State of New Hampshire

PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261

Appeal of Hallam and Laramie

Docket #2006-T-002 and 2006-T-004

New Hampslzire Department of Corrections

NH Personnel Appeals Board Decision on Appellants' Motion for Clarification
And Enforcement of Decision
June 2,2006

By letter dated May 19,2006, and received by the Board on that date, SEA General Counsel Michael Reynolds filed a Motion for Clarification and Enforcement of Decision in the above-titled appeals. To date, the Department of Corrections has filed no response or objection.

In his Motion, Attorney Reynolds asks the Board to order the Department of Corrections to include reasonable overtime amounts as part of the Appellants' back pay awards. In support of that request, Attorney Reynolds asserts that the Department of Corrections has refused to compensate the Appellants for overtime hours that they likely would have worked had they not been improperly terminated from their employment. Mr. Reynolds notes that Article VII, Section 7.2 of the current Collective Bargaining Agreement specifically provides for overtime to be "distributed equally," that both Appellants would have been entitled to work overtime, and that both would have worked approximately the same amount of overtime they regularly worked, had they not been terminated.

The Department of Corrections' position appears to be summarized in HR Administrator Lisa Currier's May 10,2006 e-mail, which was attached to Appellants' Motion. In it Ms. Currier states,

> "In follow up to our phone conversation this is to inform you that the reimbursement calculations on Hallam and Laramie do not include any overtime. It is the Department's position that overtime is too speculative to include as earnings."

The Board believes that the Department's narrow interpretation of what "earnings" should include in this instance is contrary to both the spirit and intent of the Board's order. The Board directed the Department to reinstate the Appellants consistent with the requirements of RSA 21-I:58, I, which states, in pertinent part:

> "...The employee shall be reinstated without loss of pay, provided that the sum shall be equal to the salary loss suffered during the period of denied compensation less any amount of compensation earned or benefits received from any other source during the period. "Any other source" shall not include compensation earned from continued casual employment during the period if the employee held the position of casual employment prior to the period, except to the extent that the number of hours worked in such casual employment increases during the period..."

Although the law clearly provides for a reduction in the award of back pay by the amount of other earnings during the period of termination, it does not allow the Department to rely on anything other than actual earnings prior to termination in calculating the appropriate amount of back pay. While there is no way to determine precisely what the Appellants would have earned if they had not been dismissed, there are well-established formulas for calculating employment-related benefits based on actual earnings.

When an individual files a claim for unemployment compensation, for instance, the Department of Employment Security bases the benefit on total earnings in the first four of the last five calendar quarters before the initial benefits claim was filed.'

According to RSA 282-A:15, I:

> "Wages" means every form of remuneration for personal services paid or payable to a person directly or indirectly by his employing unit, including salaries, commissions, bonuses, and the reasonable value of board, rent, housing, lodging, payment in kind and similar advantages estimated and determined in accordance with the rules of the commissioner of the department of employment security.

When an individual files a claim for workers' compensation benefits, the level of benefit is based on an average weekly wage determined by totaling the gross earnings of the injured employee during the 26 weeks preceding the date of injury, and dividing the resulting total by that number of weeks. If it is more beneficial to the employee to include earnings over a greater period of time, the employee can request that the calculation be based on up to 52 weeks of earnings prior to the date of injury.[2]

In this case, the Appellants' pre-termination earnings included payment for authorized overtime worked, and it is only reasonable to conclude that the Appellants would have continued to maintain approximately the same schedule of regular and overtime hours that they had worked prior to termination. The Department shall determine the average number of overtime hours that the Appellants worked in each of the twelve months immediately preceding the date of termination, and compensate them accordingly for the period of separation. Such a calculation will allow for variations in staffing levels over a sufficient period of time to make a more reasonable assessment of what their actual earnings would have been. That calculation shall also take into account any increases in salary to which either of the Appellants might have been entitled, whether that increase

---

[1] http://www.nhes.state.nh.us/uc/rights.htm#BENEFITAMOUNT
[2] http://www.labor.state.nh.us/injured_worker_weekly_benefits.asp?ptype=

would have been the result of a regular salary increment, or as a result of salary increases negotiated as part of the current Collective Bargaining Agreement.

