BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

THOMAS AHEARN, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. DEMO-02-0016 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and BUSSE NUTLEY, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on May 14, 2002. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Thomas Ahearn was present and represented himself *pro se.* Morgan Damerow, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of demotion for neglect of duty, gross misconduct, and willful violation of published employing agency or Department of Personnel rules or regulations as a result of Appellant's arrest for driving under the influence of alcohol.

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1.4 **Citations Discussed.** WAC 356-56-600; WAC 356-56-500; WAC 356-56-600; Coyne v. Dep't of Social & Health Services, PAB No. DEMO-02-0008 (2003); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant is a permanent employee of Respondent Department of Corrections. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on June 17, 2002.

2.2 Appellant was a Correctional Unit Supervisor, Washington Management Service (WMS) Band 1, at the McNeil Island Corrections Center (MICC). Appellant began working for the Department of Corrections on February 23, 1981. As a Correctional Unit Supervisor, Appellant was responsible for the entire D-Unit and supervised approximately 16 employees.

2.3 By letter dated June 11, 2002, Alice Payne, Superintendent of Correctional Operations, informed Appellant of his demotion to a position as a Correctional Counselor 3 (Washington General Service), effective July 1, 2002 as a result of his actions on December 15, 2001. Ms. Payne charged Appellant with neglect of duty, gross misconduct, and willful violation of published employing agency or Department of Personnel rules or regulations. The disciplinary letter stated as follows:

> Specifically, you neglected your duty, committed acts of gross misconduct and willfully violated department rules and regulations when you admitted to being arrested for driving under the influence of alcohol in Pierce County Washington on December 15, 2001 (sic).

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In explaining to Appellant her reasons for demoting him, Superintendent Payne wrote:

> … your conduct on December 15, 2002 (sic) negatively impacted the Department's program when you were arrested on McChord Air Force Base for failure to obey the Gate Officer, driving under the influence, trespassing/entry for unlawful purposes, having an open alcohol container in your vehicle and not possessing a valid driver's license.
>
> ….
>
> You neglected your responsibility as an employee and supervisor of the department when your conduct resulted in your arrest for a DUI. You were aware of your responsibility as an employee of the DOC to obey laws when on and off duty. You were also aware that your behavior off duty can affect the Department's operation. You have failed to adhere to the Department's Code of Ethics and my expectations of you as a manager and supervisor. Your behavior of failure to obey, driving under the influence, trespassing/entry for unlawful purposes, having an open alcohol container in your vehicle and not possessing a valid driver's license rises to the level of gross misconduct.

2.4 On April 24, 2003, the Board partially granted Summary Judgment to Respondent concluding that there is no dispute that Appellant engaged in the conduct outlined in the June 11, 2002 disciplinary letter. The Board ruled that the only issue before the Board was the impact of Appellant's off-duty conduct on his position as a Correctional Unit Supervisor and whether the disciplinary sanction of demotion was appropriate based on his misconduct.

2.5 Appellant admits that he is an alcoholic and has undergone treatment for alcoholism in the past. The MICC has cooperated in Appellant's steps to seek treatment by allowing him to take time off work.

2.6 Appellant has received no prior formal discipline, however, he received a letter of reprimand from Superintendent Payne on August 4, 2000 for failing to notify his supervisor of his absences from work on May 15, 16, 17, 18, and 19, 2000. Ms. Payne also admonished Appellant for

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notifying a subordinate rather than his supervisor of his absences. The letter of reprimand states in part:

> As a supervisor, you are held to the highest standard. You are a role model who must follow the same policy and procedures that you expect your subordinates to follow. You have failed in this area of leadership by not leading by example. Your actions on these dates are inexcusable. Failing to notify your supervisor of your absences will not be tolerated.

Ms. Payne ended her letter by stating that "any future actions of wrongdoing on your part may result in further corrective or disciplinary action being taken against you."

