

State of New Hampshire



PERSONNEL APPEALS BOARD

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Appeal of Ronald Quiros

Docket #2003-D-003

NH Department of Corrections

December 4, 2002

The New Hampshire Personnel Appeals Board (Wood, Rule and Urban) met in **public session** on Wednesday, October 9, 2002, under the authority of RSA 21-I:58, to hear the appeal of **Ronald Quiros**, an employee of the Department of Corrections/New Hampshire State Prison for Men. Mr. Quiros, who was appealing his August 1, 2002, demotion from the rank of Sergeant to the rank of Corporal, was represented at the hearing by Attorney John Vanacore. Attorney John Vinson appeared on behalf of the Department of Corrections.

The record of the hearing in this matter consists of pleadings submitted by the parties, notices and orders issued by the Board, the audio tape recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

Slate's Exhibits

1. Statement dated March 29, 2002 by Corrections Officer Christy L. Cotter
2. A photocopy of a handwritten note bearing the name, address and telephone number of the appellant's wife
3. A photocopy of an Easter card addressed to the appellant's wife, believed to have been signed by Inmate David Edwards
4. A typed summary of an April 18, 2002 follow-up interview of the appellant conducted by Warden Jane Coplan, Major Daniel Shaw and HR Administrator Lisa Carrier

5. A copy of the August 1, 2002 notice of demotion addressed to the appellant, signed by Warden Coplan
6. A photocopy of the Department's Rules and Guidance for DOC Employees

At the hearing, the following persons gave sworn testimony:

Ronald Quiros

Warden Jane Coplan

Major Daniel Shaw

Positions of the Parties

5

The appellant, a thirteen-year veteran of the NH Department of Corrections, was demoted from Sergeant to Corporal on August 1, 2002 for allegedly "engaging in lengthy conversations with inmates" and putting "the security of the institution at risk" by becoming "unduly familiar with Inmate Edwards." In its notice of demotion, the State asserted that the appellant's conduct violated departmental policies and procedures, constituting the following offenses:

- dereliction of duty,
- undue familiarity with persons under departmental control,
- giving, selling or accepting items from or to persons under departmental control, and
- failing to give his entire time and attention to his duties during his hours of work.

The State asserted that in the process of investigating an allegation that the appellant had been bringing tobacco into the NH State Prison for Men, investigators uncovered evidence that Inmate David Edwards "had money orders, a letter written to a local florist requesting flowers to be sent to [the appellant's] wife, a personal card made out to [the appellant's] wife, and [the appellant's] personal address and phone number in his possession." When questioned about the allegations, the appellant denied ever bringing contraband of any kind into the prison. He also denied any knowledge of how Inmate Edwards obtained money orders or personal information about the appellant's wife. The appellant acknowledged that the staff and some of the inmates knew that his wife was having surgery, but he denied ever discussing the surgery directly with Inmate Edwards.

The appellant denied ever doing special favors for Inmate Edwards. He did indicate, however, that he would provide assistance for inmates from time to time, such as calling the infirmary for them to see when their medications would be ready. He admitted that he sometimes allowed the inmate(s) who cleaned the office to have the left-over coffee that had been made on first shift. He also testified that instead of throwing out the left-over "cell feeds," he would heat them up and give them to the inmates to eat. The appellant admitted that he frequently had allowed Edwards to use the staff's office telephone, but only after having been directed to do so by Coi-sectional Counselor/Case Manager David Hart. Finally, the appellant admitted that he had engaged in some lengthy conversations with Inmate Edwards about serving in Viet Nam; however, he denied ever giving him personal information or doing any special favors other than those he was directed to do.

Review of the Evidence

Warden Coplan testified that the relationship between inmates and officers is supposed to be one-sided; officers should be friendly towards the inmates without becoming their friends. She said that the appellant had crossed that line, ignoring his training and violating the Rules and Guidance for Corrections personnel by spending inordinate amounts of time with Inmate Edwards and extending privileges to him that other inmates were denied. She testified that in deciding to demote him, she considered the evidence gathered during the investigation, the information contained in C.O. Cotter's statement, and the fact that the appellant could not explain how Inmate Edwards had obtained the appellant's home address, telephone number, and information about the appellant's wife. She said she concluded that the appellant had been derelict in his duties. She also determined that the appellant had put himself, the inmate, and the institution at risk by spending extensive amounts of time alone with the inmate and giving him at least what appeared to be preferential treatment.