THE PERSONNEL APPEALS BOARD

/s/

Philip Bonafide, Acting Chair

/s/

Robert J. Johnson, Commissioner

/s/

John Reagan, Commissioner

cc: Karen A. Levchuk, Director of Personnel
Michael Reynolds, SEA General Counsel
John Vinson, Attorney, Department of Corrections
Lisa Currier, HR Administrator, Department of Corrections

State of New Hampshire

PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
Telephone(603) 271-3261

Appeal of Timothy **Hallam,** Docket **#2006-T-002**

and

Appeal of Joseph Laramie, Docket **#2006-T-004**

New Hampshire Department of Corrections - NH State Prison for Men

March 30,2006

The New Hampshire Personnel Appeals Board (Bonafide, Johnson and Reagan) met in public session on Wednesday, January 18,2006, Wednesday, January 25,2006, and Wednesday, February 1,2006, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to hear the appeals of Timothy Hallam and Joseph Laramie, former employees of the NH Department of Corrections. The appellants, who were represented at the hearing by SEA General Counsel Michael Reynolds, were appealing their termination from employment with the NH Department of Corrections, effective July 13,2005 and July 15,2005 respectively, for alleged offenses arising out of their conduct in relation to an incident that occurred on the evening of April 12,2005, involving an alleged assault on an inmate. Attorney John Vinson appeared on behalf of the Department of Corrections.

The Department of Corrections alleged that on and after the evening of April 12,2005, Officer Laramie struck Inmate Michael Kelly during an escort off the third tier of the R&D unit while the inmate was restrained and in handcuffs. The Department further alleged that two other officers reported the assault to Sergeant Hallam, and that Sergeant Hallam failed to take appropriate steps to document the allegations of assault. Following an internal investigation, both appellants were dismissed for violating Department policies and procedures by making false official statements, failing to report an offense, obstructing investigative activity, dereliction of duty, failure to follow the

Department Code of Ethics, and failing to safeguard residents in departmental facilities. Officer Laramie was also charged with assaulting the inmate.

The record of the hearing in this matter consists of pleadings submitted by the parties prior to the hearing, 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:

Joint Exhibits

1. Investigative Documents, Human Resources Case 2005-12, Investigations Bureau Case #DOC-2005-014 Re: Timothy D. Hallam, Sr.
2. Investigative Documents, Human Resources Case 2005-10, Investigations Bureau Case #DOC-2005-018 Re: Joseph J. Laramie
3. Transcript of the Interview of CO Shawn Stone by Investigator Mark Wefers, June 7, 2005
4. Transcript of the Interview of Cpl. Glen Daniels by Investigator Mark Wefers, June 7,2005
5. Transcript of the Interview of Sgt. Timothy Hallam by Investigator Mark Wefers, June 7, 2005
6. Transcript of the Interview of CO Joseph Laramie by Investigator Mark Wefers, June 1, 2005
7. Letter of Termination Issued to Joseph Laramie, July 15,2005
8. Letter of Termination Issued to Timothy Hallam, July 13,2005
9. 2001-2003 Collective Bargaining Agreement
10. Joint Stipulations
11. Photographs of the Hallway, Cell Area and Stairwell in 3-West, R&D Unit, NH State Prison for Men

Appellants' Exhibits

A. NH Department of Corrections PPD 5.91 Re: Video Camera Recording for Documentation

State's Exhibits

1. Employee Performance Evaluation for Timothy Hallam, July 15,2004
2. Employee Performance Evaluation for Timothy Hallam, June 2,2003

3. Employee Performance Evaluation for Timothy Hallam, June 3,2002
4. Employee Performance Evaluation for Timothy Hallam, June 4,2001
5. Employee Performance Evaluation for Timothy Hallam, June 2,2000
6. Employee Performance Evaluation for Timothy Hallam, June 2,2000 (additional pages)
7. Employee Performance Evaluation for Timothy Hallam, June, 2, 1999
8. Employee Performance Evaluation for Timothy Hallam, June 1, 1998
9. Employee Performance Evaluation for Timothy Hallam, June 3, 1997
10. April 12,2000 Letter of Warning issued to Timothy Hallam
11. PPD 5.07, Notification of Incidents and/or Reports
12. PPD 5.58, Use of Physical Force in Department Activities
13. PPD 5.25, Processing Spot, Disciplinary and Intelligence
14. PPD 1.33, Quality Assurance Serious Incident Review
15. E-mail dated July 18,2005 from Mr. Hallam to Captain Kozikowski
16. Mr. Hallams's Job Application (3 page excerpt)
17. Concord Monitor Article dated July 20,2005
18. Arborwood Forums NH DOC Exposed, dated July 13,2005
19. Arborwood Forums NH DOC Exposed, dated July 14,2005
20. Arborwood Forums NH DOC Exposed, dated July 18,2005
21. Incident Report Lesson Plan, dated July 18,2002
22. Letters from Warden Bruce Cattell, dated June 29,2005

