BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CHARLES LIAS JR.,	)	
Appellant,	)	Case No. RED-01-0016
v.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD
DEPARTMENT OF CORRECTIONS,	)	
Respondent.	)	

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held in the Superintendent's Conference Room at the Monroe Correctional Complex in Monroe, Washington, on January 25, 2002.

1.2 **Appearances.** Appellant Charles Lias Jr. was present and was represented by Rick Englehart, Business Agent for Teamsters Local 313. Valerie B. Petrie, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of a reduction in salary for neglect of duty, gross misconduct and willful violation of published employing agency rules or regulations. Respondent alleged that Appellant struck an inmate and then filed an untruthful report of the incident.

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); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services,

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PAB No. D93-053 (1994); Robinson v. Dep't of Social & Heath Services, PAB No. D94-146 (1995), aff'd, Thurston Co. Super. Ct. No. 95-2-02813-3 and Shepherd v. Dep't of Social & Health Services, PAB No. D92-007 (1993), appeal filed Thurston Co. Super. Ct. No. 93-2-01350-4.

II. FINDINGS OF FACT

2.1 Appellant Charles Lias Jr. is a Correctional Officer (CO) 2 and permanent employee of Respondent Department of Corrections (DOC) at the Monroe Correctional Complex (MCC). 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 April 27, 2001.

2.2 By letter dated March 27, 2001, Robert Moore, Superintendent of MCC, informed Appellant of his reduction in salary for neglect of duty, gross misconduct and willful violation of the published employing agency or Department of Personnel rules or regulations. Superintendent Moore alleged that Appellant stuck an inmate with his closed fist, and then filed an incomplete report of the incident.

2.3 Appellant began employment at with DOC in 1984. Appellant received corrective actions for attendance problems and for disregard of supervisory authority. He received the salary reduction for attendance related misconduct.

2.4 During his tenure with DOC, Appellant received training in the use of defensive tactics, appropriate verbal tactical skills and the proper use of physical force. Appellant is an experienced correctional officer.

2.5 About one week prior to the incident giving rise to this appeal, Appellant encountered Inmate Palmer in the Program Activities Building. Appellant instructed Inmate Palmer to stop

opening and closing a door; Inmate Palmer responded that he would "whip" Appellant's butt. Appellant did not perceive Inmate Palmer's comment as a threat.

2.6 On September 23, 2000, Appellant again encountered Inmate Palmer. This encounter occurred outside of the inmate kitchen while the inmates were reporting for breakfast.

2.7 Appellant was working mainline and was stationed at the bottom of the stairway on the A/B side of the inmate kitchen area. As inmates passed through the area on their way to breakfast, Appellant checked them for their identification (ID) badges. As Inmate Palmer came down the stairs, his ID was not visible. Appellant asked him where his ID was and Inmate Palmer reached into his pocket, removed the ID and attached it to his clothing. Inmate Palmer said, "Here's my fucking ID," and proceeded to the dining area with the other inmates.

2.8 Appellant felt that a problem was developing between he and Inmate Palmer. As the inmates were leaving the dining area and Inmate Palmer started up the stairs, Appellant attempted to speak to him. Inmate Palmer told Appellant that he would see him in the Program Activities Building and proceeded up the stairway. Appellant told Inmate Palmer to stop, but he did not call him by name. Inmate Palmer did not respond to Appellant's oral request to stop.

2.9 Appellant pursued Inmate Palmer to the top of the stairway. Appellant again called to him and he turned around. As Inmate Palmer approached Appellant, Appellant thought that his manner was aggressive and that he was going to hit him. Instead, Appellant struck Inmate Palmer. Appellant made the decision to strike Inmate Palmer in the interest of self-defense.

