BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CHARLES NEEDLES, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. DISM-02-0095 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, GERALD L. MORGEN, Vice Chair, and BUSSE NUTLEY, Member. The hearing was held at the Superintendent's Conference Room at the Washington State Penitentiary in Walla Walla, Washington, on January 6, 2004. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Charles Needles was present and was represented by Spencer N. Thal, General Counsel for Teamsters Local 117. Kari Hanson, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for incompetence. Respondent alleges that Appellant repeatedly failed to pass mandatory Correctional Officer training.

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II. FINDINGS OF FACT

2.1 Appellant Charles Needles was employed by 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 November 22, 2002.

2.2 On November 26, 1979, Appellant began working for DOC as a Correctional Officer. Appellant attended and passed Correctional Officer training on October 3, 1980. On December 15, 1997, Appellant resigned from his position. On January 26, 2001, DOC hired Appellant as a Correctional Officer 2 at the Washington State Penitentiary (WSP).

2.3 DOC adopted Policy 880.110, Mandatory Employee Training, which complies with WAC 139-10-210, and requires Correctional Officers, within six months of employment, to attend and pass either the Correctional Worker Core (CORE) or the Correctional Officer Academy (COA) training. The policy states that employees who do not successfully complete the required training will be dismissed or reverted to their former job class, whichever is appropriate. The mandatory four-week training has been approved by the Washington State Criminal Justice Training Commission.

2.4 Because Appellant was selected for, and accepted, a Correctional Officer 2 position, DOC Policy 880.110 required him to attend Correctional Officer training as a condition of continued employment. Further, WSP determined it was necessary for him to receive up-to-date training that incorporated WSP's current best practices and emphasized safety and security for inmates and staff.

2.5 April 4 through May 5, 2001, Appellant attended the COA course and failed to successfully complete the training.

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2.6 In July 2001, the academy re-tested Appellant for the COA training; however, he failed the re-testing.

2.7 On October 1, 2001, Appellant failed to pass the physical requirements for admission to the CORE training course.

2.8 On December 16, 2001, Appellant resigned from his position rather than being dismissed for his failure to successfully complete the mandatory Correctional Officer training.

2.9 On December 19, 2001, WSP re-hired Appellant, which allowed him six months during his new probationary period to successfully complete the COA or CORE training. Appellant postponed his training for a number of months due to personal reasons, and due to a class cancellation. On June 11, 2002, he once again failed to successfully complete the COA course.

2.10 On June 19, 2002, Appellant gained permanent status as a Correctional Officer 2 because six months had passed since his date of re-hire.

2.11 On August 15, 2002, the academy re-tested Appellant. Appellant was unable to successfully complete the COA course, because he failed the handcuffing portion of the training.

2.12 On August 26, 2002, an Employee Conduct Report was completed. On September 19, 2002, Associate Superintendent Ron Van Boening met with Appellant, Appellant's representative, and Craig Hamada, Human Resource Consultant. During the meeting, Appellant admitted he failed the training opportunities provided to him by WSP. However, Appellant claimed the handcuff

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maneuver portion he failed was not used at WSP, and that it was unfair that he failed the course based solely on that portion of the training.

2.13 On November 5, 2002, Richard Morgan, Superintendent of Washington State Penitentiary, conducted a pre-termination meeting with Appellant, Appellant's representatives, and Mr. Hamada. Appellant again admitted he failed to properly secure the handcuffs during his training test.

2.14 Superintendent Morgan reviewed the Employee Conduct Report, Appellant's responses during the September 19, 2002 and November 5, 2002 meetings, the score sheets from Appellant's training courses, and DOC Policy 880.110. Superintendent Morgan determined Appellant had shown himself to be incompetent as a Correctional Officer by his repeated failure to pass either the COA or the CORE training. Superintendent Morgan considered the number of opportunities WSP had provided Appellant to successfully complete the training, and that Appellant understood the training to be a requirement of continued employment. After considering the level of safety risk WSP faced by employing a Correctional Officer who lacked the necessary abilities to perform his duties, Superintendent Morgan concluded termination was the only appropriate action.

2.15 By letter dated November 20, 2002, Superintendent Morgan informed Appellant of his dismissal effective midnight on December 4, 2002. Superintendent Morgan charged Appellant with incompetence for his repeated inability to pass the mandatory Correctional Officer training.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts that Appellant, despite years of on-the-job experience, demonstrated a repeated inability to meet the training requirements of a Correctional Officer. Respondent contends that Appellant was given multiple opportunities to successfully complete the mandatory training,

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and that Appellant was aware the training was a condition of continued employment. Respondent argues that because Appellant was hired before January 1, 1982, he arguably is not subject to the statutory training requirement set forth in RCW 43.101.220; however, DOC requires its Correctional Officers to be proficient in the tasks covered in the training curriculum. Respondent argues that WSP has a commitment to ensure that Correctional Officers meet the highest standards and are proficient in the skills taught in the CORE/COA training curriculum. Respondent contends Appellant demonstrated incompetence as a Correctional Officer by failing to pass the mandatory requirements. Respondent argues that allowing Appellant to remain employed without demonstrating he has the ability to carry out his duties in a safe and secure manner posed serious safety and liability risks to WSP. Respondent asserts it had no alternative other than to dismiss Appellant from his Correctional Officer position.

3.2 Appellant argues his case is unique because he was a long-term employee with almost 20 years of excellent service prior to resigning in 1997. Appellant asserts he successfully completed the Corrections Officer Academy in 1980 and, per RCW 43.101.220, should have been excused from attending additional training upon his return to the institution in 2001. Appellant contends it was unfair for WSP to determine that he was incompetent solely for failing the handcuff portion of the training. Appellant argues he witnessed improper handcuffing performed by other Correctional Officers on numerous occasions while employed at WSP. Appellant asserts that with his skill and experience, he deserves the opportunity to work for WSP. Appellant contends that if reinstated, he would have a high commitment to excellence, with a new level and focus to the safety and security of the institution.

IV. CONCLUSIONS OF LAW

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

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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; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Incompetence presumes a lack of ability, capacity, means, or qualification to perform a given duty. Plaisance v. Dep't of Social and Health Services, PAB No. D86-75 (Kent, Hrg. Exam.), aff'd by Board (1987).

4.4 Under DOC Policy 880.100, all Correctional Officers shall attend and pass CORE or COA training within six months of employment. To comply with the policy, DOC practice was to send Correctional Officers back to training after a break in service. RCW 43.101.220(1) states, " ... corrections personnel of the state .... initially employed after January 1, 1982, shall engage in basic corrections training that complies with standards adopted by the commission ... The training shall be successfully completed during the first six months of employment ..." Appellant had a break in service for more than three years; however, Respondent notified Appellant at the time he was re-hired that successful completion of the training was a requirement of continued employment. Since the statute is silent as to the training requirements for those individuals with a lengthy break in service, Appellant has failed to prove that he was exempted from attending corrections training.

4.5 Respondent has met its burden of proving that Appellant demonstrated incompetence by his repeated failure to successfully pass the mandated Correctional Officer training. Further, Appellant clearly demonstrated he lacked the qualifications and ability to carry out his Correctional Officer duties in a safe and secure manner when he was unable to complete the required training.

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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 Respondent has established that Appellant's incompetence merited dismissal in light of the safety and security risks placed on the institution by employing a Correctional Officer not able to perform the tasks necessary for effective supervision and control of inmates.

4.8 We conclude that dismissal of Appellant was appropriate under the circumstances presented here. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Charles Needles is denied.

DATED this _____ day of _____, 2004.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Gerald L. Morgen, Vice Chair

_____
Busse Nutley, Member

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