The following persons gave sworn testimony:

Joseph J. Laramie, Appellant

Timothy D. Hallam, Appellant

Michael Kelly, Inmate, NH Department of Corrections

Todd Connor, Corrections Officer

Shawn Stone, Corrections Officer

Ted Kozikowski, Corrections Captain

Bruce Cattell, Warden, NH State Prison, Concord

At the close of the Department of Corrections' case, Appellants orally moved for "Summary Judgment" arguing in effect that the evidence produced by the DOC in its case in chief, which included testimony from the Appellants, would only permit a finding to be rendered in favor of the Appellants.

Attorney Reynolds argued that while the appellants ultimately had the burden of persuading the Board that their dismissals were unlawful, unreasonable or unjust, the State first had the burden of proving the operative facts supporting its decision to terminate the appellants' employment. Attorney Reynolds offered the Court's July 11, 1977 decision in Wilfred Desmarais v. State of New Hampshire, Personnel Commission (117 N.H., 582; 378 A.2d 1361; 1977 N.H. LEXIS 386), in which the Court wrote, in part:

> "In *Peabody* v. *Personnel Commission,* 109 N.H. 152,155,245 A.2d 77, 79 (1968), involving a dismissal of a classified employee for theft, the court required the state to establish the factual allegations by a mere preponderance. This is satisfied, as here, by requiring the agency to bear the initial burden of going forward to establish its operative facts, (*e.g.,* a theft) justifying the discharge, yet requiring the appellant to bear the burden of persuasion..."

Attorney Reynolds also offered the Court's August 23, 1968 decision in Thurston L. Peabody v. State Personnel Commission, 109 N.H. 152 (1968) in which the Court wrote:

> "As a fact-finding tribunal, the Commission was at liberty to resolve any conflict in the evidence and to accept or reject such portions of the testimony as it saw fit. *N.H. Milk Dealers Ass'n. v. Milk Control Board,* 107 N.H. 335, 343; *White Mountain Power Co. v.* Whitaker, 106 N.H. 436,439. The Commission's findings and conclusions are entitled to great weight and cannot be set aside lightly. *Household Goods Carriers v.* Ouellette, 197 N.H. 199, 200..."

Attorney Vinson objected to the Motion, arguing that the Board's rules would not permit them to render a decision without first hearing all the evidence from each of the parties.

The Board advised the parties that a motion for summary judgment would be untimely at this stage of the proceedings (day 3) but that the Board would accept Appellants' motion as a "Motion for Directed Verdict." They then took the Motion under advisement and recessed the hearing.

By letter dated February 15,2006, received by the Board on February 17,2006, Attorney Vinson filed the Department of Corrections' Objection arguing that the Board should deny the Appellants' Motion and allow the hearing to proceed. In support of that Objection, Attorney Vinson argued that the Appellants failed to submit a Memorandum of Law detailing the Board's authority to issue a summary judgment order. He also argued that the evidence presented by the Appellants was insufficient to satisfy their burden of proof by a preponderance of the evidence that the Department of Corrections dismissed Appellants in violation of a law or the Rules of the Division of Personnel, or that their dismissal was unwarranted in light of the facts in evidence. Attorney Vinson argued that the Department's investigation into alleged misconduct by Mr. Hallam and Mr. Laramie was done in compliance with the current Collective Bargaining Agreement, and that the Appellants had offered no evidence to support their allegations in that regard. Finally, Attorney Vinson argued that the Appellants should either be required to rest or present their evidence, if they had any.

By letter dated and received on February 23,2006, Attorney Reynolds submitted to the Board Appellants' Further Response. Attorney Reynolds again asserted that the Department of Corrections violated the Collective Bargaining Agreement by failing to meet deadlines for completion of its investigation, and by conducting interviews after the investigation was reportedly concluded. Attorney Reynolds argued that DOC had ample opportunity to object to Appellants' Motion or to its form, and that the State's February 15,2006 response should be deemed untimely. He argued that an oral motion made at hearing, or an action the Board might take sua sponte did not require a supporting Memorandum of Law. Finally, he agreed that the Appellants had the burden of proving that their termination violated a law or administrative rule, or that their dismissal was unwarranted by the facts in evidence. However, he argued, the State first needed to prove its "operative facts."