Corrections Officer Cotter's statement dated March 29, 2002 was admitted as State's Exhibit 1. The State offered the statement for two purposes, to support its claims of misconduct and to

impeach the appellant's claim that he was unaware of staff complaints about his relationship with Inmate Edwards. The statement offers C.O. Cotter's limited firsthand observations of the appellant's behavior over a period of approximately one year immediately preceding September 2000. Beyond that, the statement consists strictly of hearsay, with C.O. Cotter reporting what was allegedly said to her by several inmates, a confidential informant, and two other officers. The State chose not to call Officer Cotter as a witness and offered no other evidence to corroborate the facts as alleged in her statement. As a result, the Board gave little weight to the statement as reliable evidence of the alleged misconduct.

The State offered Exhibits 2 and 3 as evidence of the relationship between the appellant and Inmate Edwards. The State asserted that the documents were discovered in Inmate Edwards' cell along with money orders and a letter to a florist asking for a delivery of flowers to the appellant's wife. Warden Coplan identified Exhibits 2 and 3 as true and accurate copies of the original documents that she had reviewed in connection with the investigation and had shown to the appellant during their meeting in April 2002. Otherwise, she had no firsthand knowledge of how or when or where the documents were uncovered, or what condition they were in when they were confiscated.

In determining the appropriate weight to give Exhibits 2 and 3, the Board took into consideration the following factors. The State offered no evidence of the letter purportedly found in Inmate Edwards' cell requesting a delivery of flowers to the appellant's wife. The State also chose not to offer copies of the money orders into evidence. Finally, the State chose not to offer the testimony of any witness other than the appellant who had any firsthand knowledge of the investigation or information about the appellant's relationship with Inmate Edwards.

The appellant gave uncontroverted testimony that during the investigation, the State Police officer conducting his polygraph examination lied, telling the appellant that his fingerprints were found all over the physical evidence that the agency had gathered. According to the appellant, the officer later admitted that they had no such evidence, describing his tactics as simply "the way they do things."

State's Exhibit 4 lists the questions asked of the appellant and his answers to those questions in his April 18, 2002 interview with Warden Coplan, Major Shaw and HR Administrator Currier. Throughout the document, the appellant's answers are consistent with his sworn testimony.

State's Exhibit 5, the August 1, 2002 letter of demotion, describes Warden Coplan's analysis of the information gathered during the investigation and her decision to demote the appellant from Sergeant to Corporal. In the letter, Warden Coplan wrote:

“When you were questioned about [the contraband and documents found in Inmate Edwards' cell] you offered no explanation to this other than he was 'setting you up.' A thorough investigation into this matter was done and you were afforded the opportunity to meet with Major Shaw and myself to offer some explanation to these charges. You had no explanation as to why this inmate would possess personal information about your family and have your address and phone number. However, you admitted that you spent up to forty-five minutes at a time on several occasions in your office talking with this inmate.”

State's Exhibit 6, the Department of Corrections' Policy and Procedure Directive 2.16, outlines the various offenses for which personnel can be disciplined. The pertinent sections cited in the letter of demotion include Dereliction of Duty, Undue Familiarity with Persons Under Departmental Control, Giving, Selling or Accepting Items from or to Persons Under Departmental Control, and Attention to Duty.

The Facts in Evidence

Officers on the second shift at Medium Custody North (MCN) are responsible for walking rounds, conducting inmate counts, escorting inmates to and from the mess hall, guarding the inmates during their evening meal, and providing "cell feeds" to inmates who are restricted to the unit. They also are responsible for conducting cell searches or "cell shakes," searching

individual inmates for contraband, collecting urine samples for drug testing, responding to issues raised by the inmates, and generally assuring the safety and security of the unit. Throughout the shift, one officer is assigned to the Control Room to monitor staff and inmates on all three tiers of the unit. The Control Room officer also operates the door locks and manages communications within the unit. During meal times, the second officer is normally "pulled" to escort the inmates to and from the dining hall and remain with them to supervise them during the meal. Any remaining officers stay "on the floor" to deal with issues on the unit as they arise. During his tenure as second shift supervisor, the appellant's staff normally included only two other officers, a Corporal and a Corrections Officer.

Among the 288 inmates then housed in Medium Custody was David Edwards, an inmate the appellant first met in 1993 or 1994 while he was working as a Sergeant in the Closed Custody Unit. Edwards claimed to be a retired US Army Lieutenant Colonel and a Viet Nam War veteran, a claim widely accepted by inmates and members of the staff. Edwards even asked the inmates and staff to refer to him as Colonel. Although Edwards reportedly admitted at some later date that he was not a veteran, he did manage to convince the appellant that he had been an officer in "special ops" working out of Cambodia during the war. The appellant developed a friendly relationship with Edwards, conversing with him frequently about what he believed to be common experiences, and disclosing information to the inmate about his own service in Viet Nam as a non-commissioned officer.

On April 5, 2001, the appellant was called into Investigations, shown money orders that reportedly had been found in Inmate Edwards' cell, and questioned about contraband coming into the prison. The appellant denied ever bringing contraband of any kind into the prison.

