

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

Robert Joy,

Appellant,

v.

Case No. 2014-REM-01-0013

Department of Rehabilitation & Correction,

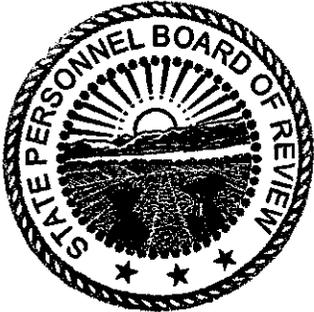
Appellee,

ORDER

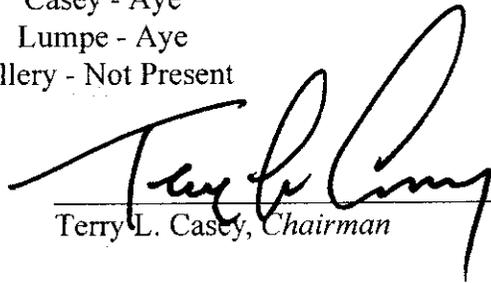
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the 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 removal of Appellant Joy is **AFFIRMED** pursuant to section 124.34 of the Ohio Revised Code.



Casey - Aye
Lumpe - Aye
Tillery - Not Present



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, July 10, 2015.



Clerk

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

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE July 17, 2015. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Number: 2014-REM-01-0013

Transcript Costs: \$651.00 Administrative Costs: \$25.00

Total Deposit Required: * \$676.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: July 27, 2015

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

Robert Joy

Case No. 2014-REM-01-0013

Appellant

v.

March 24, 2015

London Correctional Institution
Department of Rehabilitation & 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 May 20 and 21, 2014. Present at the hearing were Appellant Robert Joy, represented by Daniel H. Klos, Attorney at Law and Appellee London Correctional Institution designee Gary Clever, Operations Manager, represented by Sloan Spalding and Amanda L. Scheeser, 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 Joy was removed from his position of Correctional Captain, effective January 29, 2014. The pertinent part of the removal order states as follows:

On November 30, 2013, you used excessive force on Inmate Boggs 686596. Not only was force not justified in this incident, the amount of force utilized far exceeded that which is authorized by ODRC Policy. Therefore you were found to have violated Standards of Employee Conduct Rules:

#40 – Use of excessive force toward any individual under the supervision of the Department or a member of the general public

#50 – Any violation of ORC 124.34. . . and for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, 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 office.

STATEMENT OF THE CASE

Appellee's first witness was Deborah Timmerman-Cooper, Warden of London Correctional Institution since November 2, 2003, and an employee of Appellee for approximately thirty-four years. As Warden, it is her responsibility to provide for a safe and secure institution and oversee the finance, program and security sections. Ms. Timmerman-Cooper testified she is the appointing authority for the Institution and as such, has the final word in discipline for all employees. In considering discipline, she stated she considers the work history and previous discipline of the employee as well as the seriousness of the offense. She is part of a disciplinary committee which meets to review and discuss all disciplines and then she ultimately decides the discipline.

Appellee's Exhibit 6 was identified by Ms. Timmerman-Cooper as the Standards of Employee Conduct, which she stated puts all staff on notice of the rules and permissible conduct. Pages 34 and 35 list behaviors that are not tolerated and page 36, number four, states that the "Department will not permit brutality, physical violence, abuse, patient abuse, or intimidation of inmates, . . ." Ms. Timmerman-Cooper testified the staff is not there to punish the inmates but to maintain their safety and security. In looking at the disciplinary grid, Ms. Timmerman-Cooper stated the use of excessive force is punishable anywhere from a two day suspension to removal, as she has discretion to levy what discipline she feels is warranted. She stated any violation of Revised Code section 124.34 ranges from a written reprimand to a removal. She also explained that Appellee conducts annual in-service training, which includes training on the use of force.

Appellee's Exhibit 5 was identified by Ms. Timmerman-Cooper as Appellant Joy's training records, showing among other things, that he was an unarmed self-defense and use of force instructor. The document also evidences Appellant Joy received training on the standards of employee conduct on September 27, 2013 and use of force, unarmed self-defense training on October 24, 2013.