Although the Board's rules may not provide specifically for a motion for directed verdict, the Board's rules do provide for suspension or waiver of any rule when such suspension or waiver of the rules would be more likely to promote the fair, accurate and efficient resolution of issues pending before the Board.[1] While the Appellants bear the burden of proving that the disciplinary actions under appeal were unlawful or unreasonable, the Agency must first prove by a mere preponderance of the evidence that the offense(s) occurred as alleged.

The Board's procedural rules require the agency to present its evidence first. In this case, the State was permitted to present all of its evidence and to examine all of its witnesses, including the two Appellants. Having found that the appeal could be decided fairly, accurately and efficiently without requiring the Appellants to present additional evidence, the Board chose to proceed on the evidence offered by the state.

Based on the contradictory nature of the Department's evidence and an assessment of the credibility of a number of the witnesses presented by the DOC, and having considered all of the evidence presented by the Department of Corrections in the light most favorable to the Department, the Board concluded that no decision could be rendered in favor of the DOC. The Board found that the Appellants were entitled to reinstatement as requested.

In reaching that conclusion, the Board considered the stipulations jointly filed by the parties and the following facts drawn from a review of the evidence.

---

[1] Per-A 203.04 Waiver or Suspension of Rules: 'The board, upon its own initiative or upon the motion of any party, shall suspend or waive any requirement or limitation imposed by this chapter upon reasonable notice to affected persons when the proposed waiver or suspension appears to be lawful, and would be more likely to promote the fair, accurate and efficient resolution of issues pending before the board than would adherence to a particular rule or procedure."

Findings of Fact

1) During and immediately after the cell extraction and escort, Inmate Kelly insisted that an officer punched him in the side and lower back. Inmate Kelly told Corporal Jardine it was Officer Stone who had punched him. He also claimed that he was assaulted by an officer on his left side. During the escort, Officer Connor was on the left.
2) Inmate Kelly repeatedly and consistently reported that Officer Laramie did not strike him. During his interview with Investigator Wefers and in his testimony before the Board, Inmate Kelly testified that it was not Officer Laramie who punched him.
3) When asked at the hearing what might motivate him to lie in order to protect Officer Laramie or Sergeant Hallam, Inmate Kelly testified that he had gained nothing. He said that in addition to being transferred from Concord to Berlin, "I'm the loser. Officer Laramie is the perfect patsy if I wanted to sue the Department."
4) The only individuals who claimed to have seen Officer Laramie strike the inmate are those officers who the inmate had accused of assaulting him.
5) None of the witnesses, including Officer Connor, corroborated Officer Stone's claim that he pulled Officer Laramie away from the inmate by grabbing Officer Laramie's shoulders and pulling him back during the alleged assault
6) When Captain Kozikowski and medical personnel examined the inmate after the cell extraction and escort, there were obvious marks near the inmate's ears from the application of a pain compliance technique known as "mandibular pressure" by Officer Stone and Corporal Daniels. There also were obvious injuries to the inmate's wrists from the handcuffs that were placed on the inmate during the cell extraction by Officer Stone and Corporal Daniels. Witnesses indicated that during the escort off the tier, Officer Connor was holding the inmate by the wrists. There was no evidence that the inmate had been struck repeatedly with a closed fist in the side or back.
7) Captain Kozikowski was fully aware of the allegations by Inmate Kelly that he had been assaulted by an officer, but failed to report the alleged assault until he was questioned by investigators. Captain Kozikowski was not disciplined for failing to report possible inmate abuse or for failing to provide a true or timely account of events on the evening of April 12,2005.
8) In his incident report on the night of April 12,2005, Officer Stone did not report what he later described as excessive force in extracting Inmate Kelly from his cell, or of any alleged assault on the inmate as the inmate was being taken off the tier. Officer Stone was investigated but never disciplined for failing to report possible inmate abuse or for failing to provide a true or timely account of events on the evening of April 12,2005.

9) In his incident report on the night of April 12,2005, Officer Connor did not mention an assault on Inmate Kelly, nor did he report that Inmate Kelly had accused Officer Connor of striking him. Officer Connor was never disciplined for failing to report inmate abuse or failing to provide a true or timely account of events on the evening of April 12,2005.

10) Sergeant Hallam's April 12,2005 incident report indicated that the inmate claimed to have been assaulted by "all staff." Although Sergeant Hallam's report is misleading in that it fails to accurately report specific details regarding the inmate's statements concerning the alleged assault, Sergeant Hallam's was the only incident report from the evening of April 12,2005 that made any reference to a possible assault on the inmate.