The appellant did not see the money orders again until a year later. On April 18, 2002, the appellant met with Warden Coplan, Major Shaw and Human Resources Administrator Currier and was asked to explain a number of items reportedly discovered in Inmate Edwards' possession. They included a handwritten note bearing the name, address and telephone number of the appellant's wife's Dorothy and an Easter card signed "David Michael Damien Edwards"

with a personal message to "Dot" about making a speedy recovery from surgery. He also was shown a letter and three money orders, one of which reportedly was made out to a florist.'

The appellant denied any knowledge of how the items or information might have been obtained by Inmate Edwards. He told the interviewers it was common knowledge on the unit that his wife was having surgery, and inmates frequently asked about her health. The appellant said that when Edwards indicated he planned to send flowers, he replied, "No thanks." The appellant insisted that a year earlier, when Investigator Blackden had shown him the money orders, they were blank.

In describing his relationship with Inmate Edwards, the appellant admitted that over a period of about six months he had allowed the inmate to use the staff telephone approximately three times a week. He indicated that Correctional Counselor/Case Manager David Hart had instructed him to allow Edwards to use the phone and had never put any limitations on the privilege.² The appellant gave uncontroverted testimony that he questioned his Unit Manager about Edwards' phone privileges, and was told that the Unit Manager would take care of it. The appellant testified that his Unit Manager never gave him further instructions or told him to limit or eliminate the privilege. The appellant admitted that some of his conversations with Inmate Edwards were as much as forty-five minutes in length. He insisted, however, that they took place while he was in the office doing his work. He admitted that he had never personally conducted a search of Inmate Edwards' cell, but said he never gave orders for any of the other officers to leave the cell alone. The appellant acknowledged that he had disclosed information about his military service to Inmate Edwards, but denied ever disclosing other information of a personal nature about himself or his wife.

¹ Photocopies of the note and the Easter card were admitted into evidence. Neither the money orders nor the letter to the florist mentioned in the letter of demotion were offered into evidence. The State offered no direct witness testimony about the manner in which the documents were confiscated or the condition of the documents at the time they were discovered.

² The appellant gave uncontroverted testimony that CC/CM Hart provided his instructions in the form of a memo. Neither party offered that memo into evidence.

Rulings of Law

- A. Per 1001.01 of the NH Code of Administrative Rules provides for six different levels of disciplinary action: "(a) Dismissal during initial probationary period; (b) Written warning; (c) Withholding annual increment; (d) Suspension; (e) Demotion; and (f) Dismissal."
- B. RSA 21-I:58, I provides, in pertinent part: "Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal. ... [and] In all cases, the personnel appeals board may reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just.

Burden of Proof, Burden of Production, Standard of Review

Per-A 207.01 of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board) provides that, "In all cases, the burden of proof shall be upon the party making the appeal. The appointing authority shall have the burden of production."

In this case, the appellant's burden is to prove, by a preponderance of the evidence, that, "(1) The disciplinary action was unlawful; (2) The appointing authority violated the rules of the division of personnel by imposing the disciplinary action under appeal; (3) The disciplinary action was unwarranted by the alleged conduct or failure to meet the work standard in light of the facts in evidence; or (4) The disciplinary action was unjust in light of the facts in evidence." [Per-A 207.12 (b)] By comparison, the appointing authority needs to produce sufficient credible evidence and argument to support the underlying factual allegations and the discipline imposed.

On all the evidence, the Board made the following findings with respect to each of the charges outlined by Warden Coplan in her August 1, 2002 notice of demotion:

Dereliction of Duty -- Corrections PPD 2.16 states that, "Employees are derelict in their duties when they willfully or negligently fail to perform them, or when they perform them in a culpably inefficient manner." In the letter of demotion, Warden Coplan alleged that the appellant was negligent in his responsibilities by allowing privileges to Inmate Edwards "such as spending an excessive amount of time on a one to one with this particular inmate" and "failing to perform [his] security responsibilities as the Unit Sergeant."

The evidence reflects that a substantial amount of time that Edwards spent in the staff office occurred while he was using the telephone, a privilege extended by Correctional Counselor/Case Manager Hart. The evidence also reflects that the appellant's work performance was deemed "above average," with no reported breaches in security and no complaints that rounds or counts were not performed. As such, despite the fact that the appellant did not make the best use of his time, the evidence does not support the State's claim that the appellant failed to perform his security responsibilities and should have been deemed derelict in his duties.

Giving, Selling or Accepting Items from or to Persons Under Departmental Control --

Warden Coplan charged the appellant with allowing inmate Edwards to sit in the appellant's office for extensive periods of time, allowing him privileges that other inmates did not have. The evidence reflects that at least initially, access to the staff office and use of the staff telephone were privileges extended by Correctional Counselor/Case Manager Hart. If the appellant afforded additional privileges to Inmate Edwards beyond those described in the letter of demotion, the State offered no evidence of them at the hearing.

