BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

REBECCA BISHOP, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	)	Case No. RED-05-0002 ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

1.1 **Consideration of Motion.** This matter came before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; BUSSE NUTLEY, Vice Chair; and GERALD L. MORGEN, Member, for consideration of Respondent's Motion for Summary Judgment. This matter was considered on written documents without oral argument.

1.2 **Representation.** Appellant Rebecca Bishop, *pro se*, did not file a written response. Valerie B. Petrie, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including Respondent's Motion for Summary Judgment, filed July 14, 2005.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

II. FACTS

2.1 Appellant began her employment as a Community Corrections Officer 2 with the Department of Corrections (DOC) in January 1997. Upon her employment, Appellant was informed of DOC policies and procedures.

2.2 DOC has adopted Policy 850.030 that requires employees to report family and personal relationships with offenders. In 1998, Appellant notified her supervisor, Robert Pearson, that she had contact with her nephew, JPS, an offender who was under DOC supervision, and her brother, RRS, a DOC inmate. Mr. Pearson advised Appellant to stay out of both offenders' Offender Based Tracking System (OBTS), the department's database program that contains confidential offender information. Mr. Pearson also advised Appellant to refrain from using her position's professional influence regarding their DOC supervision and to report any significant changes of either offender's DOC status. DOC has also adopted Policy 800.100, which provides that "employees are to avoid actions that use, or create the appearance of using their position for personal gain or private advantages for themselves or another person." The policy further provides that "[e]mployees shall not use their positions to secure special privileges for themselves or any other person."

2.3 On September 14, 2004, Appellant sent an e-mail message from her DOC computer to Progress House Work Release (PHWR) Community Corrections officer Louis Kacho regarding her nephew JPS. Progress House is a work release facility that DOC contracts with to provide work release placements for eligible DOC offenders. Appellant's e-mail, in relevant part, stated:

> . . . I was wondering if you have any influence over who comes to Progress House and who doesn't? I have a nephew who is currently at Olympic CC

> [Olympic Corrections Center] and doing really well. It's the first time he has really made some significant changes in his life. I am hoping that he will be able to get to work release as early as possible. His name is [JPS] and his ERD [early release date] is 10/23/05. When I was there at PHWR, about 4 months was the max that people were able to be there although the time limit was 6 months. Even 4 months would be a great start for him. Let me know if you have an influence, would you? O[r], if you would be uncomfortable about using it, please let me know that, too.

2.4 On the same date, Mr. Kacho responded to Appellant via e-mail, "[u]fortunately I have as much influence as you do" and went on to explain the work release and screening process. In turn, Appellant replied back, "[a]nd we all know how much influence I have. (zip) Yeah, I was afraid of that. Well thanks anyway." Mr. Kacho subsequently forwarded Appellant's e-mails to his supervisor.

2.5 On September 23, 2004, an employee conduct report (ECR) was initiated and an investigation was conducted. During the investigation, Appellant admitted to sending the e-mail to Mr. Kacho, but asserted that it was misunderstood and that she was not asking for any favors. Appellant's ECR response acknowledged that she sent the e-mail to Mr. Kacho and that it was "a poor judgment call" on her part.

2.6 Regional Administrator Jim Blodgett, Appellant's appointing authority, held an administrative review with Appellant on October 28, 2004. Appellant advised Mr. Blodgett that she had contacted Mr. Kacho to advise him of the release address for her nephew who had been re-incarcerated. Appellant also asserted that her actions were a "misunderstanding in terminology" and that she was only trying to obtain information about the process. However, Mr. Blodgett found no indication in Appellant's e-mail that her inquiry to Mr. Kacho was related to a release address

because there was no reference to Appellant's nephew's address. Rather, Mr. Blodgett found that the language in Appellant's e-mail was intended to solicit Mr. Kacho's influence. Mr. Blodgett further determined that Appellant engaged in misconduct by attempting to involve another staff to use his influence in the placement of her nephew, an offender. Mr. Blodgett also concluded that Appellant failed to follow the expectations of Mr. Pearson and to follow agency policy in reporting her nephew's change in status from community corrections supervision to an inmate in a DOC facility.

2.7 Mr. Blodgett concluded that Appellant was insubordinate, neglected her duty and willfully violated DOC rules and regulations and that her conduct affected her credibility with the agency. Because Appellant had no previous corrective or disciplinary action in her file, he determined that a reduction in salary was the appropriate sanction. By letter dated December 15, 2004, Mr. Blodgett notified Appellant that her salary as a Community Corrections Officer 2 was reduced by five-percent for three months.

2.8 Appellant appealed her salary reduction on January 10, 2005.

2.9 On July 14, 2005, Respondent filed a Motion for Summary Judgment. Respondent argued that summary judgment denying the appeal was appropriate because Appellant admitted to the conduct underlying her reduction in pay, therefore, there was no question that Appellant engaged in the alleged misconduct and that the sanction imposed was appropriate.

2.10 On July 14, 2005, the PAB issued a notice scheduling Respondent's Motion for Summary Judgment on Monday, August 8, 2005. The notice was mailed to Appellant by both certified and regular mail. The notice also contained the timelines for responding to the motion, as provided in WAC 358-30-060(4).

2.11 Appellant did not file a written response to Respondent's motion with the PAB.

III. DISCUSSION

3.1 The Board may decide an appeal by motion if the documents on file, depositions and affidavits show there is no genuine issue as to any material fact and the appeal should be dismissed as a matter of law. WAC 358-30-060(1). All facts and reasonable inferences therefrom are to be determined in favor of the nonmoving party. For purposes of Respondent's motion to dismiss, we must assume any disputed facts in favor of Appellant. Hall v. University of Washington, PAB No. 3863-V2 (1995).

3.2 Appellant was notified of Respondent's motion and given notice of the timeline in which to respond. However, Appellant failed to submit a response to this motion. Therefore, she has failed to set forth any specific facts to show a genuine dispute of material fact exists. Consequently, there is no question that Appellant sent an e-mail message to Mr. Kacho asking if he had any influence on Progress House placements in an effort to obtain placement for her nephew, a DOC inmate.

3.3 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).

3.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995).

3.5 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).

3.6 Based on Appellant's length of time working for the Department of Corrections, she should have been aware of what behavior was expected of her as a community corrections officer. Appellant neglected her duty and willfully violated DOC policy when she solicited Mr. Kacho to use his influence to secure placement for her nephew. Furthermore, Appellant was insubordinate when she failed to follow her supervisor's directive to report the change in her nephew's DOC status.

3.7 Based on the uncontroverted facts, Appellant's actions warrant a three-month, five-percent reduction in salary. Therefore, Respondent's motion should be granted, and the appeal of Rebecca Bishop should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion for Summary Judgment is granted, and the appeal of Rebecca Bishop is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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