2.10 Although Appellant had not called or radioed for help, CO Terry Mikelsen, who was stationed at the top of the stairs, saw a portion of the altercation. CO Mikelsen radioed that a fight

was occurring and went to assist Appellant. He and Appellant used force to subdue Inmate Palmer. When the quick response team arrived, they escorted Inmate Palmer to the segregation unit. Appellant was relieved of duty, went to the Shift Lieutenant's office, and wrote an infraction report.

2.11 In his report, Appellant described Inmate Palmer's actions, but he did not report that he had struck the inmate. CO Mikelsen also wrote a report of the incident. However, from his vantage point, he did not hear what was said between Appellant and Inmate Palmer and he did not see whether either of them struck the other.

2.12 After Inmate Palmer was placed in segregation, CO Lloyd Ogden overheard Inmate Palmer telling other inmates that an officer had attacked him. CO Ogden notified the Shift Lieutenant of Inmate Palmer's allegations. Registered Nurse 2 Pat Tuller was called to segregation to assess Inmate Palmer. She noticed redness around his right ear.

2.13 Robert Hoover, Correctional Specialist, was assigned to conduct an initial investigation of the incident. He interviewed Inmate Palmer who claimed that Appellant has assaulted him. Mr. Hoover then interviewed Appellant. Appellant stated that the inmate attacked him and admitted that he instinctively struck the inmate to defend himself.

2.14 On October 19, 2000, an Employee Conduct Report (ECR) was issued against Appellant. The ECR alleged that Appellant assaulted Inmate Palmer by striking him with a closed fist. The ECR further alleged that Appellant wrote a "less than truthful, i.e. false" infraction report of the incident.

2.15 Lieutenant Tina Davis conducted the ECR investigation. She concluded that Appellant engaged in a verbal confrontation with the inmate which resulted in Appellant striking him; that the

documentation written by Appellant about the incident contained erroneous information; and that Appellant did not follow proper procedures in dealing with the inmate. She also concluded that the earlier incident in the Program Activities Building had a direct bearing on the incident in the A/B area. Lieutenant Davis completed her report on October 31, 2000.

2.16 On November 27, 2000, Patrick Glebe, Associate Superintendent, conducted the ECR Administrative Hearing. Appellant said that he did not feel threatened by inmates and felt that he could handle the situation with Inmate Palmer. Appellant said that he did not initially report hitting the inmate because he was not thinking clearly when he wrote the infraction report. Appellant also said that when the inmate turned toward him, he did not have time to call for assistance or to verbally command the inmate to stop. Associate Superintendent Glebe concluded that Appellant's rationale for failing to report striking the inmate was not acceptable. He also concluded that Appellant's action of striking the inmate was contrary to DOC policy. Associate Superintendent Glebe found that misconduct occurred when Appellant struck the inmate and failed to mention in the infraction report the level of force he used to subdue the inmate. Associate Superintendent Glebe completed his report on November 27, 2000.

2.17 L.W. Ryder Jr. was the Superintendent at MCC. However, he left his position before issuing any discipline against Appellant for the September 23, 2000, incident. Superintendent Robert Moore met with Appellant and his representatives on January 2, 2001. Appellant admitted that he hit the inmate but asserted that he did not intentionally leave that information out of the infraction report. Appellant stated that he and the former superintendent had agreed to the sanction of a one-day suspension. Superintendent Moore was unable to verify whether Mr. Ryder had agreed to impose a one-day suspension.

2.18 Before determining the level of discipline, Superintendent Moore considered Appellant's disciplinary history, his training record and his length of service with the agency. Given Appellant's history of discipline and corrective action and the nature of his confrontation with the inmate in an area where other inmates were present, Mr. Moore concluded that a significant disciplinary sanction was necessary. He also concluded that Appellant failed to employ the lowest level of defensive tactics and attempted to hide his actions by not immediately reporting that he struck the inmate. Superintendent Moore did not want to terminate Appellant because he was a long-term employee. Therefore, he decided that a significant reduction in salary was appropriate. By letter dated March 27, 2001, he notified Appellant of his reduction in salary of ten percent for one year.

