BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

PATRICK CAMPBELL, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	)	Case No. SUSP-98-0051 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; GERALD L. MORGEN, Vice Chair; and LEANA D. LAMB, Member. The hearing was held on April 11, 2000, at Station #89 of the Vancouver Fire Department in Vancouver, Washington.

1.2 **Appearances.** Appellant Patrick Campbell was present and was represented by Edward E. Younglove, Attorney at Law, of Parr and Younglove, P.L.L.C. Respondent Department of Corrections was represented by Elizabeth Delay Brown and Lawrence W. Paulsen, Assistant Attorneys General.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of a three-day suspension for insubordination and neglect of duty. Respondent alleges that Appellant, a Community Corrections Officer 3, failed to comply with his supervisor's directive and as a result, failed to make the required contacts for maximum offenders.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); Countryman v. Dep't of Social and Health Services, PAB No. D94-025 (1995); McCurdy v.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504
(360) 586-1481

Dep't of Social & Health Services, PAB No. D86-119 (1987); Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant Patrick Campbell is a Community Corrections Officer 3 and permanent employee of 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 on November 30, 1998.

2.2 By letter dated October 19, 1998, Marianne McNabb, Regional Administrator for the Southwest Region, informed Appellant of his three-day suspension without pay. Ms. McNabb alleged that Appellant was insubordinate and neglected his duty when he failed to comply with his supervisor's oral directive regarding management of his offender caseload and related offender contacts. Ms. McNabb further alleged that Appellant failed to make the required contacts for the maximum offenders on his caseload.

2.3 Prior to the incident giving rise to this appeal, Appellant had received two letters of reprimand. On February 4, 1998, he was given a letter of reprimand for failing to obtain supervisory approval to make an arrest. On March 6, 1997, he was given a letter of reprimand for failing to properly use the chain of command.

2.4 During the end of April 1998, Appellant volunteered to provide coverage for the sole Community Corrections Officer assigned to the Skamania County, Stevens Community Corrections Office. The officer normally assigned to that office was away from work due to an unexpected emergency medical leave. At the time, Appellant's assignment to the Stevens Community Corrections Office was expected to last approximately 60 days. Although Appellant began working

on the Stevens Community Corrections Office caseload in early May, he was not formally assigned to the temporary position until May 16, 1998.

2.5 Prior to Appellant assuming the temporary assignment, the caseload of the Stevens Community Corrections Office was is disarray. In addition, the office was being remodeled. Respondent was aware of the problems in the office and was taking steps to alleviate the situation. However, when Appellant assumed the temporary assignment, none of the problems had been resolved.

2.6 On May 13, 1998, Appellant, his supervisor, Larry Hanson, and two clerical employees, met to develop an emergency plan to organize and provide coverage for the office. Because of the problems in the office, Mr. Hanson orally directed Appellant to make field contacts with maximum offenders only. Mr. Hanson expected Appellant to make office contacts with medium and minimum offenders. Appellant expressed his concerns with Mr. Hanson's directive and asked Mr. Hanson to provide him with the directive in writing. Mr. Hanson agreed to do so.

2.7 On May 14, 1998, Appellant did not report to the Stevens Community Corrections Office as expected. Instead he went to the North Bonneville area where he made field contacts with ten offenders. Two inmates were classified as limited contact (LCT), one was classified as gross misdemeanor (OMA), one was classified as monetary only (OMB) and six were classified as medium offenders.

2.8 On May 15, Mr. Hanson and Appellant met to review the contacts made by Appellant on May 14. Mr. Hanson again orally directed Appellant to make field contacts on maximum cases only. Appellant told Mr. Hanson that he felt Mr. Hanson was micro-managing him. Subsequently, on May 17, Appellant sent Mr. Hanson an e-mail requesting that Mr. Hanson provide his oral

directive in writing. Mr. Hanson complied with Appellant's request and by e-mail dated May 20, 1998, he gave Appellant the directive in writing.

2.9 On May 21, during a telephone conversation with Mr. Hanson, Appellant stated that he was making contacts with field contacts with maximum offenders and with other offenders who lived in the same general area. Mr. Hanson once again orally directed Appellant to make field contacts with maximum offenders only. However, Appellant contacted two medium offenders and one minimum offender in addition to two maximum offenders.

