

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

WILLIAM R. POLT,

*Appellant,*

v.

Case No. 12-RED-08-0181

DEPARTMENT OF REHABILITATION & CORRECTION,  
SOUTHEASTERN CORRECTIONAL INSTITUTION,

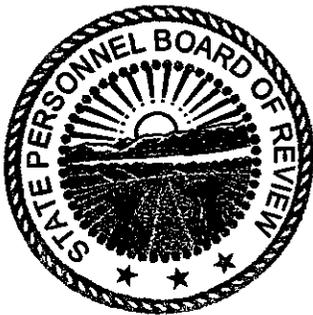
*Appellee*

**ORDER**

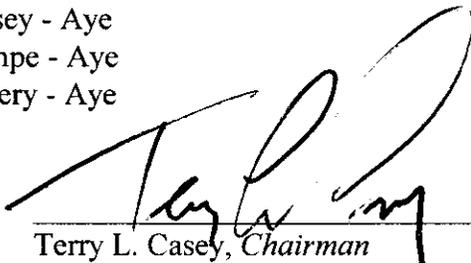
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including 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 Appellee's demotion of Appellant Polt from a Lieutenant to a Corrections Officer is **AFFIRMED**.



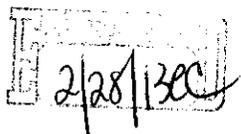
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
Terry L. Casey, *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 constitutes (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, February 28, 2013.



  
Eric E. Con  
*Clerk*

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

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

William R. Polt

Case No. 12-RED-08-0181

*Appellant*

v.

December 13, 2012

Department of Rehabilitation & Correction,  
Southeastern Correctional Institution

Marcie M. Scholl

*Administrative Law Judge*

*Appellee*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on November 28, 2012. Present at the hearing were the Appellant, William R. Polt, represented by Daniel H. Klos, Attorney at Law and Appellee designee Sheri Duffey, Warden, represented by Timothy M. Miller and Rory P. Callahan, 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 Polt was reduced from his position of Correctional Lieutenant to Correctional Officer, effective August 12, 2012. The pertinent part of the reduction order states as follows:

You have violated Standards of Employee Conduct Rules #40, Use of excessive force toward any individual under the supervision of the Department or any member of the general public, and rule #50, any violation of ORC 124.34 – and for the incompetency, inefficiency, dishonesty, drunkenness, discourteous treatment of the public, neglect of duty, violation of such sections or the rules of the Director of Administrative Services or the commission, or any failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in the office.

On May 27, 2012, you used excessive force by placing your hands to the neck of inmate Graham 599-904. Inmate Graham was handcuffed with his hands behind his back and no effort was made to de-escalate the situation or move and create more space and in fact you closed the distance between yourself and the inmate.

### **STATEMENT OF THE CASE**

Appellee's first witness was Appellant Polt. He testified he had held the position of Lieutenant for approximately six years and has been employed by Appellee for approximately eighteen years. He identified Appellee's Exhibit A as his position description, stating he supervised Correction Officers and Sergeants when he was a Lieutenant. As Lieutenant, Appellant Polt stated he set an example for his subordinates, ensured inmates were secure and followed policy. Appellee's Exhibit B was identified by Appellant Polt as the Standards of Employee Conduct and Appellee's Exhibit C, as the Use of Force policy. Appellee's Exhibits R, S, U, and V were identified as his notice of the pre-disciplinary conference, his receipt of that notice, the notice of discipline and the reduction order, respectively.

Appellant Polt testified he is familiar with the Use of Force policy and knows that he is to use the least amount of force possible to control a situation. He stated he is familiar with the definition of excessive force and also the policy of summoning assistance before using any use of force. Appellant Polt testified he attended annual trainings on self-defense, but felt that he only received minimal instruction and stated that it is his opinion that no staff member is proficiently trained in self-defense, although he confirmed that he never asked for any additional training or voiced his criticism of the training.

