

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Vernon Beddell,

Appellant,

v.

Case No. 10-REM-03-0052

Department of Youth Services,
Indian River Juvenile Correction,

Appellee.

ORDER

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that Appellant's removal be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.34.



Lumpe - Aye
Tillery - Aye

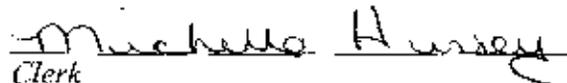


J. Richard Lumpe, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, December 28, 2010.



Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

12-28-10 

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Vernon Beddell

Case No. 10-REM-03-0052

Appellant

v.

November 12, 2010

Department of Youth Services,
Indian River Juvenile Correction

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on July 21, 2010. Present at the hearing were the Appellant, Vernon Beddell, represented by Michael A. Creveling, Attorney at Law and Appellee Department of Youth Services, Indian River Juvenile Correction designee Amy Ast, Bureau Chief, represented by Lee Ann Rabe and Komlavi Atsou, Assistant Attorneys General.

The subject matter jurisdiction of the Board was established pursuant to sections 124.03 and 124.34 of the Ohio Revised Code.

Appellant Beddell was removed from his position of Operations Manager, effective February 23, 2010. The pertinent part of the removal order states as follows:

The reason for this action is that you have been guilty of incompetence, inefficiency, neglect of duty, violation of any policy or work rule of the officer's or employee's appointing authority.

You failed to properly supervise/manage the use of physical force during a youth restraint on September 11, 2009. You also failed to initiate a Planned Intervention during the incident. This is your third discipline for failure to supervise.

Your actions are in violation of the ODYS General Work Rules Policy 103.17, Specifically Rules: 5.12P – Actions that could harm or

potentially harm an employee, youth, or a member of the general public, 5.15P – Failure of a supervisor to properly supervise, 5.25P – Procedural violations of Managing Youth Resistance policy and procedures, and 5.09P – Violation of Ohio Revised 124.34 – performance related.

Appellant Beddell filed a timely appeal of his removal.

STATEMENT OF THE CASE

Appellee's first witness was Amy Ast, an employee of Appellee for approximately fourteen years and the Bureau Chief of Facility Operations for the past two years. She was also Superintendent of Scioto Juvenile Correction for two years. Ms. Ast testified her current duties consist of oversight of direct services, such as security, youth movement, and transfer in all facilities and she reviews all discipline, making recommendations to the director. She is also responsible for training and writing policy as well as the curriculum.

Ms. Ast explained the Appellee was sued in federal court regarding the conditions in the confinement areas. Appellee was found by the court to be operating under unconstitutional levels of excessive force, so the federal court assigned a monitor, Steve Martin, who is an expert on the use of force. Ms. Ast testified she reviews all discipline involving a use of force charge and stated that the federal monitors have had a great influence.

In February 2009, Ms. Ast testified there was an incident involving Appellant Beddell. The federal monitor requests videos for a certain time period and this was one that the monitor requested. He was very concerned about what he saw on the video for this time period and he had her, the superintendent and other monitors watch the video to show them how the youth was put in harm's way and the inappropriate actions that took place. The video was reviewed with Appellant Beddell, another Operations Manager and some other employees. Mr. Martin talked with Appellant Beddell about his part in escalating the situation and Ms. Ast testified she told Appellant Beddell that her expectation of someone in his position was much higher and that his work was unacceptable. She told him she would be watching him closely. Ms. Ast testified Appellant Beddell was not disciplined at that time since the incident had taken place sometime previous to the review of it.

Ms. Ast testified that the Operations Managers play a critical role within the Appellee, as when the Superintendent and deputies are gone, the Operations Manager manage the facility, the staff and the youth and is the highest ranking officer in those circumstances. She explained that the Corrections Officers use the force as the Operations Manager is told to direct the staff and to provide guidance but they are not to get involved in any altercations. The only time that a use of force is sanctioned is if a youth is harming him or herself, others or property or if the youth is trying to escape. Ms. Ast explained that a planned intervention is an opportunity for an Operations Manager to identify that there is no immediate need for a use of force. The Operations Manager can ensure that the scene is clear and that the situation can be resolved without a use of force.