2.10 On May 21, Mr. Hanson initiated an Employee Conduct Report (ECR) against Appellant for failing to comply with his oral directive.

2.11 On May 27, 1998, Appellant opened Mr. Hanson's May 20, 1998 e-mail. Subsequent to reading the e-mail, Appellant made no field contacts with medium or minimum offenders.

2.12 Appellant’s temporary assignment was terminated on June 5, 1998.

2.13 During the administrative review of the ECR, Marianne McNabb learned that contrary to Appellant's assertions, Appellant had not made field contacts with all of the maximum offenders assigned to the Stevens Community Corrections Office. Ms. McNabb determined that Appellant's failure to comply with Mr. Hanson's directive and Appellant's continued field contacts with medium and minimum offenders negatively impacted his ability to meet the required contacts for the maximum offenders.

2.14 Department of Corrections Division Directive number DCC 200.300 provides, in part, that CCOs are to develop offenders' supervision plans using their discretion in determining the type and frequency of contacts and are to meet the following minimum contact requirements for offenders:

MAXIMUM - (4)

2 face-to-face with offender, including 1 mandatory field contact.
2 other which may include collateral

MEDIUM - (2)
1 face-to-face with offenders in the field or office
1 other which may include collateral

MINIMUM - (1)
1 face-to-face with offender in the field or office

2.15 Appellant's supervisor credibly testified that the required contacts found in the policy are based on a monthly time period. Mr. Hanson stated that CCOs are not held accountable for meeting the monthly requirements if they are assigned a case for less than one full month.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant failed to follow his supervisor's clear, oral directive and as a result, failed to meet the contact requirements for maximum offenders. Respondent further argues that Appellant misrepresented to Ms. McNabb the maximum contacts he did make. Respondent asserts the Mr. Hanson's directive was reasonable, lawful, did not violate policy, was repeated to Appellant on numerous occasions, and yet Appellant chose to disobey the directive. Respondent contends that the emergency situation in the Stevens Community Corrections Office was not a typical situation and that under the circumstances, it was reasonable for Mr. Hanson to take away Appellant's discretion in regard to where contacts with medium and maximum offenders was to take place. Respondent further contends that it is not reasonable for all oral directives to be put in writing. Respondent asserts that Appellant did not have a right to disobey an oral directive from his supervisor. Respondent argues that Appellant's action of disobeying his supervisor's oral directive constituted insubordination and resulted in his neglect of duty. Therefore, Respondent contends that a three-day suspension is an appropriate level of discipline.

3.2 Appellant argues that he had a reasonable belief that his supervisor's directive was unlawful and that because he was concerned about his liability if he were to follow what he believed to be an illegal oral directive, it was reasonable for him to ask for the directive in writing before he complied. Appellant asserts that his supervisor delayed providing the written directive but that as soon as he received it, he complied. Appellant argues that he was making efforts to contact all the maximum offenders at their homes but that some of his efforts were unsuccessful. Appellant further argues that his effort was important but that he was unable to make all the required contacts through no fault of his own. Appellant contends that contacting medium and minimum offenders who lived in the same area as maximum offenders was reasonable and he should not have been disciplined for doing this. Appellant asserts that a permanent blemish on his employment record is not justified because he tried to follow the legal requirements and take reasonable steps for his own protection.

IV. CONCLUSIONS OF LAW

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

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 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 and Health Services, PAB No. D94-025 (1995).

4.4 Appellant failed to comply with his supervisor's oral directive. The directive was not contrary to the provisions of the policy. Furthermore, there is no evidence in the record of a law or regulation governing offender contacts. Therefore, we conclude that the oral directive was reasonable and lawful. Appellant failed to comply with the oral directive even though he was given the directive on more than one occasion and as evidenced by Appellant's May 17 e-mail to his supervisor, he clearly understood the directive. Appellant's actions constituted insubordination.

4.5 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).

