

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

EDWARD GOLLA,

Appellant,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent.

CASE NO. R-DISM-09-012

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, LAURA ANDERSON, Vice Chair, and DJ MARK, Member. The hearing was held on March 10 and 11, 2010, in the Personnel Resources Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Edward Golla was present and was represented by Michael Hanbey, Attorney at Law. Valerie Petrie, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a dismissal for violation of published DOC standards of conduct as a result of off-duty conduct.

II. FINDINGS OF FACT

2.1 Appellant Edward Golla was a permanent employee for Respondent Department of Corrections (DOC). Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder, Title 357 WAC. Appellant filed a timely appeal with the Personnel Resources Board on August 20, 2009.

2.2 Appellant had been employed with DOC since 1995. At the time of his termination, Appellant was a Correctional Specialist 3 (CS3) Training and Grievance Coordinator at Larch Corrections Center (LCC). As a CS3, Appellant was responsible for overseeing the offender

1 grievance and staff training programs. In part, his responsibilities included supervising one staff
2 member, managing the offender grievance program, and assisting in the offender grievance
3 hearing process. As a CS3, Appellant was a member of the LCC management team and he had
4 contact with offenders in the course of performing his duties.

5
6 2.3 Appellant voluntarily demoted into the CS3 position following his second arrest for
7 driving under the influence (DUI). He had previously been a Corrections Unit Supervisor (CUS).
8 As a CUS, Appellant was responsible for managing the Elkhorn offender living unit which
9 included supervision of approximately 15 staff, contact with and supervision of 220 to 240
10 offenders and oversight of the Elkhorn chemical dependency unit. As a CUS, Appellant was also
11 a member of the LCC management team.

12
13 2.4 Appellant's work history included good performance evaluations and no prior informal or
14 formal disciplinary actions. He had an extensive training record including ethics training. He had
15 also received a copy of the DOC Employee Handbook and was aware of his obligation to abide
16 by DOC standards of conduct and policies. In addition, he was aware of the DOC expectations in
17 his Performance and Development Plans including that he be an exemplary role model, avoid
18 inappropriate situations and actions which result in or present the appearance of inappropriate, and
19 demonstrate ethical behavior and teach its importance to others.

20
21 2.5 DOC standards of conduct are addressed in the DOC Employee Handbook. The
22 handbook states, in part:

23 **Ethics and Integrity**

24 . . . Avoids inappropriate situations and actions which result in and/or present the
25 appearance of impropriety. . . .

26 **DEPARTMENT EXPECTATIONS**

27 . . .

28 *As an employee of the Department of Corrections, you will be expected to:*

- 29
- Positively represent Washington State government to everyone you meet. . . .

- Be a good citizen, obey laws while on and off duty. Your conduct off duty may reflect on your fitness for duty. . . .

2.6 Appellant admits that on June 14, 2008, he was arrested for driving under the influence (DUI) during off duty hours. As a result of the DUI, the judge ordered Appellant to install an ignition interlock device on his vehicle and not to drive a vehicle without one. Yet, on August 17, 2008, while driving a vehicle without an ignition interlock device during off duty hours, Appellant was involved in an accident in which he sustained serious injury and damaged another vehicle. Appellant was hospitalized and was off work from August 18, 2008 until November 13, 2008.

2.7 As a result of the August 17, 2008 accident, Appellant was once again charged with DUI.

2.8 LCC is considered a small institution. Appellant's accident and his DUI arrests were known to LCC staff and offenders within the facility. Numerous witnesses, including Appellant's supervisor Captain Rick Karten, LCC Superintendent Patricia Gorman and Deputy Secretary for Prisons Division, Richard Morgan, testified that Appellant's accident and arrests became well known to LCC staff and offenders. In addition, Mr. Morgan credibly testified that LCC staff expressed concern about whether Appellant was receiving preferential treatment from Ms. Gorman.

2.9 On May 5, 2009, Appellant was convicted of the two DUIs. And, he was incarcerated for 30 days in the Thurston County jail annex from May 19, 2009 to June 18, 2009. Upon his release, he was placed on electronic home monitoring for 90 days. He was also placed on 24 months of court supervision with the Thurston County Drug/DUI Court Program and other conditions. As of the date of the hearing before the Board, Appellant was complying with the conditions of his release.