Attention to Duty -- Warden Coplan charged that the appellant failed to attend to his security duties while he allowed Inmate Edwards to spend an excessive amount of time in the appellant's office. This is the same complaint articulated in the sections titled "Dereliction of Duty" and "Giving , Selling or Accepting Items..."

Under the heading "Attention to Duty," PPD 2.16 states, "Employees are required to give their entire time and attention to their duties during their hours of employment. No distracting amusement or occupation shall be engaged in by employees while on duty."

Witnesses agreed that staffing was tight on the appellant's shift. Nevertheless, Warden Coplan testified that she knew of no security breaches and no complaints that rounds or counts had been neglected. She also testified that the appellant had above-average performance evaluations. Although the appellant clearly exhibited poor judgment in spending more time with Edwards than with the other inmates, the State produced little evidence to persuade the Board that the appellant should be deemed guilty of engaging in distracting amusements or occupations while on duty.

Undue Familiarity with Persons Under Departmental Control -- In the letter of demotion, Warden Coplan wrote that the appellant's interactions with Inmate Edwards demonstrated that he "shared information of a personal nature which this inmate used to attempt to send flowers with unauthorized money orders to [the appellant's] wife." The Board does not agree.

The evidence reflects that Inmate Edwards successfully conned the appellant and others into believing that he was a Viet Nam veteran, and that the appellant allowed a friendly relationship to develop between them. The evidence also reflects that Inmate Edwards obtained the appellant's home address, phone number, wife's nickname, and information about surgery for which the appellant's wife was scheduled. While that evidence certainly should have led to further inquiry and investigation, which it did, it did not rise to the level of proof by a preponderance of the evidence that the appellant committed the violations of policy that the department alleged.³

³ Although additional evidence may have been available to the Department of Corrections, the Board relied strictly on the documentary and testimonial evidence offered by the parties.

Based on the appellant's own testimony, the Board found that the appellant exhibited poor judgment and failed to provide appropriate role modeling for subordinate officers on his shift. Regardless of what he perceived as "a talking relationship" between Lieutenants Chestnut, Grimaldi and Parrish with the inmate, the appellant was responsible for maintaining an appropriate professional distance from the inmates he supervised. As the shift supervisor, the appellant needed to set a good example for his subordinates. While there were no reported breaches in security in the unit, by allowing himself to be conned and developing a friendly relationship with Inmate Edwards, the appellant let down his guard, increasing the likelihood that security could be breached

Decision and Order

On the evidence and argument offered by the parties, the Board found that disciplinary action was warranted. However, the Board also found that demotion from the rank of Sergeant to Corporal was an unwarranted and ineffective remedy.

In deciding to demote the appellant from Sergeant to Corporal, the agency cited the appellant's inability to function as a role model and shift leader. Under the circumstances, however, demotion from Sergeant to Corporal would not appear to address that concern. According to the parties, Corporals serve as the second in command on a shift, taking over as the OIC (Officer in Charge) in the Sergeant's absence. Thus, demotion serves simply as a punishment, not as a means of correcting the problem.

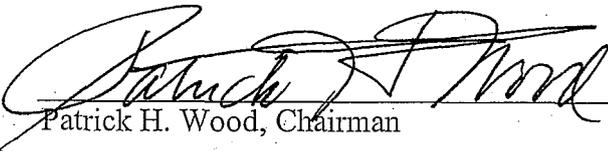
The Board is always reluctant to replace the agency's judgment with its own. However, RSA 21-I:58, I, authorizes the Board to "...reinstate an employee or otherwise change or modify any order of the appointing authority, or make such other order as it may deem just." The Board voted unanimously to amend the decision of the appointing authority in this case, directing the agency to restore the appellant to the rank of Sergeant by replacing the notice of demotion with a letter of disciplinary suspension without pay for a period of 30 working days. The agency shall calculate the difference in compensation that the appellant would have received if he had been

suspended rather than demoted, and shall make the appropriate adjustments. Inasmuch as the appellant has been transferred from the Men's Prison in Concord to the Laces Region Facility, the agency shall have the discretion to determine whether or not to return him to his original assignment or assign him to another location or shift.

This decision shall serve as notice to the appellant that any subsequent infraction may result in additional disciplinary action, up to and including the appellant's dismissal.

For the reasons set forth above, the appeal is therefore **GRANTED IN PART**.

THE PERSONNEL APPEALS BOARD


Patrick H. Wood, Chairman


Lisa A. Rule, Commissioner

Anthony B. Urban, Commissioner

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