Ms. Ast testified there was an incident on September 11, 2009 involving a use of force and Appellant Beddell. She testified Appellant Beddell put a youth in harm's way and abused the youth by failing to direct his staff and failing to provide guidance to them. Ms. Ast stated Appellant Beddell had a pattern of committing those failures.

Appellee's Exhibit 47 was identified by Ms. Ast as the video of the incidents that took place on September 11, 2009. The video shows a youth who was in attendance at the school at Appellee. Ms. Ast explained the student had been acting out in class and he was being sent to "ABC" or to in-school suspension. A teacher walked the student down the hall and was interacting with him, trying to de-escalate the situation and walk him to the in-school suspension. An officer then interrupted them and told the student he was going back to his unit, escalating the situation. The student then took off down another hallway and that is when Appellant Beddell approached him and tried to talk to him. Standing nearby was Correction Officer Chaney, playing with his handcuffs and rattling them, which again escalated the situation. The student took off down the hall again and Appellant Beddell then pointed to Officer Chaney and another officer and told them to come with him. The three of them plus the camera person followed the student down the hall. The student attempted to leave through doors that were locked and then turned into an occupied classroom and went into the bathroom at the rear of the classroom. Appellant Beddell, Officer Chaney and another officer followed him. Appellant Beddell then began giving orders to get the student on the ground and to "cuff him". The officers used force to get the bathroom door open and to get the student on the ground. Officer Chaney elbowed the student in the head three or

four times, knocking his head against the cement wall. When the officers finally got the student to his feet, the students in the classroom began yelling and one of them got out of his chair, causing more calls to be made for officers to come to the classroom. Appellant Beddell got the second student to the ground and put a "full nelson hold" on him on the floor, until he was able to be handcuffed.

Ms. Ast testified the first student was not exhibiting any threatening behavior and did not have a weapon. There was no escape in progress. Therefore, Appellant Beddell should have secured the area and should have emptied the classroom before attempting to get to the student. The bathroom that the student went into does not lock. She testified it was his responsibility to keep everyone calm. He could have had someone come to the student in the bathroom and talk to him without resorting to a use of force. Appellant Beddell gave no direction and did not have a plan. No one knew what was going to happen next when the bathroom door opened. Appellant Beddell opened the door and he should not have been involved physically as he was there to control and supervise the situation. The camera should have always been on the student and at one point, Appellant Beddell was actually blocking the view of the camera. Once he saw Officer Chaney elbow the student in the head, Appellant Beddell should have removed him from the situation. Since he did not, another student became involved and went after Officer Chaney. That caused Appellant Beddell to take the student down, putting a hold on him that is not sanctioned by Appellee. It also caused several other alarms to be called. Ms. Ast testified Childrens' Services found Appellant Beddell abused the youth and she stated this was the first time she has seen these charges filed.

On cross examination Ms. Ast testified a planned intervention calls for time to plan, identify people and assign their roles, decide if force is needed, what type and when. She stated Appellant Beddell gave general directions without specifics and when that happens, the staff do not have specific directions, so they act and that is what was reflected in the video. Ms. Ast testified she could not tell what the plan was as there was no planned intervention mentioned on the film. She explained that a C-grip is an escort technique, or a progressive movement which is authorized by the Appellee. She confirmed that Appellant Beddell did say they would be using a C-grip and that he wanted two people.

Appellee called Appellant Beddell as if on cross examination. He testified he has been employed by Appellee since October 1996 and became an Operations Manager in 2000. He identified Appellee's Exhibits 16, 17 and 18 as his notice of the pre-disciplinary conference, the sign-in sheet with his signature and the order of removal, stating he has seen and received those documents. Appellant Beddell testified it was his responsibility to provide guidance to his staff, and to supervise the Juvenile Correction Officers on his shift. He identified Appellee's Exhibit 3 as the Employee Code of Ethics with his signature on the pertinent pages, showing he received the documents and updates. Appellant Beddell testified he is aware that he was to abide by the Code of Ethics. Appellee's Exhibit 5 was identified as his training records, stating he went through an extensive amount of training, which included training on excessive use of force. He identified Appellee's Exhibit 61 as the Standard Operating Procedures, stating he has received those documents. He testified he is familiar with the definition of physical response and knows that the goal is to limit a physical response and to use it as a last resort. Appellant Beddell identified Appellee's Exhibit 13 as the General Work Rules and Appellee's Exhibit 4 as his signature indicating receipt of those. Appellee's Exhibit 14 was identified as a list of the work rules he violated and Appellant Beddell testified he has seen those and read them. He also testified he has seen, read and is familiar with Appellee's Exhibits 11 and 12, Management of Resistant Youth Behavior and the Verbal Abuse Policy, respectively.

