State of New Hampshire

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PERSONNEL APPEALS BOARD
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APPEAL OF SALLY CROWELL
New Hampshire Department of Corrections
Docket #90-D-4

May 17, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, May 1, 1991, to hear Sally Crowell's appeal of a one-week suspension without pay from her position at the New Hampshire Department of Corrections. Ms. Crowell appeared pro se. Charles Black, Administrator of the Bureau of Community Corrections, represented the Department of Corrections. Also testifying on behalf of the Department were Lt. Gerald Haney, Unit Manager Jane Coplan, and Unit Manager John Sanfilippo.

Ms. Crowell had been suspended without pay for one week, beginning April 14, 1990 through April 20, 1990, for three violations of Department of Corrections PPD 2.2.16:

1. Violation of Paragraph IV. E., by repeatedly failing to obey an order not to smoke in a designated no smoking area.

2. Violation of Paragraph IV. I., by wrongfully disposing of property belonging to a person under departmental control.

3. Violation of Paragraph IV., P2, by accepting $87 from eight inmates and also by extending $9 of personal funds to pay for a taxi used by an inmate.

Board's Findings of Fact

Violation #1 - (Repeatedly smoking in a designated no-smoking area)

On December 5, 1989, the Department of Corrections instituted a no smoking policy. In the Concord Community Corrections Center (halfway house) where Ms. Crowell was working, the only designated smoking areas were outside of the building or the second floor porch area. Staff were instructed not to smoke in the office area, and were advised to consider smoking when outside the building malting rounds. Ms. Crowell initialled the no smoking advisory, and was aware of the policy, but informed Ms. Coplan that she would be unable to comply.

In spite of the policy being in place, Ms. Crowell continued to smoke in the office area while taking check-in calls from the inmates. Lt. Haney advised her to go outside to smoke, but she told Haney she had no intention of going outside and would continue to smoke in the house. Unit Manager Coplan advised the appellant that if she continued to smoke in designated no smoking areas, it would be considered a violation of a direct order. Ms. Crowell told Ms. Coplan "to do what she had to do".

Coplan discussed the situation with John Sanfilippo, former Acting Administrator of the Bureau of Community Corrections, informing him that Crowell continued smoking in places other than the designated smoking areas. He arranged for a meeting with Coplan and Crowell, where the three of them discussed the problems. Sanfilippo reminded her that continued smoking in violation of the policy would be considered a direct violation of an order, and Crowell responded that she understood.

Ms. Crowell admitted that she continued smoking in areas where no smoking was allowed, arguing that in order to be available in the office to log in the inmates' check-in calls, there was no opportunity for her to go outside and have a cigarette. Ms. Crowell was the only employee to be so severely disciplined for disregarding the no-smoking policy. She also was the only employee who habitually violated the policy, and openly admitted to the Security Sergeant, Unit Manager and Administrator of Community Corrections that she would be unable to comply with the policy.

Violations #2 & #3- (wrongful disposition of property and personal funds)

On Tuesday, February 14, 1989, one of the inmates at the halfway house had complained of serious chest pains and had asked to be taken to a doctor. In keeping with halfway house policy, since this inmate was employed in the community and receiving an allowance from his wages, he was informed that the treatment and medication would be his own financial responsibility. He accepted that responsibility and was seen by a physician at the Concord Hospital Walk-In Clinic who gave him several prescriptions for medication. On the return trip to the halfway house, he informed Lt. Haney, who was transporting him, that he did not want to fill his prescriptions at that time, but would wait until he received his allowance on Thursday of that week. The prescriptions were then locked up at the halfway house.

During the next several days, the inmate continued to report to work at Cheers, and attended a regular meeting of Narcotics Anonymous. On February 18, the inmate made two separate trips to the hospital because of his chest pains, but still did not have his prescriptions filled. The inmate had not made a request of either his case counselor or the unit manager to borrow funds to fill his prescriptions.

When Ms. Crowell reported to work on February 19th, she found the inmate sitting up in a chair outside the officers' station where he reported to her that because he was in such severe pain, he had been afraid to go to bed the night before. Ms. Crowell, a certified E.M.T., spoke with R.N. David Southard at the State Prison Infirmary who informed her that the inmate should have the prescription for antibiotics filled, but that none were available at the Infirmary which he could provide. He also told Crowell that in a worst case scenario, if the inmate's condition went untreated, he could suffer permanent damage to the heart or even death. She did not call the Security Sergeant or Unit Manager prior to taking up a collection from the inmates for the purpose of paying for the prescriptions, and providing funds for cab fare to another inmate to pick up the prescriptions at a local pharmacy. Knowing that there would be minimal staffing due to the three-day holiday week-end in progress, she was afraid the inmate might go without treatment until at least Tuesday. The other inmates voluntarily gave donations at her request, and were assured they would suffer no disciplinary action because of it.

