

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

TIM STOWE,

Appellant,

vs.

CENTRAL WASHINGTON UNIVERSITY,

Respondent.

CASE NO. R-SUSP-07-005

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

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Washington Personnel Resources Board, LAURA ANDERSON, Chair; MARSHA TADANO LONG, Vice Chair; and JOSEPH PINZONE, Member. The hearing was held in the First Floor Conference Room at the Department of Social and Health Services Community Services Office in Yakima, Washington, on June 17, 2008. Subsequent to the hearing but prior to issuing this decision, the Board's titles changed. The signatures on this document reflect the Board's current titles.

1.2 **Appearances.** Appellant Tim Stowe was present and was represented by Elyse B. Maffeo, Assistant General Counsel for the Public School Employees of Washington. Gil Hodgson, Assistant Attorney General, represented Respondent Central Washington University.

1.3 **Nature of Appeal.** This is an appeal from a three-day suspension for failing to properly handle two suspicious packages.

II. FINDINGS OF FACT

2.1 Appellant Tim Stowe is a permanent employee for Respondent Central Washington University (CWU). Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder at Title 357 WAC. Appellant filed a timely appeal with the Personnel Resources Board on December 5, 2007.

1
2 2.2 By letter dated November 2, 2007, Steve Rittreiser, Assistant Vice President for
3 Business Auxiliaries and Public Safety, notified Appellant of his three-day suspension. Mr.
4 Rittreiser alleged that Appellant failed to properly handle two suspicious packages. Mr.
5 Rittreiser alleged that Appellant's actions were contrary to department policy and procedures
6 and inconsistent with the advice and training Appellant had received. Appellant's suspension
7 was effective beginning November 7, 2007 and concluding November 10, 2007 at 4:00 p.m.
8

9 2.3 The incident for which Appellant was disciplined began during the afternoon of Friday,
10 October 19, 2007, in the Career Services Office at CWU.
11

12 2.4 At the outset of the hearing, the parties stipulated to the following undisputed facts:
13

- 14 1. Tim Stowe has been employed by the Central Washington University (CWU)
15 Public Safety and Police Services since November, 1981. He is currently a Police
16 Sergeant.
17
- 18 2. [Noella Wyatt] noticed sitting on top of the order she had been expecting two
19 packages, neither of which were part of the order. Those packages were wrapped
20 in brown paper, completely covered with clear packaging tape, and lacked any
21 information regarding who had delivered them, what address they were to be
22 delivered to, or what they contained.
23
- 24 3. Upon seeing the packages in the Career Services office, Ms. Wyatt handled the
25 packages, confirming that the packaging contained no information.
26
- 27 4. Finding no address or writing of any kind on the boxes, Ms. Wyatt called Kristen
28 Garland in Duplicating Services and told her about the packages. Ms. Garland
29 said that they were probably business cards for someone else and asked Ms.
Wyatt to open them. Ms. Wyatt indicated she was not going to do so. Ms.
Garland indicated that she would send someone from Duplicating Services back
to get them.
5. [Ms. Wyatt left the office and] [w]hen she returned, the packages described in the
preceding paragraphs were still there.
6. At approximately 4:45 P.M., near the end of her work day, Ms. Wyatt contacted
the CWU Public Safety and Police Services.

- 1 7. Ms. Wyatt reported to the person answering the phone at CWU Public Safety and
2 Police Services that there were two suspicious packages at 202 Barge Hall, the
3 Career Services Office.
- 4 8. Ms. Wyatt received a return phone call from Sergeant Stowe. Ms. Wyatt advised
5 Sergeant Stowe that both suspicious packages were wrapped in brown paper that
6 was completely encompassed in clear packing tape. She explained that there was
7 no writing or addresses of any kind on either package. Sergeant Stowe indicated
8 that he would proceed to Barge Hall, where Ms. Wyatt was located. He arrived at
9 the Career Services Office (202 Barge Hall) at approximately 4:50 p.m.
- 10 9. Upon his arrival, Sergeant Stowe questioned Ms. Wyatt regarding the two boxes.
11 He asked her who had left the packages. Ms. Wyatt informed Sergeant Stowe
12 that she wasn't sure who had left the packages. She advised him she had noticed
13 the packages after Duplicating Services had dropped off the mail for her area, but
14 conveyed that she had been unable to verify whether Duplicating Services had
15 left the packages. Sergeant Stowe asked Ms. Wyatt whether it was possible that
16 somebody followed mail services personnel into the office and left the packages,
17 and then exited before Ms. Wyatt had seen him or her. Ms. Wyatt indicated it
18 was a possibility. Ms. Wyatt told Sergeant Stowe that no one in the office had
19 any knowledge of the packages or who left them.
- 20 10. Ms. Wyatt advised Sergeant Stowe that she had handled the boxes looking for
21 address labels.
- 22 11. Vicki Sannuto [a counselor in the Career Services Office] heard Sergeant Stowe
23 and Noella Wyatt speaking in the Career Services Office. She approached and
24 advised Sergeant Stowe that she had seen an unusual individual in the Career
25 Services Office that day. Ms. Sannuto described to Sergeant Stowe the individual
26 and her interaction with that individual. Sergeant Stowe asked Ms. Sannuto
27 where the packages were from, and she told him that she did not know.
- 28 12. Sergeant Stowe put on gloves and examined the packages himself. Ms. Sannuto
29 and Ms. Wyatt were also present. He did not ask them to leave the area.
13. Sergeant Stowe removed the boxes from Room 202 by placing them in a box
provided by Ms. Wyatt. He transported the box containing the two packages to a
picnic table outside the west end of the Public Safety Building.
14. Sergeant Stowe called Captain Kevin Higgins [his supervisor], and advised him
of the situation.
15. Captain Higgins, who was off duty, advised Sergeant Stowe to contact the
Yakima Firing Center EOD. Sergeant Stowe contacted the Yakima Firing Center
EOD at approximately 5:30 p.m.