On May 27, 2012 Appellant Polt had a day off but he went into work for several hours to oversee a detailed cleaning that was taking place in preparation for an upcoming inspection. He was working in the segregation block and inmate Graham was to have a new cellmate and he protested. Appellant Polt told a Corrections Officer to get inmate Graham out of his cell and bring him to the office. The office was the Rules Infraction room, which is approximately 10 x 14, not very large, with a long desk with a small opening on one side and bookcases on the other. Inmate Graham was brought to the office with his hands handcuffed behind him and said he refused to have a cellmate and if they gave him one, he was going to beat up the guy. When inmate Graham was brought to the office, Appellant Polt

was behind the desk and the inmate was on the other side of it, placing the two men approximately three feet apart. Appellant Polt testified inmate Graham threatened him, saying things like he will find out where he lives, he will beat his wife, kids, etc. Appellant Polt testified these are the typical threats they receive from inmates. Appellant Polt testified there was a phone in the room, which he did not use, and he stated that he could not call for help, as there were no officers present to hear him if he did yell for assistance.

Appellant Polt testified he told inmate Graham to leave, but the inmate refused, so he was going to escort him out of the office. He went to the end of the desk area and ordered inmate Graham to leave, pointing at him and telling him "to get out and get out now". Inmate Graham stepped closer, closing the gap between them at this point to approximately three inches. Due to inmate Graham's arguing, he sprayed some saliva on Appellant Polt's face and Appellant Polt placed his hands on the inmate's chest and neck area and drove inmate Graham back into a table and into the corner. At that time, a Corrections Officer came into the office. Another officer came in, retrieved a spit hood to put on inmate Graham and he was then escorted back to his cell.

Appellant Polt testified he did not feel he lost his composure and testified that if he stepped back away from inmate Graham, he would have backed himself further into a corner. He did not have a radio to use and he did not use the telephone to ask for assistance. He testified he used reactive force and confirmed that he could have given inmate Graham a palm blow to his face or given him knee strikes as part of self-defensive moves. He stated he did not call out for assistance as the other officers were in the cell block.

Appellee's Exhibit D was identified as a Use of Force Summary Report which Appellant Polt identified and stated he completed, per the instruction of Captain Cordial. He explained a Conduct Report is what is written up when an inmate violates a rule or makes threats, as inmate Graham did. Appellant Polt did not complete such a report with regard to this incident. He identified Appellee's Exhibits F, M and W as the transcript of his interview, the transcript of the administrative investigation and a CD of the incident, respectively.

Appellee's next witness was William Chilcote, an employee of Appellee for approximately fifteen years and he has been at Southeast Correctional since May, 2000. He is currently a Unit Manager, and as such, supervises Sergeants,

Corrections Officers and Case Managers, and does investigations of the use of force. Mr. Chilcote identified Appellee's Exhibit E as a Use of Force Committee Assignment which he received and signed. This document launches the investigation. He identified all persons involved and interviewed them. He identified Appellee's Exhibits H, F, G and I as his interviews with Officer Bateson, Appellant Polt, Officer Ward and inmate Graham, respectively. Mr. Chilcote testified that Appellant Polt's written report stated inmate Graham spit on him, but his answer during the interview contradicted that. He stated in the interview that it was only through inmate Graham's talking and yelling that he got sprayed with saliva. He considered this to be a difference worth noting as it goes to the intent of the inmate.

Mr. Chilcote testified he also interviewed Officer Vernon, as he is a trained officer in unarmed self-defense and he felt Officer Vernon could contribute to the investigation. He identified Appellee's Exhibit J as that transcript. Appellee's Exhibit K was identified as his summary of the investigation, which he signed, and his recommendation that the amount of force used by Appellant Polt was not justified, inappropriate and excessive. Mr. Chilcote testified that since the inmate was handcuffed with his hands behind his back, that limited the inmate's threat level and his opportunity to cause harm. He stated Appellant Polt could have given inmate Graham a direct order to leave the room and if he did not comply after several times, then he could have asked another officer to assist him in removing the inmate from the office. He also testified that Appellant Polt was the one who closed the distance between himself and the inmate when he stepped out from behind the desk. That increased the danger of being injured by the inmate as that brought him within striking distance of the inmate's feet. Mr. Chilcote testified that his investigation showed there to be other officers within shouting distance that could have been alerted by Appellant Polt and they could have assisted with inmate Graham.