4.6 Appellant neglected his duty when he failed to comply with a lawful directive from his supervisor. Furthermore, Appellant neglected his duty when he failed to meet the required contacts for maximum offenders. However, in regard to the required contacts, Appellant's actions are mitigated by several factors. First, it is uncontroverted that the Stevens Community Corrections Office was being remodeled and that the office and case files were in disarray. In addition, Appellant's supervisor testified that CCOs are held accountable for contacts made on a monthly basis. While Appellant performed some work in the Stevens Community Corrections Office prior to his formal assignment to office, he was not assigned responsibility for the Stevens Community Corrections Office caseload until May 16. His assignment was terminated effective June 5. As a result, Appellant was responsible for the Stevens Community Corrections Office caseload for less than one month. Therefore, in accordance with his supervisor's testimony, Appellant should not be held accountable for the monthly requirements.

4.7 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances including the seriousness and circumstances of the offense. 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. An action does not necessarily fail if one charge is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

4.8 Based on a preponderance of the credible evidence, Respondent has met its burden of proving that Appellant was insubordinate and neglected his duty. Therefore, the sanction of a three-day suspension should be affirmed and the appeal of Patrick Campbell should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Patrick Campbell is denied.

DATED this _____ day of _____, 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Leana D. Lamb, Member

DISSENT

While agreeing that the Findings of Facts are accurate, I must dissent from the Conclusions reached by a majority of the Board.

The disciplinary letter charges Appellant with insubordination. Insubordination has been defined by this Board as the refusal to comply with a lawful order or directive given by a supervisor and as not submitting to authority, willful disrespect or disobedience. In this case, Appellant did refuse to follow a directive from his supervisor. The refusal, however, is offset by Appellant's reasonable belief that the supervisor's directive was unlawful, unethical and a violation of published agency policies. Specifically, DOC Policy 200.300 charges Community Corrections Officers with the responsibility to "develop a supervision plan using their discretion in determining the type and frequency of contacts based on offender needs assessment and community safety issues." Because of his belief that the safety of the community might be at risk and because of his personal liability, Appellant requested twice that his supervisor put his oral directive in writing. Upon receipt of the written directive, Appellant immediately complied. If the supervisor had followed through with his

agreement to reduce the directive to writing during the initial meeting (Finding of Fact 2.6), Appellant would not have been placed in the position of being insubordinate. The appointing authority testified that Appellant was sincere in his belief, although, she believed that his expressed opinion was not reasonable.

While failure to obey a supervisor's directive is normally considered insubordination and grounds for disciplinary action, there are some orders that are permissible for a public employee to disobey. Such orders are those that are criminal, unsafe or given in bad faith. A person with the conviction to risk employer sanction by disobeying a supervisor's order on the belief that it would be illegal or unethical for him to act otherwise, is entitled to a determination of the reasonableness of his belief. In this day and age, when public employees, especially Community Correction Officers, are under intense scrutiny by both the press and the general public, Appellant's belief that compliance with the directive jeopardized not only him, but also the public, was not only sincere but also reasonable.

The disciplinary letter also charges Appellant with neglect of duty. 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. Appellant did not meet the minimum contact requirements as required by DOC Policy 200.300. However, based on the testimony of his immediate supervisor, this should not be a basis for charging Appellant with neglect of duty. Appellant assumed responsibility for the caseload on May 16, 1998 and based on the finding that "Community Correction Officers are not held accountable for meeting the monthly requirements if they are assigned a case for less than one full month," (Finding of Fact 2.15) the charge of neglect of duty should be dismissed.

Based on the totality of the findings, the failure of the supervisor to follow through with the written directive and Appellant's reasonable belief that the directive was unlawful, I would conclude that the Respondent has failed to carry the burden of proof on the insubordination charge.

Based on the uncontroverted testimony of the supervisor as to the accountability of employees to a new caseload, I would conclude that Respondent has failed to carry the burden of proof on the neglect of duty charge

Based on the failure to carry the burden of proof on either charge outlined in the disciplinary letter, I would conclude that the sanction of a three day suspension should be overturned and Appellant should be fully reinstated with full back pay and benefits.

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Gerald L. Morgen, Vice Chair

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504
(360) 586-1481