Appellee's Exhibit 4 was identified by Ms. Timmerman-Cooper as the Use of Force policy, which she stated provides guidance to staff on how to use force and is also a guideline for those employees who investigate a use of force action. She stated the policy defines deadly force and excessive force and she reiterated that

force should never be used to punish an inmate. She explained when a use of force has been used, a report must be completed and all parties are examined by the medical team and an investigation ensues.

Ms. Timmerman-Cooper testified she has known Appellant Joy since November 2003. She stated he was a Captain in charge of safety and security, managing counts and staffing and was in charge in her absence. Appellee's Exhibit 1 was identified as a position description for a Captain. Ms. Timmerman-Cooper testified she expects a Captain to be knowledgeable about the standards of employee conduct and the use of force. She stated she received an incident report and the Major called her regarding Appellant Joy's use of force and possible excessiveness of the force used. She received the packet of information, which she reviewed as well as reviewing the videotape of the incident and discussed the incident with the Major and Deputy Warden. It was agreed that the incident needed to be investigated. She stated she wanted someone from outside the institution, who was neutral, to conduct the investigation.

Appellee's Exhibit 9 was identified by Ms. Timmerman-Cooper as the pre-disciplinary notice she signed on January 10, 2014 and the list of documents provided to Appellant Joy with the notice. She stated the inmate, Boggs, who was the recipient of the use of force, made a statement which was included in the documents. Appellee's Exhibit 7 was identified as the fact finding report from Mr. Clever, Southwest Region Operations Manager. She stated she reviewed this report prior to deciding the discipline for Appellant Joy. Appellee's Exhibit 10 was identified as the report she received from the pre-disciplinary hearing officer, who determined excessive force was used on inmate Boggs by Appellant Joy. After receiving all the documentation, Ms. Timmerman-Cooper met with the committee and all documents were reviewed again. The committee unanimously voted to terminate Appellant Joy's employment and she agreed. She testified she agreed due to the egregiousness of the offense and because this was his second offense of a performance issue. Ms. Timmerman-Cooper viewed the videotape of the offense and concluded the inmate was laid back, leaning on the wall and not taking any aggressive stance.

Appellee's Exhibit 11 was identified by Ms. Timmerman-Cooper as the order of removal which contains her signature. She stated prior to this incident, she had spoken with Appellant Joy about a change of venue as she felt he was starting to spiral downhill and things were not good, as he had had confrontations with union members. She was willing to transfer him to Mansfield as a Captain but that obviously did not happen. Appellee's Exhibit 3 was identified by Ms. Timmerman-

Cooper as Appellant Joy's previous disciplines which included a written reprimand in December, 2004; a written reprimand in January, 2006; a two day fine in April, 2006; and a two day working suspension in November, 2013.

On cross examination Ms. Timmerman-Cooper testified when she reviewed the videotape, she did not see any attempt by inmate Boggs to head butt Officer Savage. She stated Appellant Joy had said he needed to use force to get the inmate's attitude right, when all that needed to be done was to remove the inmate from the area. Ms. Timmerman-Cooper testified the conclusion drawn by Mr. Clever was correct, as he stated it seemed to be Officer Savage that the inmate was making threats to, so Appellant Joy should have told Officer Savage to leave the area, but instead, he told Officer Savage to put a shirt on the inmate.

Appellee's next witness was Gary Clever, Operations Manager with Appellee and a twenty-nine year employee of the department. As Operations Manager, Mr. Clever testified he is responsible for security and other programs in six institutions. He stated he conducted the use of force investigation of Appellant Joy and presented management's case during the pre-disciplinary hearing. Mr. Clever testified that during the pre-disciplinary hearing, Appellant Joy stated he took inmate Boggs down to get his attitude right before taking him to the block. He stated he did not recall Appellant Joy saying anything at the pre-disciplinary conference about inmate Boggs head-butting anyone but stated Appellant Joy did talk about it during his investigation of him.