2.7 On January 3, 2002, Gary Clark, Correctional Program Manager and Appellant's supervisor, initiated an Employee Conduct Report after learning of Appellant's arrest on December 15, 2001.

2.8 On March 7, 2002, Appellant and his representative met with Superintendent Payne and Cynthia Gay, Human Resource Consultant, for an administrative review. During the administrative review, Appellant admitted to receiving a ticket for Driving Under the Influence. Appellant stated that he had not eluded police and had been cooperative by stopping three to four blocks down the road. Appellant reported that he had completed a 10-day alcohol program and was doing everything he could to address his alcohol problem.

2.9 On July 17, 2002, Appellant entered a guilty plea to one count of Driving Under the Influence in the United States District Court for the Western District of Washington. In accordance with the plea offer, the remaining four charges against Appellant were dismissed.

2.10 The Department of Corrections' Employee Handbook contains the "Code of Ethics" and "Department Expectations" and states in part:

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CODE OF ETHICS
High moral and ethical standards among correctional employees are essential for the success of the department's programs. The Department of Corrections subscribes to a code of unfailing honesty, respect for dignity and individuality of human beings, and a commitment to professional and compassionate service.

DEPARTMENT EXPECTATIONS
As a representative of the Department of Corrections, you will be expected to … be a good citizen, obey laws while on and off duty. Your conduct off duty may reflect on your fitness for duty.

2.11 By signature dated July 8, 1991, Appellant acknowledged that he received the Department of Corrections' Employee Handbook and agreed to become familiar with its contents. Appellant also agreed to contact his supervisor or personnel officer if he had any questions.

2.12 Superintendent Payne reviewed Appellant's personnel file, performance evaluations, previous letter of reprimand, and the recent Employee Conduct Report. Superintendent Payne also reviewed Appellant's responses during the administrative review and determined that he did not provide any mitigating or convincing explanations for his off-duty conduct on December 15, 2001.

2.13 Superintendent Payne decided that the severity of Appellant's behavior clearly constituted misconduct. Superintendent Payne determined that Appellant's behavior constituted neglect of duty, gross misconduct, and willful violation of published employing agency or Department of Personnel rules or regulations.

2.14 Superintendent Payne considered the serious nature of Appellant's behavior and found that he disregarded agency policy by failing to obey all laws while on and off duty. Superintendent

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Payne was also troubled by Appellant's failure to adhere to the higher moral and ethical standards of conduct and professionalism expected of a WMS employee and a Correctional Unit Supervisor.

2.15 Because MICC's mission is to enforce policies and regulations, Superintendent Payne was concerned that Appellant's off-duty unlawful conduct would have a negative impact on the morale of the MICC staff.

2.16 Superintendent Payne and Mr. Clark spoke with Appellant's subordinates and determined that Appellant's off-duty conduct had damaged his subordinates' trust, confidence, and respect for him resulting in Appellant's loss of credibility as an effective supervisor. Appellant had a responsibility to be a role model for both staff and offenders. Superintendent Payne determined that Appellant's conviction for a crime impacted his credibility. It was clear to Superintendent Payne, after talking with Appellant's subordinates, that Appellant could no longer effectively supervise the 16 employees in the D-Unit.

2.17 In determining the level of discipline, Superintendent Payne considered Appellant's misconduct to be severe and completely unacceptable. However, she did not consider termination because Appellant had never been disciplined for work performance other than not reporting to work. Superintendent Payne considered suspension and reduction in pay; however, she decided that those sanctions would not have addressed the problem of Appellant's lack of credibility as a supervisor, and her concerns about his ability to enforce rules. Superintendent Payne concluded that demotion was the only appropriate sanction.