1 2.10 Appellant kept the LCC Superintendent, Patricia Gorman, informed of his arrests, the
2 status of his court proceeding and his conviction. Between the first DUI charge and the second
3 incident, Appellant returned to work. After the second incident, Appellant was hospitalized and
4 did not return to work until November 2008. When he returned to work, he was placed in a CS3
5 temporary position. He subsequently requested a voluntary demotion into the CS3 position.
6

7 2.11 Pursuant to his sentencing, Appellant began serving his 30-day sentence on May 19,
8 2009. Although the court had approved Appellant for work release during his incarceration, Ms.
9 Gorman credibly testified that she did not believe it would be appropriate for DOC to approve
10 Appellant to come to work in a correctional facility while on work release. As Appellant's
11 supervisor, Ms. Gorman refused to approve the work release.
12

13 2.12 Appellant met with Ms. Gorman on May 5, 2009 to update her on his sentencing and
14 upcoming incarceration. Appellant's supervisor, Captain Rick Karten, was also present. Initially,
15 the meeting was not intended to be a pre-disciplinary meeting. But, because Appellant would be
16 reporting to jail soon and Ms. Gorman was schedule to go on vacation, Ms. Gorman wished to
17 resolve the issue. Therefore, during the meeting, she decided it would be a pre-disciplinary
18 meeting. Ms. Gorman also asked Human Resource Consultant Roy Murphy to participate in the
19 meeting. Although Appellant had not been provided a pre-disciplinary notice or letter, Ms.
20 Gorman orally stated that the meeting was going to be a pre-disciplinary meeting and that she
21 was going to impose discipline. Appellant did not object to proceeding with a pre-disciplinary
22 meeting. Before the close of the meeting, Ms. Gorman indicated that she was imposing a two
23 week suspension and that Appellant could use two weeks of leave and two weeks of unpaid leave
24 during his incarceration.
25

26 2.13 Because of the lack of notice and lack of consultation with human resources staff, Mr.
27 Murphy was concerned about the meeting being a pre-disciplinary meeting and about Ms.
28 Gorman imposing a suspension during the meeting. He was concerned that Appellant had not
29

1 been afforded due process because the normal investigative, pre-disciplinary notice and hearing,
2 and disciplinary processes had not been followed. During his testimony, Mr. Murphy explained
3 that the normal disciplinary process includes an investigation, consultation with human resource
4 staff, a pre-disciplinary letter with notice of a hearing or option to provide input, a pre-
5 disciplinary meeting, the appointing authority contemplating the appropriate level of discipline,
6 human resources assisting in writing the disciplinary letter to reflect the appointing authority's
7 decision, and review of the letter by various levels of management located at DOC headquarters
8 and the assistant attorney general. Because he was concerned about the process not being
9 followed, Mr. Murphy notified his supervisor, Regional Human Resource Manager Shirley
10 Morstad. Ms. Morstad felt that the process used by Ms. Gorman was problematic and that it
11 appeared Appellant was being treated differently than other people, nonetheless, she had Mr.
12 Murphy draft a disciplinary letter and send it to her for the normal review and approval process.

13
14 2.14 Subsequently, Richard Morgan, Deputy Secretary for Prisons Division, became involved
15 and in his capacity as Ms. Gorman's superior and Appellant's fourth-level supervisor, took
16 ownership of the process. He testified that he was concerned about how Ms. Gorman handled the
17 process and as a result, decided that he would act as the appointing authority in this matter. Mr.
18 Morgan wanted to assure that DOC's pre-disciplinary and disciplinary processes were followed
19 and that Appellant received his due process rights. Mr. Morgan directed that Appellant be served
20 with a pre-disciplinary letter and that he be afforded an opportunity to respond to the allegations
21 in the letter.

22
23 2.15 By pre-disciplinary letter dated June 10, 2009, Mr. Morgan acknowledged that Appellant
24 had met with Ms. Gorman. He also informed Appellant that:

25 Notwithstanding this informal meeting, it is the Department's practice to provide
26 written notice of the allegations of misconduct in a pre-disciplinary letter, and to
27 schedule a pre-disciplinary meeting prior to making a determination regarding
28 discipline. Because this has not yet occurred, please consider this letter your
29 formal pre-disciplinary notice. Additionally, please be advised that I have been
delegated appointing authority over this matter, and that any final decisions
regarding disciplinary action will be made under my authority.

1
2 2.16 Mr. Morgan scheduled a pre-disciplinary meeting with Appellant for June 24, 2009. He
3 also gave Appellant an opportunity to provide a written response to the allegations in the pre-
4 disciplinary letter. The allegations against Appellant, as outlined in the pre-disciplinary letter
5 were:

- 6 • You were convicted on May 5, 2009 of two counts of Driving Under the
7 Influence (DUI);
- 8 • You were sentenced to 45 days incarceration, to be reduced by fifteen days
9 “good time”;
- 10 • You will be required to wear an electronic home monitoring device (EHM) for
11 a period of ninety days following your release;
- 12 • You are required to be under the supervision of the Thurston County
13 Drug/DUI Court Program for a period of twenty-four (24) months beginning
14 May 5, 2009.

