems for staff and offenders. Appellant had been aware of problems with OMNI  
6 entries and lost appeals from Ms. McMahon and Mr. Bailey. For this reason, the Board finds  
7 disciplinary action was warranted.

8  
9 However, the Board finds under the unique facts and circumstances of this case, a permanent  
10 demotion is not reasonably related to (a) the seriousness of the employee's offense and (b) the  
11 record of the employee in his service for the following reasons:

- 12  
13 1. Appellant had satisfactory and above satisfactory performance in conducting hearings,  
14 as no evidence or testimony was given to the contrary. Appellant's position description  
15 date stamped July 6, 2009, indicated roughly 70% of Appellant's job was to conduct  
16 disciplinary hearings; serve as the final appeal authority for general infractions;  
17 coordinate the negotiated hearing process at CRCC; and perform other duties as  
18 assigned. For these responsibilities (the majority of his work), Appellant had no  
19 complaints from management. Additionally, Appellant was kept in his position during  
20 the entire investigative process and served on the hiring committee for a non-permanent  
21 Hearings Officer, pointing to his capability to perform his job duties and responsibilities  
22
- 23 2. Appellant had no prior discipline, including verbal warnings with proposed  
24 consequences, formal counseling, letters of reprimand, reduction in pay, suspension or  
25 other forms of disciplinary action. Until June of 2013, when Ms. Westerfield came  
26 under Appellant's supervision, he had an excellent work record.  
27  
28  
29

- 1 3. No clear testimony or evidence was provided that indicated Appellant was aware of Ms.  
2 Westerfield or anyone else taking sensitive prison documents to her residences, nor was  
3 he aware of how or why so many documents wound up in the shred bin. He did not  
4 authorize Ms. Westerfield to work at home or to remove documents from CRCC.  
5 While there was testimony and evidence Appellant and Ms. Westerfield deleted or  
6 shredded some records that were old or had “gone away,” no evidence points to  
7 Appellant being aware of such a large quantity of missing and unprocessed documents.  
8
- 9 4. After learning about the confidential and time sensitive documents in the shred bin and  
10 at the residences of Ms. Westerfield, both parties agreed Appellant showed a desire to  
11 make positive changes. Appellant was aware of his failure to effectively supervise Ms.  
12 Westerfield. When asked what he thought his discipline should be, Appellant suggested  
13 a letter of reprimand, which is an indication of taking some responsibility. When  
14 Appellant learned of the missing documents and lost appeals, he offered suggestions,  
15 such as installing a camera and changing processes including requesting a drop box for  
16 the paperwork and personally hand-walking documents to their destination.  
17
- 18 5. Appellant testified most of his work day was spent preparing for hearings, traveling to  
19 and from hearings or conducting hearings. No testimony or evidence was presented to  
20 indicate Appellant had sufficient time in his day to perform all his supervisory  
21 responsibilities, including overseeing and checking document processing. Appellant  
22 admitted to placing his trust in Ms. Westerfield due to his busy hearings schedule and,  
23 as such, the Board questions whether Appellant was able to handle both hearings and  
24 effective oversight of Ms. Westerfield’s work given time constraints and minimal in-  
25 office hours.  
26

27 In summary, Appellant was the assigned supervisor of Ms. Westerfield, yet ignored signs of  
28 problems in the hearings unit, including disregarding emails sent by Ms. McMahan; delaying  
29

1 Ms. Westerfield's requests for meetings; failing to set up checks and balances for document  
2 processing and OMNI entries; and meeting regularly with Ms. Westerfield to establish a plan of  
3 action. Insufficient leadership ultimately resulted in disorganization in the hearings unit which  
4 negatively affected staff, offender rights and prison morale. However, Appellant had no prior  
5 history of discipline and performed the majority of his duties effectively and without cause for  
6 correction. Appellant was unaware of the documents removed from CRCC or being placed in the  
7 shred bin. The Board finds it unreasonable to hold Appellant fully responsible for the problems in  
8 the disciplinary hearings unit, given the unit was unsecured and a second Hearings Officer played a  
9 role in the process. At the pre-disciplinary hearing, Appellant showed signs of taking responsibility  
10 for his actions by admitting to his lack of close supervision and attempting to help with process  
11 improvement. No evidence or testimony was presented that proved Appellant's work schedule  
12 allowed him to effectually engage in overseeing Ms. Westerfield's work. An interview with Mr.  
13 Biviano could have shed necessary light on the interaction between Appellant, Ms. Westerfield and  
14 Mr. Biviano. The Board finds Appellant demonstrated he is capable and willing to make positive  
15 changes in his supervisory responsibilities and has demonstrated he is capable of performing his job  
16 as a Hearings Officer.

17  
18 Respondent has not met the burden proof and did not establish just cause for Appellant's permanent  
19 demotion. Therefore, Appellant's discipline should be modified to a temporary six-month demotion  
20 and restored to his permanent position as a Corrections Specialist 3, effective November 1, 2014.

21 This temporary removal from supervisory duties and reduction in pay is sufficient to deter  
22 Appellant from similar behavior and to maintain the integrity of CRCC.

23  
24  
25 **V. ORDER**

26 NOW, THEREFORE, IT IS HEREBY ORDERED the appeal of David Scantlin is granted in part  
27 and the disciplinary sanction is modified to a six-month temporary demotion to Classification  
28  
29

1 Counselor 2 from May 1, 2014 through October 31, 2014. Appellant is to be restored to Corrections  
2 Specialist 3, effective November 1, 2014.

3 DATED this \_\_\_\_ day of \_\_\_\_\_, 2016.  
4

5 WASHINGTON PERSONNEL RESOURCES BOARD  
6

7  
8 \_\_\_\_\_  
9 NANCY HOLLAND YOUNG, Chair

10 \_\_\_\_\_  
11 SUSAN MILLER, Vice Chair

12  
13 \_\_\_\_\_  
14 VICKY BOWDISH, Member  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29