III. ARGUMENTS OF THE PARTIES

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3.1 Respondent argues that Appellant, as a WMS employee and Correctional Unit supervisor, was held to a higher moral and ethical standard of conduct and professionalism. Respondent asserts that Appellant was specifically reminded of the higher expectations in his August 4, 2000 letter of reprimand. Respondent contends that Appellant had a 24-hour responsibility for the operation and supervision of the D-Unit and could be called in at any moment in the event of an emergency. Respondent argues that correctional employees are expected to be role models and to obey and enforce the laws and rules of the institution. Respondent contends that Appellant's credibility was undermined, his ability to perform his duties was diminished, and he was no longer able to operate as an effective supervisor for the D-Unit. Respondent argues that if Appellant is not able to conduct himself in an appropriate manner, he cannot expect others to abide by the rules and laws that he refuses to follow. Respondent asserts that demotion was not too severe and asks the Board to uphold that disciplinary sanction.

3.2 Appellant argues that his demotion was unfair and an act of discrimination because he is an alcoholic. Appellant asserts that he set a good example as a role model to correctional staff and inmates by being cooperative with the police, taking necessary steps to resolve his legal issues, and seeking treatment for his alcoholism. Appellant contends that he worked with the Employee Advisory Service and they recommended that he be returned to all his former responsibilities. Appellant argues that three months after his demotion, his supervisor also recommended that he be returned to his normal chain of command. Appellant contends that he continues to have the respect of the inmates, staff, and supervisors at MICC. Appellant argues that he performed quality work as a supervisor and received good performance evaluations. Appellant contends that even though he had 24-hour responsibility for what happened on the D-Unit, he was not on duty 24 hours per day. Appellant asserts that since his demotion, he has assumed the duties and responsibilities of his current Correctional Unit Supervisor during the supervisor's absences. Appellant asks the Board to

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reinstate him to his Correctional Unit Supervisor position and reimburse all his lost wages as a result of his demotion.

IV. CONCLUSIONS OF LAW

4.1 Washington Management Service employees may appeal disciplinary actions to the Personnel Appeals Board under WAC 356-56-600.

4.2 Appellant was in a Washington Management Service (WMS) position at the time of this disciplinary action. Chapter 356-56 WAC establishes a system of personnel administration for WMS employees. Disciplinary action for WMS employees is provided for in WAC 356-56-500, which states; in part:

> Appointing authorities may demote, suspend, reduce in salary, or dismiss a permanent Washington Management Service employee for cause. The disciplinary process shall be administered in accordance with WAC 356-34-020 through 356-34-070.

4.3 Discipline or dismissal of Washington Management Service (WMS) employees for cause under WAC 356-56-500 does not require the citation of one or more of the specific causes for discipline or dismissal of general service employees enumerated in WAC 356-34-010, nor does the rule require the misconduct or other unacceptable performance to be characterized as such.

4.4 WMS employees have the right to appeal disciplinary actions to the Personnel Appeals Board under WAC 356-56-600. At a hearing on appeal, the agency employer bears the burden of proof and the Board reviews and determines whether the disciplinary action is justified and

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appropriate under the facts and circumstances. Coyne v. Dep't of Social & Health Services, PAB No. DEMO-02-0008 (2003).

4.5 As a WMS employee, Appellant was held to a higher standard of conduct and professionalism and he had a duty to act as a role model. Appellant's conduct on December 15, 2001 called into question his judgment and undermined his ability to effectively perform his duties as a Correctional Unit Supervisor. Superintendent Payne's decision to remove Appellant from his supervisory position was appropriate under the circumstances.

4.6 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness and circumstances of the offenses. The penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

4.7 Although it is commendable that Appellant has recognized his alcoholism and has assumed responsibility and sought treatment for his alcoholism, it does not diminish the fact that he should be held accountable for his actions on December 15, 2001 while under the influence of alcohol. There is no credible evidence to support Appellant's claim that he was demoted because of his alcoholism.

4.8 Under the facts and circumstances, Respondent has met its burden of proving the charges in the disciplinary letter. Respondent has established that the disciplinary sanction of demotion was appropriate under the circumstances presented here. Therefore, the appeal should be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Thomas Ahearn is denied.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Busse Nutley, Member

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