15 2.17 After serving 30 days in jail, Appellant was released from incarceration and was placed
16 on court supervision. After his release, Appellant did not return to work at LCC. However, he
17 met with Mr. Morgan and Ms. Morstad on June 24, 2009. During the meeting, Appellant
18 admitted to the allegations in the pre-disciplinary letter including being under the court’s
19 supervision until May 5, 2011. Mr. Morgan credibly testified that during the pre-disciplinary
20 meeting, Appellant was very candid and straight forward in admitting to the allegations.

21 2.18 Prior to determining the level of discipline to impose, Mr. Morgan consider the
22 information provided during the pre-disciplinary meeting; information about the contents of
23 Appellant’s personnel file provided by Ms. Morstad, including commendations; a conversation
24 with Ms. Gorman; the court records; the DOC standards of conduct; and Appellant’s acceptance
25 of responsibility for his actions. Although there were no negative issues addressed in Appellant’s
26 personnel file, Mr. Morgan believed that Appellant’s misconduct was so egregious that it negated
27 the positive aspects of the file. Mr. Morgan credibly testified that a single DUI is a serious
28 offense for a criminal justice agency and that in this case, while under sanction of the first DUI,
29

Appellant committed a second offense and was incarcerated which compounded the seriousness and egregiousness of Appellant's misconduct.

2.19 Mr. Morgan determined that Appellant was aware of his obligation to abide by the standards of conduct found in the DOC employee handbook, yet Appellant violated those standards. Mr. Morgan felt that Appellant engaged in behaviors similar to those of offenders and that because he was incarcerated he became an offender himself. As a result, Mr. Morgan concluded that Appellant would no longer be effectual and would be a poor role model for offenders at LCC. Mr. Morgan credibly testified that he had become aware of conversations among offenders and staff about Appellant's conviction and that some staff had expressed concerns to management about the situation. Mr. Morgan felt that the offenders would use information about Appellant's arrests and conviction to coerce or manipulate Appellant and that Appellant would be in a position to identify with offenders with the same history. Mr. Morgan concluded that he did not have confidence that Appellant would be immune to manipulation, that he could be trusted to refrain from identifying with offenders or that he would be able to maintain his objective in any role within the agency. Mr. Morgan felt that Appellant's behavior demonstrated a lack of capacity to exercise sound judgment and as a result, he lost trust in Appellant's ability to interact objectively with offenders. Therefore, by letter dated July 23, 2009, Mr. Morgan notified Appellant of his dismissal, effective August 7, 2009.

III. ARGUMENTS OF THE PARTIES

3.1 In summary, Respondent argues that the facts in this case are undisputed and that Appellant admits to all of the charges. Respondent asserts that Appellant's actions violated DOC expectations and the core competencies of his position. Respondent further asserts that Appellant acknowledges that he was in a leadership position on the LCC management team and that in regard to his arrests and conviction, he was not a good citizen, did not obey laws on and off duty, and was not a good role model. Respondent contends that Ms. Gorman's May 5, 2009 meeting with Appellant was an unconventional, impromptu, informal meeting and that Appellant never received a disciplinary

1 letter from her, never received a loss in pay, and the process was never completed. Respondent
2 asserts that Ms. Gorman's meeting was not consistent with department practices and did not assure
3 that the process was fair and that Appellant was afforded his due process rights.

4
5 Respondent argues that there is a clear nexus between Appellant's off duty conduct and his
6 employment at LCC. Respondent contends that when Appellant became an offender, it
7 compromised his credibility, eroded his authority, and rendered him a poor role model for offenders
8 and staff. Respondent further argues that Appellant's conduct placed him in a position where he
9 could be manipulated and exploited by offenders. Respondent asserts that there were concerns from
10 staff and talk among offenders about Appellant's return to work after receiving the DUIs, which is
11 why Ms. Gorman assigned him to a temporary position without responsibility for the supervision of
12 offenders and refused to allow him to participate in work release during his incarceration.
13 Respondent contends that for the same reasons, following his incarceration, Appellant could not be
14 allowed to come back to work at the facility because his actions undermined what the department
15 was trying to do and his return to work would give the impression that offenders were held
16 accountable for their actions while staff were not. Respondent argues that Appellant's conduct
17 irrevocably violated management's trust in his ability to interact objectively with offenders.
18 Therefore, Respondent asserts that dismissal is the appropriate sanction.