16. Sergeant Stowe was told by the EOD to leave the packages in place, secure the area, and that they would call out the team and be en route.
17. Sergeant Stowe then cleared out the Public Safety Building as well as the Naneum Building.
18. Sergeant Stowe received a call from Agent Boyd Goodpaster of the BATFE at approximately 6:30. Agent Goodpaster arrived at the scene at approximately 7:05 p.m.
19. The 53rd Ordnance Company of the EOD arrived at the scene at approximately 7:10 p.m.
20. At that point, the officers blocked off access to the parking lot area from Pioneer Village and just north of the Safety Office.
21. The packages were x-rayed.
22. EOD personnel attempted to open the packages by pulling hooks. The second attempt to open the packages with hooks was successful.
23. Once the EOD unit was able to look inside the packages, it then determined that they were safe to handle.
24. Sergeant Stowe was advised by EOD personnel to leave the packages in place and remove the personnel from the area in any future similar event.
25. The larger of the two packages contained red brick.
26. The smaller of the two packages contained miscellaneous metal and rubber parts.
27. Sergeant Stowe was placed on administrative leave pending investigation of his actions in response to the October 19, 2007 reported called in by Noella Wyatt.

2.5 When Appellant examined the packages prior to moving them, he noted that they had no odor. However, he did observe a reddish substance that appeared to be leaking from the larger package. Appellant also noted that the package felt cold to the touch. He testified that he thought the package might have held a meat product or a body part. Appellant also testified that he had never seen an explosive with a red stain and that in this case, he did not suspect the packages were explosive devices.

1 2.6 At the conclusion of the incident, Appellant wrote a case report. He also wrote an email
2 to Captain Higgins in which he stated, in part, "I checked the packages at 202 Barge. Both heavy
3 cool to the touch no identification any where on them. Decided to move them (will not do that
4 again)."

5
6 2.7 Appellant was aware of CWU's policies and procedures for handling suspicious
7 packages. In addition, he had trained subordinate staff on the policies and procedures. Appellant
8 also had extensive training in how to handle suspicious packages, how to secure locations and
9 evacuate buildings or areas in which the suspicious packages were located, and how to arrange
10 for the disposal of suspicious packages.

11
12 2.8 In addition to dealing with bomb threats, CWU's Bomb Threat Policy addresses reporting
13 suspicious items and what actions an employee should take when he/she finds a suspicious
14 device. Appellant was aware of the policy and procedures to be followed.

15
16 2.9 Appellant attended multiple training sessions that specifically addressed incident
17 response for improvised explosive devices including letter and parcel bombs. The training
18 materials indicated that package bombs can range in size and appearance and can be mailed or
19 shipped using various methods. The training materials stated that situations can begin when a
20 suspicious item is discovered. The materials outlined the steps to follow after discovery of a
21 suspicious item and the safety precautions that should be followed. Appellant was aware of the
22 appropriate response and precautions to take for suspicious packages.

23
24 2.10 On November 21, 2001, Mr. Rittreiser distributed an information bulletin regarding
25 procedures for suspicious packages and biohazards. The bulletin included level of threat
26 information and indicators of credible threat. The threat levels ranged from a low of "0" to a high
27 of "3." A package with an unusual or unknown material but no articulated threat is a Level 2
28 threat. The bulletin indicates that a key indicator of a credible threat includes when some type of
29

1 material is detected in a package which cannot be easily explained as usual or common for that
2 item, area or location. The bulletin also indicates that local protocols should take precedence and
3 that the bulletin should be used to supplement local policies. Appellant was aware of the
4 information in the bulletin.

5
6 2.11 As an experienced and trained police officer, Appellant's job duties included the exercise
7 of discretion and judgment. Based on a preponderance of the credible testimony and evidence in
8 this case, the Board finds that the policies and procedures for determining whether a suspicious
9 package rises to the level of a bomb threat or a biohazard require the responder to make
10 professional judgments and then make informed decisions on the safety precautions needed and
11 the response level to employ. Based on Appellant extensive training record and long-term
12 employment at CWU, Appellant had the knowledge and background needed to make informed
13 and professional decisions during the October 19, 2007 incident.

