BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

BRIAN BUCKNER, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. DEMO-04-0024 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, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held in the Personnel Appeals Board Hearing Room, 2828 Capitol Boulevard, Olympia, Washington, on February 4, 2005.

1.2 **Appearances.** Appellant Brian Buckner appeared *pro se*. Assistant Attorney General Rachelle Wills represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of demotion for neglect of duty and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleges Appellant disregarded safety issues when he pursued and apprehended a suspected shoplifter.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

II. FINDINGS OF FACT

2.1 Appellant was a Community Corrections Officer 2 and a permanent employee for Respondent Department of Corrections (DOC). 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 July 28, 2004.

2.2 Appellant began his state employment as a Hospital Attendant at Western State Hospital in 1983 and promoted to a Psychiatric Child Care Counselor (PCCC) and Institutional Counselor with the Department of Social and Health Services (DSHS). In July 2000, Appellant began working for DOC as a Community Corrections Officer (CCO) 1. On February 16, 2001, Appellant promoted to a CCO 2 and was working in a lead position as a temporary CCO 3 at the time of his demotion.

2.3 Appellant's personnel file reflects the following:

- On August 30, 1991, Appellant received a two-day suspension from his PCCC 1 position with DSHS for neglect of duty and willful violation of published employing agency or Department of Personnel rules or regulations for directing two residents to hold hands.
- On April 25, 1996, while working for DSHS, Appellant received a letter of reprimand for failing to follow his supervisor's directive.
- By letter dated April 17, 1997, Appellant was notified of his dismissal from his PCCC 1 position with DSHS. By order dated April 16, 1998, the Personnel Appeals Board modified Appellant's dismissal to a suspension, effective May 2, 1997, through April 16, 1998. Buckner v. Dep't of Social & Health Services, PAB No. DISM-97-0027 (1998). On May 8, 1998, DSHS amended Appellant's April 17, 1997, dismissal letter to reflect the suspension.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.4 On October 12, 2000, Field Administrator Pamela J. Maddess for DOC's West Central Region, Pierce County and Marty Lyons, acting Facility Manager for RAP/Lincoln Park Work Release and the Special Needs Unit, met with Appellant to address Appellant's previous discipline, while working with special needs clients at DSHS. Ms. Maddess noted that Appellant had been working with his supervisor and lead worker to assess training needs related to special needs offenders. In addition, Ms. Maddess noted that Appellant was scheduled to participate in training that included Arrest, Search and Seizure and appropriate restraint interventions.

2.5 DOC has adopted Policy Directive 420.390, Arrest, Search, and Seizure. In subsection I (A), the policy directive states, "Community Corrections Officers (CCO) may arrest or cause the arrest of an offender when:

> 1. A Department detainer has been issued per DOC 350.750 Violation Warrants and Detainers,
>
> 2. There is an outstanding warrant for the offender on a cause that has Department jurisdiction, or
>
> 3. The offender commits a crime in the CCO's presence.

Subsection I (D) further states that "CCOs should first obtain the assistance of law enforcement if it is believed that an unplanned arrest cannot be carried out without endangering the safety of the CCO, offender or community." In addition, subsection III (A) states, "CCOs may search an offender's person or property, living area, or vehicle when there is reasonable cause to believe that an offender has violated a condition of supervision."

2.6 Appellant completed the Washington State Criminal Justice Training commission Adult Services Academy on March 16, 2001, which included training on Arrest Search and Seizure

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

guidelines that emphasize that "DOC officers may never handcuff third parties" and should have "jurisdiction and probable cause" before attempting to detain an individual. Appellant received additional training on Arrest Search and Seizure procedures through courses taken between 2001 and September 2003.

2.7 On May 7, 2004, Appellant and CCO 2 David Hilpert were driving back to DOC's West Central Regional Office in a caged state vehicle when they drove through the parking lot of a Tacoma convenience store and noticed the store's owner chasing an individual. Mr. Hilpert, who was driving, stopped the vehicle and asked the storeowner what was happening, and the owner stated he had been robbed. Without first establishing jurisdiction, Appellant and Mr. Hilpert pursued the suspect, whom they did not know, in their state vehicle and stopped him approximately two or three blocks from the store. Appellant exited the car and yelled at the suspect to lie down and show his hands. When the suspect complied, Appellant used control tactics to secure the suspect while Mr. Hilpert placed the handcuffs on the suspect. Appellant also searched the suspect and found three beers on his person.