Appellee's next witness was Timothy D. McConahay, a Deputy Warden of Operations at Noble Correctional Institution for approximately one year and an employee of the Appellee for approximately twenty-five years. As Deputy Warden, Mr. McConahay stated he oversees use of force incidents, operations, and implements the three tier system of security. He reviews all use of force within Noble Correctional and recommends discipline. He has completed over 1,000 investigations of use of force and is an instructor/trainer in the use of force, teaching the instructors throughout the state.

Mr. McConahay identified Appellee's Exhibit 4 as the use of force policy he teaches. He stated all staff receives an annual training on the policy and it is a guideline for the staff to follow. The training consists of videos, staff interaction, classroom lectures, explanations, scenarios, role play, questions and answers and testing. He explained that the factors which go into a use of force are the need to protect ones' self and others, as means of an escape or to prevent self-inflicted harm. Mr. McConahay stated one needs to consider if the force is planned or

reactive, if force is needed right then or can it wait and the only force ever needed is that which is necessary to control the situation. In looking at the continuum in Appellee's Exhibit 4, Mr. McConahay testified one's age, weight and if the inmate is male or female are all factors to consider. He explained an inmate's behavior can escalate and then de-escalate and each time the situation needs to be re-evaluated and staff has to be aware of the surroundings.

A "transitional hold" was described by Mr. McConahay as when an inmate is down in a prone position for a short time to gain control. No weight can be placed on the inmate as that could cause breathing problems. He stated that this is communicated in the training.

Mr. McConahay testified he reviewed the video of the incident with Appellant Joy and inmate Boggs and he concluded there was excessive force used by Appellant Joy. He testified he saw inmate Boggs lunge but then turn away, so the situation changed. The inmate moved away from Officer Savage and leaned up against the wall. He stated that is when the inmate should have been escorted out of the area. Mr. McConahay explained that he felt this excessive use of force constituted what he calls "high interest", which can lead to lawsuits, injuries, public interest/outcry and involve the State Highway Patrol.

On cross examination Mr. McConahay testified he watched the video of the incident approximately ten times and he slowed it down to watch it. He stated the appropriate time to use force was when the inmate attempted a head-butt, but then he moved. He reiterated that the inmate should have been escorted out of the area. Mr. McConahay testified that after the inmate got his shirt on and tries to head-butt, he then turns to the side and leans up against the wall and was sideways to Appellant Joy, so there was no one that he could have head-butted at that point, as there was no one in front of the inmate. Mr. McConahay stated it appeared on the video that Appellant Joy did a take-down of the inmate, not a transitional hold, and the inmate looked compliant going to the ground. Appellant Joy then put his knee on the back of the inmate, which is inappropriate, and it appeared to Mr. McConahay that Appellant Joy's shin went across the neck of the inmate.

Appellant's first witness was Megan Crowe, a Correction Officer at London Correctional Institution for approximately one year. She testified she was in her probationary period in November, 2013, when the incident between inmate Boggs and Appellant Joy took place. She identified Appellee's Exhibit 9, page 98, as the incident report she wrote on December 2, 2013. Officer Crowe testified she was interviewed by a state trooper and someone else regarding the incident.

Officer Crowe testified she was inside a cell for much of the incident and her view was obstructed. She could see Officer Savage trying to put a shirt on the inmate and she saw the inmate lunge toward Officer Savage, which she presumed was an attempt at a head-butt. Officer Savage told the inmate to quiet down, as the inmate was yelling obscenities the entire time. Officer Crowe testified she did not see how Appellant Joy put the inmate on the ground, as her view was obstructed. She could only see the inmate's feet. She stated the inmate continued to yell obscenities as he was being escorted away.

Appellant's next witness was Daniel Savage, a Correction Officer at London Correctional Institution. At the time of the incident with Appellant Joy and inmate Boggs, Officer Savage had been a Correction Officer for approximately three years and nine months. He stated he had been trained in the use of force and in writing reports. He identified Appellant's Exhibit G, page 89, as the report he wrote and signed, which he prepared on November 30, 2013, right after the incident took place.