Rulings of Law:

A. Per-A 207.12(b) of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board) provides that, "In disciplinary appeals, including termination, disciplinary demotion, suspension without pay, withholding of an employee's annual increment or issuance of a written warning, the board shall determine if the appellant proves 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."

B. Black's Law Dictionary (6th Edition) defines "preponderance of the evidence" as meaning "...evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not."

C. According to Per-A 207.01 of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board), the employer bears the burden of production, requiring the Department of Corrections in this case to produce sufficient evidence to persuade the Board that the underlying facts asserted in the letters of termination are true.

D. RSA 21-I:58, I, provides, in pertinent part, that, "...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."

Discussion

In his July 15,2005 letter of termination to Officer Laramie, Warden Cattell wrote, "During the investigation when asked if you had struck this inmate with a closed fist in the mid body region multiple times, you answered, 'No, Sir.' However, after asked if you physically did anything that another staff member may have misinterpreted you replied, 'Then again, it may be.'" Warden Cattell characterized that response as a false official statement obstructing an official investigation. He also indicated that the facts of the investigation demonstrated that the officer did strike the inmate while he was restrained.

The Board does not agree. The statements quoted by Warden Cattell were taken out of context and do not accurately reflect the information provided by Officer Laramie during his interview with investigators, which was tape-recorded, transcribed, and introduced by the parties as Exhibit 6. According to Investigator Wefers' report, when asked by the investigator if Officer Laramie might have done anything that would lead a reasonable person to believe that he had struck the inmate, Officer Laramie stated, "Then again, it may be. I'm not making any qualms that, or lightening down, but we took him into the wall with force. I didn't take him into the wall, then take him into the wall, then take him into the wall, which could result in him thinking I hit him three times. I didn't take my hands off him. Didn't put my hands on him, then take my hands off him, and put them on him, which would make him think that I hit him three times."

Although the investigative summary provided by Investigator Wefers provides a more accurate depiction of events than the summary in Warden Cattell's letter, it still omits very relevant information about the sequence of events, including the manner in which Officer Laramie was apprised of the nature and source of the allegation. By letter dated April 25,2005, received by Officer Laramie on April 29,2005, Warden Bruce Cattell notified Officer Laramie that an investigation had been initiated into the allegation, "That you hit an inmate with a closed fist in the mid-body region multiple times while this inmate was already being held around the neck from behind and in handcuffs." On June 1,2005, during his interview with Investigator Wefers and Sergeant Goings, Officer Laramie was asked if he knew what the allegation was all about and he said that what he knew he'd learned through rumors at work. He said, "I'm guessing that I'm being accused of assaulting Inmate Kelly while on a response to [inaudible]."

Investigator Wefers asked Officer Laramie to describe the incident. Officer Laramie described in some detail the call to R&D, and how Sergeant Hallam handed off Inmate Kelly to him and Officer Connor after the inmate had been extracted from the cell. He said, "Inmate Kelly at this point lunged with his leg towards Officer Welch at which point Connor and myself turned Kelly and drove him into the wall and everybody else

there, you know, piled in, boom, boom, boom..." Officer Laramie went on to describe taking the Inmate to the "north tank" then later to the infirmary and to SHU. Officer Laramie described the condition of the inmate's wrists and that the inmate's wrists appeared to be too injured to be placed in handcuffs. He told Investigator Wefers, "In the infirmary [the inmate] was telling Captain Kozikowski who arrived as we arrived in the infirmary that he had been assaulted, that Officer Stoner, he called him, assaulted him."

After another series of questions about the incident itself, Investigator Wefers asked if Officer Laramie realized that the allegation had been made by a fellow officer, and not by an inmate. Officer Laramie replied, 'Yeah, the warden made that clear... he did not give me a name..." Nearly three quarters of the way through the interview, Investigator Wefers indicated that Officer Connor had made the allegation and asked Officer Laramie if he could think of any reason why Officer Connor would make such an allegation against Officer Laramie. The Appellant had no explanation but said, "I don't even see this... is that if Connor was accused by Inmate Kelly as Suska may be saying that maybe this is some way to get his name out of it. I don't know. I mean that seems to be stretching it to me 'cause Connor certainly, you know, even though he is accusing me, Connor doesn't seem like the type of guy to do that, so..." At that point in the interview, Investigator Wefers asked if there was something the Appellant could have done that might have been misinterpreted. Officer Laramie then responded by telling the investigator that the officers "took him into the wall with force," though not such force that it would have been considered excessive or abusive.