14
15 2.12 Following the investigation into the incident, Mr. Rittereiser determined that Appellant's
16 decision to move the packages was wrong and was in violation of the intent of CWU's policies,
17 contrary to the training Appellant had received, and conflicted with established standards. Mr.
18 Rittereiser concluded that Appellant should have left the packages in place, should have
19 evacuated the building, and should have called EOD to respond. Appellant failed to take the
20 actions and precautions that Mr. Rittereiser felt should have been taken under the circumstances.

21
22 2.13 Mr. Rittereiser determined that Appellant's actions caused potential risk to people and
23 the facility, and were outside the scope of what a reasonable police sergeant should have done.
24 Mr. Rittereiser felt that Appellant's admission in his email to Captain Higgins that he would not
25 move suspicious packages again, showed that Appellant was aware that he did not handle the
26 incident appropriately and that his actions were contrary to policies, standards and expectations.

2.14 In determining the level of discipline to impose, Mr. Rittereiser considered Appellant's position of significant responsibility and his distinguished service of more than 26 years to the University. However, he concluded that Appellant committed a critical mistake that could have had huge consequences and that disciplinary action was warranted. Mr. Rittereiser testified that he considered more significant levels of discipline, but given Appellant's history and positive performance, he concluded that a three-day (30 hour) suspension would be sufficient to impart to Appellant the seriousness of his err in judgment.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts that at the time that Appellant decided to move the suspicious packages, he did not have the information needed to make a determination of whether the packages posed a threat or contained a suspected device. Respondent further asserts that by examining the packages in the proximity of staff and failing to secure the area, Appellant placed people in a position of potential risk. Respondent contends that Appellant violated CWU protocol when he moved the suspicious packages and failed to assure the security and safety of people and the facility. Respondent argues that when considering the totality of the circumstances, Appellant's extensive training and his experience as a police officer, a three-day (30 hour) suspension is minimal given the magnitude of what could have happened.

3.2 Appellant suggests that Respondent is attempting to find someone to blame and is attempting to turn the incident into a bomb threat when there was no threat. Appellant contends that he made a calculated and educated decision that the packages were safe and that no one felt threatened when they were delivered. Appellant argues that the policies are inconsistent and that other staff who failed to adhere to the policies were not disciplined. Appellant asserts that he treated the packages appropriately as suspicious packages and that he would not move the packages again because he failed to consider that the packages might have been a test run, not because he felt they posed a threat. Appellant contends that he exercised his judgment and

1 discretion as a police officer and that a three-day suspension was not warranted under the
2 circumstances.

3 / / / /

4 IV. CONCLUSIONS OF LAW

5 4.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.

6
7 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
8 the charges upon which the action was initiated by proving by a preponderance of the credible
9 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
10 sanction was appropriate under the facts and circumstances. WAC 357-52-110.

11
12 4.3 Respondent has met its burden of proof. At the time Appellant decided to move the
13 suspicious packages, Appellant did not know who sent the packages or what they contained. Even
14 though no threat had been articulated, the packages could have contained a bomb. Appellant testified
15 that he thought they contained meat or body parts. If that were the case, at a very minimum,
16 Appellant should have treated the packages as a potential biohazard.

17
18 4.4 In determining whether a sanction imposed is appropriate, consideration must be given to
19 the facts and circumstances including the seriousness and circumstances of the offense. The
20 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient
21 to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of
22 the program. An action does not necessarily fail if one charge is not sustained unless the entire
23 action depends on the unproven charge. Holladay v. Dep't of Veteran's Affairs, PAB No. D91-
24 084 (1992).

25
26 4.5 In carrying out his duties as a police officer, Appellant is expected to exercise judgment and
27 discretion on a day-to-day basis. In responding to the call about the suspicious packages, Appellant
28 did not intentionally disregard policies, procedures, standards, protocols, or his training. However, in
29

exercising his judgment, Appellant failed to apply his knowledge and experience to the totality of the circumstances surrounding the suspicious packages including the unknown origin of the packages, the physical appearance of the packages, and his admission that he did not know what was in the packages.

4.6 As a seasoned and experienced police officer and given his lack of knowledge about the origin and content of the suspicious packages, Appellant failed to exercise the level of caution warranted. Therefore, some level of discipline is warranted. However, under the totality of the proven facts and circumstances, a three-day suspension is too severe. A 15-hour suspension is sufficient to impart to Appellant the seriousness of the situation, to prevent recurrence, and to deter others from similar misconduct. The appeal should be granted in part and the discipline should be reduced to a 15-hour suspension.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Tim Stowe is granted in part and the disciplinary sanction is reduced to a 15-hour suspension.

DATED this ____ day of _____, 2008.

WASHINGTON PERSONNEL RESOURCES BOARD

MARSHA TADANO LONG, Chair

JOSEPH PINZONE, Vice Chair

LAURA ANDERSON, Member