Officer Savage testified inmate Boggs was getting a tattoo from another inmate, so he called for other officers to assist. He cuffed the other inmate, but inmate Boggs refused to be cuffed and made threats. Two more officers arrived and they were able to put the cuffs on inmate Boggs. Officer Savage stated he walked Boggs out on the catwalk. Appellant Joy stated Boggs was going to the hole. Officer Savage testified he put a shirt on Boggs and while doing so, Boggs attempted to head-butt him, but he stepped back. At that point, Appellant Joy stepped in and took control of Boggs. Officer Savage testified he did not believe Appellant was there when Boggs threatened Officer Savage and he stated that after Boggs was cuffed, he pretty much quieted down. Officer Savage testified Boggs said to him that he was going to have to hurt him to get him to quiet down and Officer Savage told Boggs that was not going to happen. After Appellant Joy took hold of Boggs, Officer Savage went in the block and he did not see Appellant Joy take Boggs to the ground. He could hear words being said, but he does not know what was said. He stated there was a size and age difference between Appellant Joy and Boggs.

On cross examination Officer Savage testified he never felt threatened by Boggs' verbal threats. He stated he did not try to take Boggs down after the head-butt attempt, as he just stepped back.

On redirect examination Officer Savage testified his first response was to retreat from the attempted head-butt and once he stepped back, there was no reason to try any other moves, as he was safe. Officer Savage opined that Appellant Joy's motivation at the time was to take Boggs down as he had tried to hurt one of his officers.

Appellant Joy testified he began his employment with Appellee on December 14, 1992. During his employment, he had been awarded Officer of the Year, Officer of the Year for the department, made Lieutenant, and then became a Captain in 2007. Appellant Joy identified Appellee's Exhibit 4 as the use of force policy and stated he is familiar with it. He testified he never used force against an inmate as punishment and stated he would never do such a thing.

Appellant Joy testified he viewed the video of the incident and was allowed to explain his actions, but not at the same time he viewed the video. He recounted that on November 30, 2013, he was working the night shift in the special housing unit. He heard over the radio a signal that an officer needed assistance but it was not an emergency. He was close by and could hear yelling, which was not unusual as the block was a disciplinary one. When Appellant Joy got to where the yelling was, he saw inmate Boggs out of his cell and Officer Savage told him he had caught Boggs tattooing. Appellant Joy explained that the B3 unit was the overflow unit for lower disciplines such as tattooing, jawing, etc., as that unit helped to keep the "hole" freed up. Appellant Joy stated he knew Boggs, as three weeks prior, the Major brought Boggs to him as Boggs had a homemade cap which he would not give to the Major. Another time, Appellant Joy testified, Boggs threatened an officer with a "whoopin". He stated Boggs was a young inmate who had probably been getting attention from sexual predators.

Appellant Joy testified he assessed the situation with two inmates out of the cell. He looked in the cell and the fire used to do the tattoo was still going and the cell was a mess. Officer Savage told Appellant Joy that Boggs threatened him and Boggs was still mouthing off. Appellant Joy told Boggs he could not have him threaten an officer and he told Officer Savage to put a shirt on Boggs. Boggs tried to head-butt Officer Savage then, so now there was verbal and physical threat by Boggs. Appellant Joy testified he could have cared less about the verbiage, as that is an everyday occurrence, but when it is combined with threats and physical movement, then he goes into high alert. Appellant Joy testified Boggs then squared up with him and he could see in his eyes that he was getting ready to do something. Boggs rose up on Appellant Joy and continued to threaten Officer Savage and Appellant Joy confirmed that he made a statement to the effect that "he wanted to

get Boggs' mind right". He testified that what he meant by the statement was that he wanted to get Boggs to comply with orders, as he did not say it to be mean. Boggs keep repeating threats, even after he was on the ground.

Appellant Joy testified he used a "technique 4", which he described as an arm bar take down with wrist and shoulders down. Once down, Boggs responded with "yes sir, ok, yes sir" and that is when Appellant Joy stopped. He stated that a lot of people do not even know what a "technique 4" is. Appellant Joy testified that his actions guaranteed the safety of his officers. He stated he knew the inmate and knew that he had to a "technique 4" to get control of the inmate and to get him to be quiet. He testified there were already enough officers there and he did not need any more. Appellant Joy explained he did not want to move Boggs until he knew he was going to be compliant as "inmates will perform for other inmates" and once they got Boggs off the block he was quiet and fine. Appellant Joy testified he shifted his weight when he had Boggs on the ground in order to get further from Boggs' neck and he stated he never put any pressure on Boggs' neck. Boggs never stated he could not breathe.