In reviewing the video, Mr. Chilcote testified that it was clear that Appellant Polt put his hands around the neck of the inmate, which would only be appropriate in a deadly force situation. He testified in Appellee's Exhibit F, Appellant Polt's interview, Appellant Polt admits his hands were around the inmate's neck, stating "I directed his face away from me initially. I went to control his face and my hands ended up around his neck." Mr. Chilcote also notes that Appellant Polt pointed and waved his finger at inmate Graham, which was poor judgment on his part, as such action could escalate the situation.

Appellee's next witness was Brian Needham, a sixteen employee of Appellee and currently with the Corrections Training Academy. He is in charge of the self-defense programs and was tasked with investigating Appellant Polt. Appellee's Exhibit M was identified as his investigative report and Appellee's Exhibits N, O and P were identified as the interviews he conducted. Mr. Needham testified that as a result of his investigation, he learned that officer Bateson was just outside the door of the office, as was officer Ward, both of whom Appellant Polt could have called out to assist him. He stated he found that Appellant Polt aided the inmate in closing the proximity and that his hand gestures of pointing were not anything that is taught by Appellee. Appellant Polt did not use his verbal skills and did not make a call for assistance. He used excessive force by placing his hands on the throat of the inmate and that force was above and beyond what was necessary.

Appellee's next witness was Sheri Duffey, Warden at Southeastern Correctional since June, 2009 and an employee of the Appellee for approximately twenty-four and one-half years. She identified all of Appellee's Exhibits that had not yet been identified and stated she referred the matter to an administrative investigation, asking that it be done by an employee outside of the institution in order to assure an unbiased assessment.

Warden Duffey testified she agreed with the Hearing Officer's report from the pre-disciplinary hearing that Appellant Polt violated rules 40 and 50. She testified she felt Appellant Polt became upset, reacted and used inappropriate use of force when there were other options available. Warden Duffey stated Appellant Polt could simply have walked out of the room and that it is not appropriate for any staff member to get upset, especially a supervisor since they lead by example. She testified Appellant Polt could have also stayed behind the desk instead of escalating the situation by pointing at the inmate. He should not have responded at all to the threats to his family and when he saw the inmate was agitated, he should have removed himself from the situation or called for help, used his mace or at the most, used balance displacing techniques. Placing both hands around the neck of the inmate was a use of excessive force.

When asked why she demoted Appellant Polt to a Corrections Officer, Warden Duffey testified it was because he exhibited behavior that was not expected of a supervisor. It is not a good idea for the officer that the inmate is upset with to be the one escorting him back to his cell or out of the room. She stated it is not appropriate to even argue with an inmate as the institution is in control of the

inmates. That coupled with his excessive use of force led her to think of removal, but due to Appellant Polt's years of service and no prior discipline, she decided on demotion.

### FINDINGS OF FACT

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

1. Appellant Polt is an eighteen year employee with Appellee who had achieved the rank of Lieutenant. He has no prior discipline. Effective August 12, 2012, he was demoted to Corrections Officer.
2. Appellant Polt received training throughout his years on self-defense and he received and was familiar with Appellee's Standards of Employee Conduct, the Use of Force policy and the definitions of the various kinds of use of force.
3. As a Lieutenant, Appellant Polt set an example for his subordinates and was to abide by and enforce Appellee's policies and procedures.
4. On May 27, 2012, Appellant Polt used excessive force on inmate Graham by placing his hands around the inmate's neck and pushing him back onto a table and into a corner.
5. Appellant Polt violated Appellee's policies and procedures by using excessive force on inmate Graham.

## CONCLUSIONS OF LAW

In order for Appellee's demotion of Appellant Polt to be affirmed, Appellee had the burden of proving by a preponderance of the evidence, the allegations in the reduction order. Appellee has met its burden.