Appellant Beddell testified he knows Officer Chaney, as he is Officer Chaney's supervisor. He stated that he had previously investigated Officer Chaney for excessive use of force and that he filed incident reports on Officer Chaney for excessive use of force in the past. He admitted that he was aware of Officer Chaney's propensity to engage in excessive use of force. Appellant Beddell identified Appellee's Exhibit 21 through 25 as his investigatory interview, his statement, the youth intervention report he filed, his pre-disciplinary statement and an incident report he filed, respectively.

Appellant Beddell explained the situation of September 11, 2009 and testified that he tried verbal strategies with the student, but they failed. He stated he told the correction officers at first to use a C-grip, which is the beginning of a physical intervention. He told them to "take him", meaning bring the student to the floor. Appellant Beddell testified he did not tell the teacher to evacuate the classroom and he stated he saw and heard Officer Chaney hit the student with his elbow, but he had no time to tell him to stop, as it all happened within seconds. He admitted that

he did not include the fact that Officer Chaney elbowed the student in the head in his incident report. He also stated he did not have time to talk to Officer Chaney about the incident after it happened.

With regard to the second youth, Appellant Beddell testified he did not have any correction officers around him when the second youth started acting out, so he took him down and put him in a "full nelson" which he stated is not a move that Appellee uses or trained him on. He also admitted he told the youth to "shut up" and did not include that in his report.

Appellant Beddell identified Appellee's Exhibits 48 through 59 as his previous disciplines, consisting of a three day suspension, two separate fines, two written reprimands, a verbal reprimand, two supervisory conferences and a one day suspension.

Appellee's next witness was Terry Smith, Labor Relations Officer 2 with Appellee since August 2006. He testified he is a liaison between bargaining unit and management employees, reviews investigations and hears employee grievances. He stated he knows Appellant Beddell as he was supervised by him at one point and was also a co-worker of his. He identified Appellant's Exhibit 20 as the hearing officer's report and Appellee's Exhibits 26 through 46 as documents which are part of the pre-disciplinary packet. He identified Appellee's Exhibit 15 as the disciplinary grid and Appellee's Exhibit 14 as the general work rules.

On cross examination, Mr. Smith testified he was involved in the discussions regarding the removal of Appellant Beddell, stating that the final decision rests with the Director. He stated Appellant Beddell did not properly manage or report the incident of September 11, 2009, and that a planned intervention should have taken place.

Appellee's next witness was Chris Freeman, Acting Deputy Director Superintendent for approximately one week and employee of Appellee for approximately fourteen years. He stated he had been Operations Administrator for five years and was Appellant Beddell's supervisor.

Mr. Freeman identified Appellee's Exhibit 1 as Appellant Beddell's position description. He stated he looks at all video within twenty-four hours of an incident and forwards his comments and recommendations to the Deputy Superintendent and then an investigation takes place, if warranted. After reviewing the video, he told Officer Chaney that he was on no contact with any of the youth. Appellee's Exhibit 60 was identified as the form he signed after viewing the incident with his recommendation for investigation. Mr. Freeman testified Officer Chaney has had a history of use of excessive force and Appellant Beddell was aware of that history.

Appellant Beddell testified the teacher and Officer Chaney were wrong. He stated the teacher in the classroom was responsible for getting the youth in there "riled up". He stated he asked for two correction officers, but did not say which two. Appellant Beddell testified he did not feel he was responsible for the actions of Officer Chaney and stated he was in great pain after the incident due to Officer Chaney hitting him and him torquing the youth to the ground, trying to miss the desk and the computer. He stated what Officer Chaney did was totally wrong. Appellant Beddell testified he was never taught that the classroom should be cleared in a situation like this.