2.19 The Department of Corrections Employee Handbook directs employees, in part, to:

- Ensure safety for the public, staff and offenders;

. . . .

- . . . [Subscribe] to a code of unfailing honesty, respect for dignity and individuality of human beings, and a commitment to professional and compassionate service.

. . . .

- Serve each offender with appropriate concern for their welfare. . . .
- Conduct yourself and perform your duties safely.

2.19 DOC Policy Directive 410.200, Use of Force, states, in part, that:

- Staff shall exercise good judgment, discipline, caution, and restraint when using force.

. . . .

- All reasonable steps shall be taken to de-escalate or prevent any incident which would likely result in the use of force.

. . . .

- In all cases staff presence and verbal intervention should occur prior to using . . . force options.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant engaged in a verbal confrontation with Inmate Palmer that escalated to a physical confrontation, that Appellant struck the inmate and that he failed to accurately and truthfully report his use of force. Respondent asserts that Appellant's conduct was inappropriate, unprofessional and violated DOC policies. Respondent argues that Appellant failed to employ de-escalation tactics and instead pursued the inmate and engaged him in a one-on-one confrontation. Respondent asserts that the confrontation took place in a volatile area in which others could have become involved and injured. Respondent contends that Appellant demonstrated a lack of good judgment that created the situation that necessitated the use of force. Respondent argues that there was no agreement made between Appellant and former Superintendent Ryder to impose a one-day suspension. Respondent contends that in light of Appellant's history of corrective actions and his years of experience as a correctional officer, a one-year reduction in salary is the appropriate sanction.

3.2 Appellant argues that he was trying to deal with the inmate at the lowest possible level but that when the inmate charged toward him, he struck the inmate in self-defense. Appellant further argues that he was coached and assisted by his superior in writing the infraction report and asserts that he did not intentionally leave information out of the report. Appellant contends that he had an agreement with former Superintendent Ryder to accept a one-day suspension for the incident and that under the circumstances of the incident, a one-year, ten percent reduction in salary is too severe. Appellant further contends that Respondent failed to comply with the ECR timelines and

that some of the information Superintendent Moore considered from Appellant's personnel file should not have been in the file.

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 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 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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

4.6 Respondent has met its burden of proof that Appellant neglected his duty, violated agency rules and regulations and that his actions rose to the level of gross misconduct. Appellant is an experienced correctional officer and is aware of his responsibility to submit complete and accurate incident reports, yet he failed to do so. In addition, Appellant exhibited extremely poor judgment when he pursued the inmate up the stairs and then struck the inmate.

4.7 The Board has addressed the issue of filing Personnel Conduct Reports (PCR) on numerous occasions. Employee Conduct Reports provide the same function as a PCR. The Board has held that there is a clear distinction between "discovery" of an incident compelling disciplinary action and suspicion of employee misconduct. The Board has found that, it would be premature to initiate the PCR process absent a clear communication of employee activity subject to sanction. See: Robinson v. Dep't of Social & Heath Services, PAB No. D94-146 (1995), aff'd, Thurston Co. Super. Ct. No. 95-2-02813-3 and Shepherd v. Dep't of Social & Health Services, PAB No. D92-007 (1993), appeal filed Thurston Co. Super. Ct. No. 93-2-01350-4. Here, Respondent had a suspicion of misconduct when the inmate's comments were overheard in the segregation unit. However, it would have been premature to initiate an ECR before the institution was able to verify that Appellant was involved in an actual physical altercation with the inmate.

4.8 There is no evidence to support Appellant's claim that his personnel file contained improper or inappropriate documents.

4.9 Under the totality of the proven facts and circumstances and in light of Appellant's years of experience and training as a correctional officer, a severe disciplinary sanction is warranted. A ten percent, one-year reduction in salary is appropriate and the appeal should be denied.

V. ORDER

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

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

_____

Gerald L. Morgen, Vice Chair

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