2.8 Appellant directed the storeowner to call 911, and he and Mr. Hilpert placed the suspect in the state car and transported him back to the store. Appellant entered the store, and Mr. Hilpert remained in the vehicle with the suspect, who was sitting in the cage portion of the car. Appellant waited approximately 30 to 40 minutes for the police to arrive; however, he informed the storeowner he was nearing the end of his shift and needed to leave. Appellant then left the suspect, still handcuffed, in an employee restroom with the restroom door blocked by merchandise crates.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Mr. Hilpert gave the handcuff key to the storeowner, and he and Appellant returned to the office, leaving the suspect in the custody of the storeowner until police arrived.

2.9 Appellant did not contact his supervisor or any other person within his chain of command either at the time he detained the suspect or after he returned to the office. Mr. Hilpert, however, informed other CCOs of the incident and asked CCO Bill McDonough to retrieve his handcuff key from the convenience store's owner. Mr. McDonough immediately informed Community Corrections Supervisor Kelly Miller of the incident.

2.10 The department subsequently initiated an investigation of Appellant's suspected misconduct, and in May 2004, Deputy Regional Administrator Mark Kucza reviewed the investigative report and held an administrative review. Mr. Kucza determined that Appellant, as the lead officer, failed to provide proper direction, failed to perform any sort of risk assessment prior to pursuing the suspect, and consequently, put himself, Mr. Hilpert, and the public in a potentially unsafe situation. During the administrative review, Appellant stated that he should not have pursued the suspect, should have remained with the storeowner, and should have contacted his supervisor. Mr. Kucza considered Appellant's acknowledgement and determined that demotion was the appropriate sanction.

2.11 By letter dated July 15, 2004, Regional Administrator Jim Blodgett notified Appellant of his demotion as Community Corrections Officer 2, range 47, step K, with the Office of Correctional Operations, West Central Region Pierce County to a Correctional Officer 2, range 40, step K at the Washington Corrections Center for Women, effective August 1, 2004. Mr. Blodgett charged Appellant with neglect of duty and willful violation of published employing agency or Department

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

of Personnel rules or regulations for disregarding personal safety and the safety of others when he admittedly pursued, restrained, searched, and transported a suspected shoplifter and left the handcuffed suspect and handcuff keys with a store owner, returned to his office and failed to notify his superiors.

2.12 In determining the level of discipline, Mr. Blodgett consulted with Mr. Kucza, considered Appellant's employment record, and considered the seriousness of Appellant's misconduct. Mr. Blodgett was concerned about Appellant's ability to use proper judgment and make good decisions. As a result, Mr. Blodgett determined that a demotion to a Correctional Officer 2 working in a housing unit with other CCOs provided a good balance for Appellant to perform his duties under the supervision necessary to ensure the safety of Appellant and others within the department.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues Appellant neglected his duty and violated agency policy when he exceeded his authority as a CCO by arresting a citizen without the proper jurisdiction to do so. Respondent contends Appellant was unaware of the suspect's true identity at the time of the incident and did not have the authority to pursue or detain the individual. Respondent argues that Appellant failed to assess the risks involved and failed to apprise his supervisor of the situation. Respondent asserts Appellant's lack of judgment could have resulted in a dangerous situation and potentially posed a serious liability for the department. Respondent asserts Appellant's actions were contrary to his training and contrary to the department's expectation that DOC employees ensure public safety, as well as their own safety.

3.2 Appellant argues that the suspect he pursued was an offender under DOC's jurisdiction and that the department became aware of his offender status due to Appellant's actions. Appellant

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

asserts that he de-escalated a highly volatile situation and that the community is safer as a result. Appellant contends he received no progressive discipline and asserts the department intended to make an example of Mr. Hilpert and him. Appellant asserts the department suffered no financial liability as a result of his actions and asks the Board to reinstate him to his Community Corrections Officer 2 position.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; [WAC 251-12-240(1)]; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

4.5 Appellant had a duty to follow departmental guidelines regarding arrest, search, and seizure and to consult with his superiors regarding any jurisdictional questions or procedural concerns.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Respondent has proven by a preponderance of the credible evidence that Appellant neglected that duty, violated agency policy, and put himself, his co-worker, and the public at harm when he pursued an unknown individual without fully understanding the circumstances or having any knowledge about the dangerousness of the person he was pursuing.

4.6 Therefore, under the proven facts and circumstances, demotion is the appropriate sanction, and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Brian Buckner is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504