Relevant Department of Corrections Policy

Violation #1

Department of Corrections PPD 2.2.16, IV. D. Failure to Obey a Written Order, Regulation or Directive Issued by Appropriate Authority, provides that:

> "Any employee who fails to obey a written order, regulation or directive issued by appropriate authority is in violation of this rule. For purposes of definition, the term 'appropriate authority' includes all persons to whom the employee is subordinate and has the responsibility to obey."

Ms. Crowell and the other employees of the Department of Corrections were notified that effective December 5, 1990, no smoking would be allowed except in designated smoking areas. In spite of her understanding of the policy, and counselling by her supervisors, Ms. Crowell continued to smoke in areas where it was not permitted. The agency was aware of Ms. Crowell's visits to a psychotherapist in an attempt to quit smoking. The agency, nonetheless, was under no obligation to overlook her violations of the smoking policy simply because she had sought help in quitting smoking. The agency acted within its discretion in disciplining her for the continued violation, and for her refusal to obey direct orders from both the Unit Manager and Acting Administrator of Community Corrections regarding smoking in undesignated areas.

Violations #2 and #3

Department of Corrections PPD 2.2.16 IV. I., (Loss, Damage, Destruction, Theft or Wrongful Disposition of Property Belonging to Another) states:

> "Any employee who willfully or through negligence causes or permits the loss, damage, destruction, theft or wrongful disposition of property belonging to another employee, a person under departmental control, or any other property is in violation of this rule."

Department of Corrections PPD 2.2.16 IV., P. 2. states:

> "No employee shall give or sell anything to a person under departmental control, or buy, sell, or accept anything from or to persons under departmental control or their families or extend to them any favors without the permission of the Commissioner."

In defense of her actions, Ms. Crowell cited Department of Corrections PPD 2.7.30 (Inmate Rights) specifically as it relates to the availability of emergency medical and dental treatment on a 24 hour basis, as well as the requirement that the department assure inmates a safe environment, where no inmate shall be subjected to personal abuse, personal injury or disease. She also cited PPD 5.6.41 III:

> "It is the policy of the Bureau of Community Corrections to insure that all Halfway House residents are serviced with medical/dental, mental health, and other related services. To maintain the general health and well being of residents who are under the Bureau of Community Corrections control. .."

PPD 2.7.30 IV B. Emergencies, also states:

> "In the event of a medical emergency halfway house staff should react promptly in obtaining appropriate emergency medical assistance (EMT). Qualified staff should provide on site first aid until medical assistance arrives, notification to the Duty Captain, Unit Manager and Bureau of Community Corrections Administrator."

The record reflects an on-going awareness by both staff and administrators at the halfway house of the medical situation involving the inmate, Mr. Kochis. The inmate had been transported to an emergency health care facility, and had received prescriptions for medication, which the inmate chose not to have filled at the time they were provided. When Ms. Crowell arrived at the halfway house on the date of the incident in question, she determined that an emergency medical situation was in progress and, in good faith, took steps to provide the prescribed medication for the inmate. Those good faith efforts, however, were a clear violation of Department of Corrections Policy and Procedure, as well as appropriate emergency procedures.

The Board has no doubt that Ms. Crowell's primary interest was the inmate's health and well-being when she collected funds from the inmates to pay for prescriptions, and sent another inmate to the pharmacy by cab to fill those prescriptions. Similarly, the Board believes the inmates contributed voluntarily to pay for the prescriptions, and appreciated her efforts on behalf of Mr. Kochis. The mere fact that she fully documented her activities and reported them to her superiors after the fact demonstrates her belief that she had reacted appropriately. The Board found, however, that Ms. Crowell demonstrated extremely poor judgment and willful disregard of departmental policy in the manner in which she handled the incident.

In consideration of the evidence and testimony presented, the Board found that Ms. Crowell knowingly violated the department's policies as described above. Further, the Board found that Ms. Crowell exercised extremely poor judgment in circumventing the emergency medical procedures outlined in the policy and procedure directives in dealing with the Kochis incident. Accordingly, the Board voted unanimously to deny her appeal, and uphold the decision of the Department of Corrections to suspend her without pay for the period of one week.

THE PERSONNEL APPEALS BOARD

Patrick J. McNicholas, Chairman

Robert J. Johnson

Mark J. Bennett

cc: Ms. Sally Crowell, 33 Strafford Street, Laconia, NH 03246
Mr. Charles Black, Administrator, Bureau of Community Corrections
Lisa A. Currier, Human Resource Coordinator, Dept. of Corrections
Virginia A. Vogel, Director of Personnel
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