BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CARL ANDERSON, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	))))))))))	Case No. DEMO-01-0036 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair. The hearing was held on October 2, 2002, in Yakima, Washington. RENÉ EWING, Member, reviewed the record and participated in the decision in this matter. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Carl Anderson was present and was represented by Kristian E. Hedine, Attorney at Law. Amy F. Cook, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a demotion for neglect of duty and willful violation of a published employing agency or Department of Personnel rules or regulations. Respondent alleged that Appellant committed numerous mistakes and failed to ensure the safety and security of his staff and offenders during an incident involving the securing of an offender.

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1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

II. MOTION

2.1 At the close of Respondent's case in chief, Appellant asked that the disciplinary action be overturned for Respondent's failure to prove by a preponderance of the evidence that he neglected his duty or willfully violated agency rules or regulations.

2.2 Respondent argued that in his response to the Employee Conduct Report, Appellant stated that he formed a Quick Response Team (QRT). Respondent contends that after forming the QRT, Appellant directed actions to be taken that were not consistent with QRT procedures.

2.3 The Board took the motion under advisement. We find that Respondent presented ample information that on its face, would support a charge of neglect of duty and willful violation of rules or regulations. Therefore, Appellant's motion is denied.

III. FINDINGS OF FACT

3.1 Appellant Carl Anderson is a Correctional Officer (CO) and permanent employee for Respondent Department of Corrections (DOC) at Ahtanum View Correctional Complex. 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 December 10, 2001.

3.2 By letter dated November 30, 2001, Superintendent Joop DeJonge notified Appellant of his demotion from Correctional Sergeant to Correctional Officer, effective December 15, 2001, for neglect of duty and willful violation of a published employing agency or Department of Personnel rules and regulations. Mr. DeJonge alleged that on June 30, 2001, Appellant made numerous mistakes and/or omissions and failed to ensure the safety and security of staff and offenders during an incident that involved the securing of an offender.

3.3 Appellant has been employed with DOC for ten years. Appellant has a history of counselings, including counseling for failing to follow procedures at Ahtanum View Correctional Complex. Appellant has no history of formal disciplinary actions.

3.4 A Quick Response Team (QRT) is similar to an Emergency Response Team. Respondent has policies and procedures for forming and deploying a QRT. Appellant was aware of agency policies and procedures and received training as an Emergency Response Instructor. From 1995 to 1997, Appellant was a member of the Emergency Response Team at Clallam Bay Correctional Center where he worked prior to working at Ahtanum View Correctional Complex.

3.5 At approximately 6 a.m. on June 30, 2001, offender Ewing and offender Hawkins were involved in an altercation during which Ewing sustained a black eye. AVCC staff was not aware of the altercation.

3.6 The second shift at AVCC is from 2 p.m. to 10 p.m. At approximately 6 p.m., an offender told CO Michael Hanratty that offender Ewing had a black eye. CO Hanratty took Ewing to the medical unit where the he told CO Hanratty that offender Hawkins struck him.

3.7 Appellant was the shift sergeant on duty. CO Hanratty went to the sergeant's office and informed Appellant of the assault. Appellant decided that offender Hawkins should be secured. At approximately 6:30 p.m., Appellant contacted Duty Officer Steve Hansson and requested permission to move Hawkins to secured housing because he was thought to have been the aggressor during the morning altercation. Mr. Hansson agreed that Hawkins should be secured. Appellant and Mr. Hansson did not discuss the level of force options that would be used or whether Hawkins would be placed in handcuffs during the move.

3.8 CO Richard Bartleson was also in the sergeant's office at this time. In addition, Appellant called CO Brian Jennings to the office. Appellant did not tell the officers that he had gathered them together to form a QRT team. However, he did instruct them to find and secure offender Hawkins. CO Hanratty thought that Appellant had placed him in charge, CO Jennings thought that Appellant had placed CO Bartleson in charge, but CO Bartleson did not know who was in charge.

3.9 CO Hanratty decided to look for Hawkins in his living area and CO Bartleson went toward the recreation area to look for him. CO Bartleson and CO Jennings located Hawkins in the recreation room and informed Appellant by radio that the offender had been located. CO Hanratty heard the radio transmission and proceeded to the recreation area. Appellant told CO Bartleson that he would stay in the sergeant's office and monitor the cameras and that CO Bartleson was to take Hawkins outside and secure him.