On cross examination, Appellant Beddell stated that "ABC time" is a room in the school where the student can finish the work that was assigned and that it is a form of an in-school suspension.

Appellant Beddell testified the teacher put a choke hold on the second student but then lessened the hold. He stated he did not tell the teacher to "back off" nor did he say anything else to the teacher. He testified he never got a chance to talk to Officer Chaney during or after the incident. Appellant Beddell clarified that three officers ended up in the bathroom even though he only called for two. He stated Officer Chaney pushed him aside and went in to bring the student down to the floor. In looking at his incident report and addendum, Appellant Beddell stated he did not mention in either of those documents Officer Chaney's use of excessive force. He testified that it seemed Officer Chaney was in a zone and after the student was cuffed, he held Officer Chaney back in the bathroom and told him to stay. Appellant Beddell stated Officer Chaney calmed down some after elbowing the student.

Appellant Beddell also stated that because he was put back to work due to an arbitration of a prior incident, his previous discipline should no longer exist.

As a rebuttal witness, Appellee called Ms. Ast again. She testified that even if the student had previously been on a suicide watch, it was not relevant at the time of this incident unless he was trying to hurt himself, which he wasn't. Ms. Ast explained that running out of a building is considered running out of area but is not an attempt to escape. If a youth is on the perimeter fence, then it is considered an attempt at escape.

FINDINGS OF FACT

After thoroughly reviewing the testimony of the witnesses and the documents received into evidence, I find the following facts:

1. At the time of his removal from his position of Operations Manager, Appellant Beddell had been employed with Appellee for approximately fourteen years. His previous discipline consists of a three day suspension, two separate fines, two written reprimands, a verbal reprimand, two supervisory conferences and a one day suspension.
2. As Operations Manager, Appellant Beddell was responsible for managing a shift and for the safety of the youth and staff.
3. Appellant Beddell was familiar with all of the employee work rules, the standards of conduct and the code of ethics. He had extensive training on the use of force and understood the policies on when and how it should be used.
4. Before going into a situation where a use of force may be needed, a planned intervention is to be done. As Operations Manager, Appellant Beddell's responsibility was to plan who was going to be involved, what was going to happen and when.
5. Appellant Beddell did not do a planned intervention with regard to the situation on September 11, 2009.
6. As Operations Manager, Appellant Beddell was to guide and direct the staff in interacting with the student and he should not have become physically involved in the situation.

7. Appellant Beddell was aware of Officer Chaney's propensity for excessive use of force. He saw Officer Chaney elbow the student in the head several times and he did nothing to stop him nor did he talk to, or discipline Officer Chaney during or after the incident.
8. Appellant Beddell used an inappropriate hold on another youth in the classroom, taking him down to the ground himself.
9. Appellant Beddell violated work rules 5.12P, 5.15P, 5.25P and 5.09P.

CONCLUSIONS OF LAW

In order for Appellee's removal of Appellant Beddell to be upheld, Appellee must prove by a preponderance of the evidence the allegations contained in the removal order. Appellee has met its burden.

In viewing the video of the incident of September 11, 2009, it is clearly evident that Appellant Beddell did not follow the policy regarding planned interventions as found in procedure 301.05.05, Appellee's Exhibit 61. That policy specifically provides that the Operations Manager is to plan the specific physical response that is to be used and the roles of each member in the physical response. Appellant Beddell did not comply with any of the above procedures. Pointing and saying "two guys" is hardly planning the intervention. He did not meet with any of his staff prior to talking to the student and he did not discuss what means of force would be used other than to say they were going to use a "C grip". No one was identified on video and there was no discussions of a plan.

At the point in time when the discussion between the student and Officer Beddell stopped and the student walked away, Appellant Beddell offered no evidence as to why he could not at that time, plan the intervention. As Ms. Ast testified, the student was not going anywhere, as the doors he tried to leave from were locked. The only place at the end of the hall for him to go was the classroom or back down the hall to where Appellant Beddell and other employees were standing. There was no urgency to run down the hall after the student. Appellant Beddell could have followed procedure and taken the time to plan the intervention, assign roles and decide what, if any, use of force would be used.