Appellant Polt admitted he was aware of Appellee's policies and procedures and was responsible for enforcing them. He testified he knew the definitions of the different kinds of forces. The definition of "Excessive Force" as defined in Appellee's Exhibit C, Use of Force Policy, is as follows:

An application of force which, either by the type of force employed, or the extent to which such force is employed, exceeds that force which reasonably appears to be necessary under all the circumstances surrounding the incident.

When watching the video of the incident, marked as Appellee's Exhibit W, it clearly shows Appellant Polt putting both of his hands around inmate Graham's neck. The inmate's hands were handcuffed behind his back. The video also clearly shows that it is Appellant Polt who moves toward the inmate first by moving out from behind the desk and shortening the distance between the two of them. It is not until Appellant Polt moves out from behind the desk that inmate Graham moves closer to him. Therefore, it was Appellant Polt who first closed the distance. He also aggravated the situation by pointing his finger at inmate Graham, as it shows on the tape that after Appellant Polt points at the inmate, the inmate then moves in closer to him. As the evidence established, Appellant Polt did not need to move out from behind the desk. The inmate was not trying to go around the desk to get at Appellant Polt and he simply could have stayed behind the desk until another officer came back to the office. Another alternative would have been to have just walked out of the office and told others to go in and retrieve the inmate. Warden Duffey questioned why that did not happen and Appellant Polt had no explanation as to why he did not simply walk out.

Appellant Polt had some inconsistencies in his version of the incident. In his written report, he states inmate Graham spit at him, but later, in his interview, he clarified his statement to say that inmate Graham sprayed him with saliva as he was talking. His written report makes no mention that he placed his hands around the neck of inmate Graham. In his testimony, Appellant Polt stated his "hands just somehow ended up around his neck". They ended up there because he put his hands there. That is clear from the video. He also stated he did not call for assistance as there was no one near enough to hear him if he called; however, Officer Ward stated he heard Appellant Polt tell inmate Graham not to spit at him so he was clearly close enough to be able to hear Appellant Polt call for assistance, had he done so.

Appellant Polt should have walked out the door or called for assistance, thereby using the least amount of force to de-escalate the situation, per the policy. However, if he felt he had to use force, his first movement of turning the inmate's face away was justifiable. After that, he could have done nothing, walked out, or again, if he felt it was necessary, he could have put his hands on the inmate's chest. Instead, he very clearly put both of his hands around the inmate's neck and used enough force to then push him against a table or refrigerator. This suggests that Appellant Polt was angry, as the video shows him continuing to push the inmate even after two other officers entered the room.

No one is disputing the difficult job that prison guards, of any rank, have. To look at a video and be able to dissect it after the moment is something that one does not get to do during the incident itself. The employee is reacting, just as Appellant Polt was reacting to whatever inmate Graham said to him and to being sprayed with saliva. While that is understandable, it is also expected that in such a situation, the employee will react according to how he has been trained and according to the policies that are in place. This is especially true when the employee is a Lieutenant with many years of experience behind him and who has the responsibility of enforcing and modeling the policies and procedures. One of the most egregious moves is to grab an inmate, or any person, around the neck. Upon viewing that type of action, one immediately thinks the person who is being grabbed is being choked as there is no other reason to place one's hands around the neck of another person. Appellant Polt made an egregious error in judgment when he took that action.

Warden Duffey testified she felt demotion was proper in this case since Appellant Polt was a Lieutenant with supervisory responsibility. When he demonstrated a serious lack of judgment, she demoted him out of any position where he would have to supervise others, be looked to as a role model and have to enforce the very policies and procedures that he violated. Due to his eighteen years of service with no prior discipline, Warden Duffey testified she did not remove Appellant Polt for his actions, but instead chose to demote him. There has been no evidence of any abuse of discretion on her part in this decision. Appellant Polt violated the policies and procedures and used excessive force on an inmate when the situation could have been handled differently.

Therefore, inasmuch as the Appellee has met its burden of proof, it is my **RECOMMENDATION** that Appellee's demotion of Appellant Polt from a Lieutenant to a Corrections Officer be **AFFIRMED**.



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Marcie M. Scholl  
*Administrative Law Judge*