Looking at the evidence in its entirety, and viewing that evidence in the light most favorable to the agency, it simply will not support the agency's assertion that Officer Laramie struck Inmate Kelly. Officer Connor did not include any information about the alleged assault in his original incident report, nor did he take steps to report the alleged assault immediately after he said it had occurred. It was not until he realized that the inmate might be accusing him of assault that he reported anything at all.

The same is true of Officer Stone's report. He included nothing about the alleged assault in his original incident report, nor did he accurately describe the other officers' demeanor during the cell extraction itself. For instance, during the cell extraction, Officer Todt allegedly grabbed the inmate by his collar and dragged him to a standing position rather than "helping the inmate to his feet" as Officers Connor and Stone reported. During the investigation, Officer Todt admitted that his own report was "inaccurate."

Simply put, the State has failed to establish the operative facts of its case. Apart from Inmate Kelly's assertion that he was punched, there was no physical evidence that he was "struck with a closed fist." Assuming for the sake of argument that someone did hit the inmate, the only evidence of Officer Laramie's

guilt came from the two officers who the inmate had accused of assaulting him. The inmate himself insisted that Officer Laramie did not strike him.

There is no evidence that any of the other officers from the rank of Corrections Officer to Corrections Captain who were involved before, during or after the incident, were disciplined for making false or misleading official statements, despite the fact their reports were no more complete or accurate than those offered by the Appellants. There is no evidence that any of the other officers involved in the cell extraction or escort were disciplined for failing to protect the inmate, although there is evidence that at least one officer used an unnecessary level of force during the cell extraction itself, prior to the escort.

Joseph Laramie

The evidence does not support a finding that Officer Laramie struck the inmate, that he failed to protect the inmate, that he made false official statements, that he was derelict in his duties, or that he obstructed investigative activity. Although Officer Laramie may have failed to include information in his incident report about the inmate alleging that he had been assaulted, his report was no less complete or accurate than any of the other reports filed by the other officers involved in the incident.

Timothv Hallam

The evidence does not support a finding that Sergeant Hallam willfully misused his supervisory position, that he made false official statements, that he failed to report an offense, that he obstructed investigative activity, or that he was derelict in his duties. Although Sergeant Hallam had an obligation to ensure that his own report was complete and accurate and failed to do so by reporting that the inmate had alleged to have been assaulted by "all staff" rather than by one or two staff persons, Sergeant Hallam was the only officer to make any report of the inmate's allegations. None of the reports filed by either his subordinates or superior officers on the night of the incident made any reference to an alleged assault on the inmate.

Sergeant Hallam admitted that Officer Connor approached him on the night of the incident and reported that he thought he had seen Officer Laramie strike the inmate. Instead of instructing Officer Connor to make sure his report was complete and accurate when Officer Connor said he "thought" he saw Officer Laramie strike the inmate, he told Officer Connor to "follow his heart." That instruction clearly did not satisfy his obligation to give subordinate officers clear instructions to fully and accurately report whatever they had observed during the incident.

Although Sergeant Hallam's handling of the situation after the incident represents a failure to meet the work standard under the provisions of Per 1001.03 (a), it does not rise to the level of conduct that would warrant an immediate termination without prior warning.

Decision and Order

Having considered the evidence presented by the DOC in the light most favorable to the DOC, the Board concludes, based on the contradictory nature of that evidence and an assessment of the credibility of the witnesses who testified, that no decision could be rendered in favor of the DOC and the Appellants are entitled to the relief they have requested. As provided in Per 207.12 (b)(12) of the NH Code of Administrative Rules (Rules of the Personnel Appeals Board) the Board found that the disciplinary action was unjust in light of the facts in evidence and hereby orders both Appellants reinstated with back-pay, benefits and seniority calculated in accordance with the provisions of RSA 21-I:58, I.

THE NH PERSONNEL APPEALS BOARD

Philip Bonafide, Acting Chair

Robert Johnson, Commissioner

John Reagan, Commissioner

cc: Karen Levchuk, Director of Personnel, 25 Capitol St., Concord, NH 03301
Attorney John Vinson, NH Department of Corrections, 105 Pleasant St., Concord, NH 03301
Attorney Michael Reynolds, SEA General Counsel, 105 N. State St., Concord, NH 03302-3303