3.10 CO Bartleson understood Appellant to say that he wanted him to take Hawkins to the camera in the Echo unit recreation yard so that Appellant could monitor the incident. CO Bartleson asked Hawkins to go outside. Hawkins complied and walked out of the recreation room and turned toward the recreation yard. Other offenders were in both the recreation room and the recreation yard. However, no offenders were in the courtyard across the recreation room breezeway. CO

Bartleson and CO Jennings followed Hawkins toward the recreation yard. Intermittent Recreation Assistant John Young followed them out of the recreation room and toward the recreation yard. CO Hanratty arrived in the area after the group had exited the recreation room. CO Roger Gosnell followed CO Hanratty to the area.

3.11 Hawkins was upset that he was being placed in secured housing. During the process of securing Hawkins, CO Hanratty brushed against him and Hawkins became even more upset. Hawkins shouted profanities and indicated that he was angry that he was being segregated while offender Ewing was not. CO Bartleson deescalated the situation by talking to Hawkins. After Hawkins calmed down, he was placed in handcuffs and escorted to secured housing without further incident.

3.12 It is common knowledge in the facility that offenders are typically upset when officers detain them in the presence of other offenders. In addition, the offenders observing the detention become upset. Following the securing of offender Hawkins, there was a feeling of unrest in the facility among the other offenders, caused in part, by the racial differences between Hawkins and Ewing.

3.13 Appellant had other options he could have deployed to secure Hawkins. For example, he could have directed Hawkins to report to the receiving and release area or to the sergeant's office. Hawkins did not have to be detained in an area populated by other offenders.

3.14 After Hawkins was placed in segregation, the officers went about their normal duties. Appellant did not conduct a debriefing with them because the officers indicated that the detention of Hawkins was uneventful. However, he did ask CO Bartleson, CO Hanratty, and CO Jennings to write reports regarding the incident.

3.15 Charles Reed was the shift sergeant who relieved Appellant. Appellant briefed Sgt. Reed on the situation with Hawkins. During his shift, Sgt. Reed was informed of the general unrest in the offender population resulting from Hawkins being segregated while Ewing was not. Sgt. Reed decided that Ewing should be segregated for his own protection.

3.16 CO Hanratty started a two-week vacation following his shift. While he was on vacation, he contacted Sergeant Niles and asked him to find out why CO Bartleson took offender Hawkins to the recreation yard. When CO Hanratty returned to work, he talked to Correctional Housing Unit Manager Kathleen Dowdy and to Sgt. Reed about his perception of being placed in a potentially dangerous situation during the detention of Hawkins.

3.17 On July 27, 2001, Appellant's supervisor, Lieutenant Stephen Westland initiated an Employee Conduct Report (ECR) against Appellant. In his response to the ECR, Appellant stated that he assembled a QRT because Hawkins had a reputation for being verbally aggressive and because he wanted to have as many staff members as possible present while Hawkins was placed in handcuffs. In addition, during the ECR investigation, Appellant stated that during the incident at AVCC, he followed the Use of Force Field Instruction from the Clallum Bay Correctional Center

3.18 Following the ECR investigation, Superintendent Joop DeJonge met with Appellant and his representative. Superintendent DeJonge considered the information provided by Appellant and the information provided through the ECR process. He determined that misconduct had occurred and that disciplinary action was warranted.

3.19 Superintendent DeJonge found that by his own admission, Appellant had assembled a QRT. Superintendent DeJonge determined that because a QRT had been deployed, certain policies,

procedures and processes were required to be followed. He concluded that Appellant had failed to adhere to the QRT policies and procedures, committed numerous mistakes during the incident, omitted numerous steps in the QRT process, and failed to ensure the safety of staff and offenders. Superintendent DeJonge determined that during the ECR process Appellant identified mistakes that he believed others had made, but had not counseled or documented their mistakes and failed to accept responsibility for the mistakes that he had made during the incident. Superintendent DeJonge concluded that Appellant used poor judgment and made poor decisions that could have threatened the security of the facility. Superintendent DeJonge also concluded that Appellant neglected his duty to provide clear, concise communications to staff, to document the incident, to identify any problems to be addressed in future training sessions, to counsel the officers involved in the incident, and to fulfill the expectations of a supervisor.

3.20 Superintendent DeJonge reviewed Appellant's personnel file and concluded that Appellant was trained to use the appropriate level of response to handle inmates, that he had received a letter of reprimand and was aware of his responsibility to follow policies and procedures, and that he had been counseled about the importance of reporting information to his superiors. Superintendent DeJonge felt that Appellant continued to disregard policies, procedures and supervisory directives and that formal disciplinary action was necessary. Superintendent DeJonge concluded that demotion to a non-supervisory position was appropriate based in part, on Appellant's demonstrated lack of leadership skills and failure to follow through on his supervisory responsibilities.