FINDINGS OF FACT

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

1. At the time of his removal, Appellant Joy was a Correctional Captain and had been employed with Appellee for approximately twenty-two years. His past discipline consists of a written reprimand in December, 2004; a written reprimand in January, 2006; a two day fine in April, 2006; and a two day working suspension in November, 2013. He also received corrective counselings from the Warden in December, 2010 and in March, 2012.
2. As Captain, Appellant Joy was familiar with the Standards of Conduct and the Use of Force Policy. He had attended many training sessions on the use of force and in 2004, was a Use of Force Instructor.
3. On November 30, 2013, Appellant Joy was working the night shift. He heard a call for assistance over the radio and went to the block where the call came from. When he arrived, inmate Boggs was in handcuffs without a shirt. Appellant Joy told Officer Savage to put a shirt on inmate Boggs and when he did so, inmate Boggs attempted to head-butt Officer Savage, but Officer Savage stepped back. Inmate Boggs then had a shirt on and leaned

sideways on the wall. Appellant Joy then grabbed inmate Boggs and got him to the ground, putting his knee on the upper back/neck area of inmate Boggs. After a few seconds, Appellant Joy pulled inmate Boggs up to a standing position and inmate Boggs was escorted off the block.

STIPULATIONS OF THE PARTIES

4. The parties to the above captioned action hereby stipulate that (1) the medical examinations of Inmate Travis Boggs conducted by the Appellee's medical staff on November 30, 2013, revealed no signs or symptoms of injury, other than superficial abrasions on the Inmate's upper chest which he admitted he caused himself "in [his] sleep" and (2) the Medical Exam Report completed on the same date reflects that the Inmate stated "grabbed my arms and back of my neck and threw me on the ground" and that the report does not reflect complaints by the inmate that any employee applied any other force sufficient to cause him discomfort or injury while in the prone position nor had he sustained any injury from this event or any other use of force by an Ohio Department of Rehabilitation and Correction employee on November 30, 2013.

CONCLUSIONS OF LAW

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

Appellant Joy was alleged to have used excessive force on inmate Boggs. The evidence presented establishes that he did so. In viewing the videotape of the incident, it is clear Appellant Joy overstepped his boundaries when he took inmate Boggs to the ground. The testimony established that inmate Boggs was handcuffed and was verbally threatening Officer Savage prior to the time Appellant Joy arrived on the scene. The testimony of the witnesses and the witness statements all confirm that inmate Boggs was upset with Officer Savage. Mr. McConahay testified that the best and simplest thing to do at that point was to remove Officer Savage from the area, since he was the one inmate Boggs was directing his verbal threats to. There is no dispute that there were other Correction Officers on the scene, so sending Officer Savage away would not have created a shortage of officers. Instead, Appellant Joy made the decision to have Officer Savage, the one officer whom inmate Boggs' seemed to be focused on, attempt to put a shirt on the inmate.

It can be seen in the video, that when Officer Savage was attempting to put a shirt over the head of inmate Boggs, inmate Boggs made a move with his head. Officer Savage testified that he saw the move and simply stepped backwards in order to avoid being hit by inmate Boggs' head. Any imminent physical threat was over, as the videotape clearly shows that inmate Boggs, now with his shirt on and still handcuffed, just turns to the side and leans on the wall.

At that point, inmate Boggs is not facing Appellant Joy or anyone else, as he is leaning on the wall with his left side on the wall. Appellant Joy is not standing in front of him, but off to his right side. Inmate Boggs is not being physically combative, although he may have been continuing to make verbal threats. At that point, Appellant Joy grabs inmate Boggs and takes him to the ground, very clearly putting his right knee on inmate Boggs' upper back area. When watching the video, one is taken aback by Appellant Joy bringing inmate Boggs to the ground, as there appears no reason to do so. The inmate was just standing there, handcuffed, doing nothing and the next thing the video shows is Appellant Joy picking him up and putting him on the ground and putting his knee on inmate Bogg's upper back. He keeps him there for a few moments, and then simply pulls him back up and escorts him out. As the video and witness testimony confirm, inmate Boggs was doing nothing which warranted him being taken down to the ground by Appellant Joy.