19
20 3.2 In summary, Appellant contends that there are no written disciplinary processes or
21 procedures for unrepresented employees, that the facts and circumstances of his situation were
22 known and that by not objecting to the May 5, 2009 meeting being used as a pre-disciplinary
23 meeting he waived his rights. Appellant asserts that the May 5, 2009 meeting was a pre-disciplinary
24 meeting and that the discipline imposed by Ms. Gorman should have been accepted.

25
26 Appellant argues that there is no reason why he cannot work in the agency and asserts that others
27 convicted of DUIs continue to work for the department. Appellant argues that he was an
28 outstanding employee and that there is no evidence that he would be exploited by offenders or that
29

1 his authority was eroded. Appellant contends that Mr. Morgen based his decision on supposition
2 and opinion and not on the facts. Appellant asserts that Ms. Gorman knew him and worked with
3 him on a day-to-day basis and that she was capable of forming an opinion of whether he could
4 refrain from identifying with offenders. Appellant further contends that Ms. Gorman was holding
5 him accountable by imposing a two week suspension. Appellant also argues that prior to his
6 incarceration he came back to work and performed well in his CS3 position. Appellant asserts that
7 there was no reason why he could not continue to perform well in the CS3 position after his
8 incarceration because he was not incarcerated with individuals with a high likelihood of becoming
9 offenders and because he was not under court imposed community supervision but rather was
10 reporting to chemical dependency counselor. Appellant accepts responsibility for his actions, is
11 undergoing treatment as provided in DOC policies, and asks that the two week suspension imposed
12 by Ms. Gorman be adopted and that he be reinstated to his job.

13 14 **IV. CONCLUSIONS OF LAW**

15 4.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.
16

17 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
18 the charges upon which the action was initiated by proving by a preponderance of the credible
19 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
20 sanction was appropriate under the facts and circumstances. WAC 357-52-110.
21

22 4.3 Respondent has a responsibility to assure that employees are afforded due process. No
23 documentary evidence exists to show that Appellant waived his right to due process. When
24 concerns about the process were raised to staff in DOC headquarters, Mr. Morgan had the
25 responsibility to assure that Appellant was provided his due process rights. Because of the lack of
26 notice, the May 5, 2009 meeting with Ms. Gorman is best described as an informal meeting during
27 which the level of discipline she was contemplating was discussed. However, the discipline was
28 never formalized. The formal disciplinary process commenced when Mr. Morgan became involved
29

1 and provided notice of the allegations and the pre-disciplinary meeting to Appellant. As Ms.
2 Gorman's second-level supervisor, Mr. Morgan had the authority to review the circumstances and
3 issue the formal disciplinary action in this case.

4
5 4.4 It is undisputed that Appellant committed the offenses set forth in the disciplinary letter and
6 that, as a long term employee in a leadership position, Appellant was aware of DOC's standards of
7 conduct and of his obligation to be a good role model to others. Therefore, Appellant knew that he
8 had a duty to obey laws while on and off duty and that his conduct off duty may reflect on his
9 fitness for duty. Appellant made a deliberate decision to drive under the influence not once but
10 twice in close proximity and when considering that the second DUI occurred while he was under
11 the sanctions of the court for the first DUI, his actions demonstrate an egregious lack of
12 judgment, a violation of DOC expectations and standards of conduct, and undermined DOC's
13 ability to place trust and confidence in his ability to use good judgment on the job. Respondent
14 has established a nexus between Appellant's off-duty conduct and his employment with the
15 Department of Corrections.

16
17 4.5 We recognize that Appellant was well aware of offender behaviors, including attempted
18 manipulation of staff. In fact, Appellant indicated that he taught a class addressing manipulation by
19 offenders to other staff. However, Appellant's knowledge of potential offender manipulation does
20 not insulate him from manipulation. Rather, as an offender himself, Appellant elevated the
21 likelihood of offenders attempting to manipulate him, compromised his credibility with DOC staff
22 and management, and rendered him a poor role model.

23
24 4.6 In addition, it is commendable that Appellant has recognized his alcoholism and is
25 undergoing treatment, however, he must be held accountable for the actions taken while under the
26 influence of alcohol.

27
28 4.7 Under the totality of the proven facts and circumstances, including the egregious nature of
29 Appellant's deliberate behavior, repeated demonstration of poor judgment, and status as an

1 offender, the disciplinary sanction of dismissal is appropriate. Therefore, the dismissal should be
2 affirmed and the appeal should be denied.

3
4 **V. ORDER**

5 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Edward Golla is denied.

6
7 DATED this _____ day of _____, 2010.

8 WASHINGTON PERSONNEL RESOURCES BOARD

9
10 _____
LAURA ANDERSON, Vice Chair

11
12 _____
DJ MARK, Member