3.21 DOC Policy Directive 410.050 addresses emergency response management. The policy directive includes a section specific to QRT. The directive states, in relevant part:

> POLICY:
> I. The Department shall ensure Superintendents develop emergency response plans and ensure staff are adequately trained and knowledgeable
> . . . .

DIRECTIVE:

. . . .

VII. Phases of Response

A. The Incident Commander will manage the incident from a remote, secure location (i.e., Operations Center, Control Room). The Incident Commander shall use the Initial Emergency Checklist (attached) to ensure the following phases of response are implemented during an emergency.

B. Quick Response Team (QRT)

1. Each facility superintendent shall designate positions, which serve as Team I and Team II QRT. At a minimum, these teams shall include:
   a. QRT supervisor - the shirt Sergeant at a Level III facility;
   b. Team I - Response and Movement Officers; and
   c. Team II - includes positions which staff can vacate immediately . . .
2. Team I and Team II will deploy as needed to respond to the emergency/incident using the following procedure:
   a. The Incident Commander shall dispatch Team I upon notification that an incident is in progress to assist onsite staff. Facility movement shall be stopped when Team I is dispatched.
   b. Team I shall establish an inner perimeter, assess the incident and/or assist in incident resolution. The QRT Supervisor shall assume the role of site supervisor and direct on-site resources.
   c. The QRT Supervisor shall call for a Team II response if it appears that the incident is escalating or additional staff are needed to contain the incident. The facility shall be locked down when a Team II response is called.

   . . . .

XI. Debriefing

A. Debriefing will be an ongoing process. A complete debriefing of all involved will be conducted following the conclusion of the emergency.

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3.22 DOC Division Directive DOP 410.040 establishes procedures for management of incidents within the division. The directive requires facilities to develop field instructions to be implemented in times of emergency.

3.23 Ahtanum View Correctional Complex's Field Instruction AVCC 410.050 addresses emergency response management at the facility. The field instructions states, in part:

A. The Superintendent shall be responsible for the development of emergency response plans and ensure that staff is adequately trained and knowledgeable of the plans. The Facility Lieutenant shall be responsible for the management of the Facility Emergency Response and will be designated as such on the Security Management Form.

. . . .

C. Chain of Command

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2. The Site Sergeant at the time of an emergency shall assume and maintain the role of Initial Incident Commander until such time as the Superintendent arrives to assume Ultimate Command. . . .

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D. Deviation from Policy

1. . . . the Incident Commander is the only person authorized to order a change from existing policies, directives and field instructions to meet the goals and responsibilities of the department.

2. It is the responsibility of the staff member directly involved to bring this potential violation to the attention of the individual giving the order and then obey orders given. All deviations from policy, directives or field instructions shall be documented for after action discussion and review.

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F. Phase of Response

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7. Phase V - Deactivate

a. The Incident Commander is responsible for developing and implementing deactivation activities.

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I. Interviews

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2. Staff and/or offenders involved in an incident or situation will be interviewed as soon as possible and information transmitted to the Incident Commander via the Intelligence Officer.

3.24 Ahtanum View Correctional Complex's Field Instruction AVCC 410.040 addresses the facility's correctional incident command system. The field instruction states, in part:

B. Initial Command

1. The initial command structure and/or the emergency assignments, as shown on Attachment A. shall be established as an initial response to an emergency.
2. The Shift Commander will serve as the Initial Incident Commander with sole responsibility and authority to establish objectives and implement the phases of response necessary to resolve an incident.

. . . .

E. Staff Briefing

1. Staff briefings will occur as a new shift comes on duty or when a staff member is being relieved from a specific post or assignment.

. . . .

F. Deactivation

1. Only the Incident commander may order deactivation to begin.
2. The Incident Commander shall implement the deactivation checklist to prepare for the orderly return to normal operations.

3.25 Ahtanum View Correctional Complex Field Instruction AVCC 410.240 specifically addresses QRTs. The field instruction states, in part:

> The Office of Correctional Operations has established the Quick Response Team (QRT) as an integral part of the planning for and response to emergencies. This field instruction establishes minimum guidelines for the selection, training, equipment use, and the deployment of the QRT.

The field instruction indicates that the minimum size of a QRT team is seven staff members and that the team will consist of a team leader, an assistant leader and team members. The field instruction indicates that a QRT may be deployed for situations such as: incidents, disturbances or riot control, cell extractions, escapes, armed or barricaded individuals, hostage situations or high risk transports.