Instead, Appellant Beddell turned around, pointed to two correction officers and took off down the hall after the student. He saw the student go into an occupied classroom and go into the bathroom at the back of the classroom. As Ms. Ast pointed out, the bathroom door did not lock, so once again, Appellant Beddell could have taken the time to clear the classroom so that the other students did not have to witness what was going on and to keep them from any potential danger. Appellant Beddell testified he had not been trained to empty a classroom. The evidence established in Appellee's Exhibit 5, that Appellant Beddell has had extensive training during his tenure with Appellee. Even if there was no specific training that mentioned keeping students safe, it is just common sense to remove the other youth in the area. The reason for this is exemplified by what happened.

Once the youth was in the bathroom, Appellant Beddell blocked the video camera at times by becoming involved in the incident. Once again, the policies dictate that the Operations Manager is not to become involved, as he is to be guiding and giving direction to the staff. While Appellant Beddell was giving orders to take the youth to the floor, he could clearly see, as it was clear on the video, that Officer Chaney elbowed the youth in the head at least three times. Appellant Beddell did nothing but witness the harm to the student by Officer Chaney. He did not tell Officer Chaney to stop and after the incident, by his own testimony, he did not include in his incident report that Officer Chaney repeatedly elbowed the student nor did he begin discipline proceedings against him. Appellant Beddell did nothing.

Appellant Beddell had previously investigated Officer Chaney for excessive use of force. Yet, knowing this, he still chose Officer Chaney to be a part of this situation and upon witnessing Officer Chaney's excessive use of force, he did nothing. He clearly neglected his duty as Officer Chaney's supervisor by failing to address or report Officer Chaney's excessive use of force.

The other students in the classroom, also witnessing Officer Chaney's excessive use of force and seeing no consequence to him, started yelling loudly at Appellant Beddell and the staff. When the one student got up, it was Appellant Beddell that went after him. Again, this is a violation of the policy in Appellee's Exhibit 61. The situation had gotten out of control and the teacher in the room began calling for all staff to come to the room. Appellant Beddell then "took down" the student, placing him in a "full nelson", a hold that he testified was not taught by nor sanctioned by Appellee.

Had Appellant Beddell followed the procedures and policies, the situation would not have escalated the way it did. He specifically violated rule 5.12P of the General Work Rules Policy by harming a youth with his unauthorized hold. His actions of pursuing the original student without a planned intervention put that youth and other youth and staff at risk of harm. Appellant Beddell failed to supervise Officer Chaney properly, thereby violating rule 5.15P. He violated rule 5.25P when he failed to plan the intervention and when he used an unauthorized hold on the second youth. He violated section 124.34 of the Ohio Revised Code by neglecting

Appellant Beddell refused to take any responsibility for any of the violations that occurred. His answer was to blame Officer Chaney. While Officer Chaney certainly was to blame for the excessive use of force used on the student, so was Appellant Beddell. Appellant Beddell knew of Officer Chaney's propensity for excessive use of force. When he witnessed the excessive use of force, he did nothing. Appellant Beddell cannot occupy a supervisory position, one of the highest ranking officers within the facility, and not accept responsibility for his staff. He did not even accept responsibility for his own actions. He clearly used an unauthorized hold or take down method on the second student when he should not have been physically involved, but his response was that the teacher in the room was responsible for exciting the students. He did not admit that he was wrong in anything he did.

Appellant Beddell also argued that his previous discipline should not come into play, as an arbitrator overturned the discipline. What Appellant Beddell failed to grasp, however, is that the action he was charged with still happened. He had several previous past disciplines in the form of two different suspensions, several fines, written and verbal reprimands. Even if Appellant Beddell did not have any previous discipline, his actions or lack thereof on September 11, 2009, were egregious enough to warrant removal.

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Appellee did not abuse its discretion in removing Appellant Beddell from his position of Operations Manager. Therefore, it is my **RECOMMENDATION** that his removal be **AFFIRMED**.



Marcie M. Scholl
Administrative Law Judge

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