Appellant Joy testified he was familiar with all of the policies and procedures of Appellee regarding use of force and was previously an instructor in the use of force. He testified he could care less about inmates "mouthing off", as that is something that happens every day, but combined with a physical threat, that puts him on high alert. The problem with that statement is that there was no physical threat at the point in time Appellant Joy took inmate Boggs to the ground. He stated the video does not show the whole story, as he stated Boggs squared up to him and he could tell by the look in Boggs' eyes that he was getting ready to do something. The video does not show Boggs squaring up to Appellant Joy. He was not even facing Appellant Joy immediately prior to being taken to the ground. While the video is not close enough to show inmate Boggs' eyes, it is clear that he did not square up to Appellant Joy and that he made no move toward Appellant Joy or anyone else immediately prior to Appellant Joy taking him to the ground.

Appellant Joy also stated he used a "technique 4" move to bring Boggs to the ground. No other witness had heard of a such a technique and Appellant Joy stated a lot of people do not know the technique. Nowhere in the documents entered into evidence is a "technique 4" mentioned. Mr. McConahay testified it appeared Appellant Joy used a take down on inmate Boggs, and then put his knee on the

upper back/neck area of inmate Boggs, which is not allowed in any move taught by Appellee, as by doing so, it is possible to make it difficult for the person on the ground to breathe.

The situation Appellant Joy found himself in with inmate Boggs is basically described in Appellee's Exhibit 4, the Use of Force policy, Appendix A, the last box. It states that if an inmate is not responding to commands or exhibiting verbal or physical danger cues, then the staff member's response is an escort position with assistance from other officers, verbal or physical commands and an officer presence. This is exactly what Mr. McConahay testified Appellant Joy should have done and with Appellant Joy's approximate twenty-two years of service, he should have known that the situation called for an escort and only an escort.

Appellant Joy argued he was trying to protect his fellow officers, but at the point he did the take down on inmate Boggs, there was no threat to a fellow officer. If that is what he truly was trying to do, then the time to have taken action would have been when Officer Savage was putting the shirt on the inmate Boggs, as that was the only time it minimally appeared anyone was in danger from inmate Boggs. Instead, as the Appellee has proved, Appellant Joy used excessive force on the inmate when the situation did not call for such use of force.

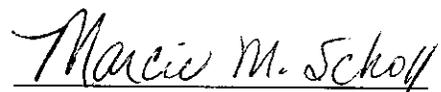
Appellant Joy also argued his actions only comprised approximately less than a minute of the videotape and while he attempted to painstakingly go through the video millisecond by millisecond, that is not how real life is viewed. Judgments are made in real time and when an officer makes a decision to use force on an inmate, the thought process is not broken down into milliseconds, but is made in real time as a reaction as to what is happening. Unfortunately, Appellant Joy's decision making and his attempt to "get the inmate's mind right" resulted in a split second decision to use force when it was not needed and the force used was excessive.

Had this incident been the only discipline which Appellant Joy had been subjected to during his tenure, removal would not have been warranted with his long tenure of service. However, his past discipline of a two day working suspension, which was based on an incidence which occurred in the same month as the incident with inmate Boggs, and which involved Appellant Joy conducting himself in an unprofessional and intimidating manner toward Union members, warrants removal in this instance. The Warden testified she considered Appellant Joy's work history, his previous disciplines and the seriousness of this offense in deciding to terminate Appellant Joy's employment. She testified she spoke to him on several occasions prior to this incident about his behavior, as she felt he needed a change

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of venue, as it was her opinion he was on a downward spiral which was not going to lead to anything good. There was no evidence presented which established an abuse of discretion on the part of the appointing authority and the disciplinary grid provides for removal in this circumstance.

Therefore it is my **RECOMMENDATION** that Appellee's removal of Appellant Joy be **AFFIRMED** pursuant to section 124.34 of the Ohio Revised Code.


Marcie M. Scholl
Marcie M. Scholl
Administrative Law Judge