3.26 DOC Prison Directive DOC 410.200 establishes when the use of force is allowed. The directive indicates that use of force can be used without prior approval in emergency situations. The directive requires that the shift commander be notified before use of force is used in a non-emergent situation. In a non-emergent situation, the shift commander is responsible to assure that resolution options are developed, qualified staff are assembled, appropriate equipment is provided,

authorization is received, and an order was given in which the offender refused to comply prior to the use of force.

3.27 DOC 410.200 also addresses, in part, situations in which an offender displays passive resistance. The directive provides that to gain compliance of an offender, staff may reason with an offender, use a video camera to record the actions of the offender or show a force of staff or equipment. The directive also provides that for non-emergent situations in which an offender displays active resistance, staff may use, in part, light control techniques or control and restraint techniques to gain compliance of the offender.

IV. ARGUMENTS OF THE PARTIES

4.1 Respondent argues that as the shift sergeant, Appellant was responsible for ensuring that proper policies were followed. Respondent asserts that Appellant failed to follow the QRT policy when he formed a team, sent four officers to detain the offender without clarifying who was in charge of the detail, allowed the team to become separated during their search for the offender, did not debrief with the officers after the offender was secured and did not counsel the officers for the errors they made during the incident. Respondent contends that Appellant is trying to place the blame on the members of the QRT rather than accepting responsibility for his own errors. Respondent further contends that in this situation, where the altercation occurred 12 hours before the offender was detained, it was not necessary for Appellant to form a QRT but that because he did, he invoked the QRT policies. Respondent asserts that Appellant exhibited poor judgment and failed to follow the QRT and use of force policies and procedures. Respondent argues that Appellant placed the offender and officers in a situation that could have escalated into a dangerous situation and that based on Appellant's history of training and formal and informal corrective actions, demotion was appropriate.

4.2 Appellant argues that securing the offender was a non-emergent situation and that he acted appropriately as the shift sergeant to review the situation and make the decision to detain the offender. Appellant contends that the problems resulted from CO Bartleson's failure to follow his instructions, from a miscommunication between the officers, and from CO Hanratty's actions that escalated the offender's anger. Appellant alleges that he spoke with each officer after the incident, was told that things went fine, and determined that there was no need to debrief the incident. Appellant argues that he directed the officers to write reports of the incident and that he gave the reports and necessary information to Lt. Westland, as required by institution procedures. Appellant asserts that he complied with his duties as shift sergeant and that he did not violate institution policies or procedures. Appellant asks that his demotion be overturned.

V. CONCLUSIONS OF LAW

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

5.2 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).

5.3 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).

5.4 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. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

5.5 By forming a QRT, Appellant invoked the QRT policy. However, Appellant did not assemble seven trained staff members, did not clearly assign a team leader, and did not record the team's activation as required by the policy. In addition, Appellant invoked the Emergency Response Team policy and the Use of Force policy.

5.6 Respondent has met its burden of proof that during the detention of offender Hawkins on June 30, 2001, Appellant made mistakes and omissions and failed to ensure the safety and security of staff and offenders. Appellant admitted that he assembled and deployed a QRT. By doing so, he created a situation where certain actions were to be taken and specific policies and procedures had to be adhered to. However, Appellant failed to ensure that the appropriate actions were taken and the applicable policies were followed. Rather, Appellant erroneously relied on a QRT policy from another institution. Appellant failed to assemble an appropriate team of trained officers, failed to ensure that instructions were clearly understood and followed, failed to ensure that the QRT team stayed together during the incident and that appropriate procedures were followed, and failed to debrief the team members or correct the errors they made during the incident. Appellant's actions constituted neglect of his shift sergeant duties and a violation of agency and facility policies.

5.7 It appears to the Board that the AVCC Field Instruction for QRTs could be difficult to follow when initiating such a team given the size of the institution. We suggest that AVCC

management review the document and ensure that it addresses the needs of AVCC and that it can be executed when necessary given the facility's staffing level. We also recommend that management ensure all staff receive appropriate training and refresher courses on facility policies and procedures.

5.8 However, regardless of our concerns about the AVCC field instruction, we find that Appellant's actions warrant disciplinary action. In light of Appellant's admitted actions and based on a totality of the proven facts and circumstances, the disciplinary sanction was appropriate. Considering Appellant's history of corrective actions, his extensive experience and training, and his length of service with DOC, his inactions and failure to ensure the safety of staff and offenders during this incident were egregious. As the shift sergeant, Appellant was the highest-ranking officer on duty and his use of sound judgment was imperative. Appellant's actions demonstrated that he could not be trusted to fulfill the duties and carry out the responsibilities inherent in the shift sergeant position. Therefore, the appeal should be denied.

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VI. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Carl Anderson is denied.

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____

Gerald L. Morgen, Vice Chair

_____

René Ewing, Member

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