

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

John Wood,

Appellant,

v.

Case Nos. 2015-RED-03-0025
2015-MIS-03-0031

Department of Rehabilitation & Correction,
Warren Correctional Institution

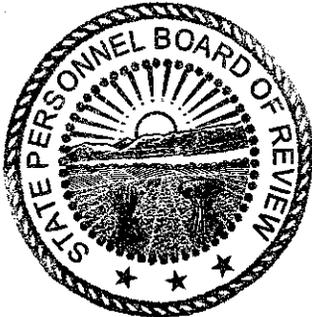
Appellee,

ORDER

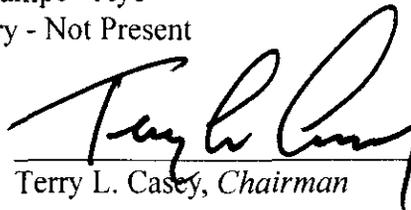
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, 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 Appellant's instant **REDUCTION** from Correction Lieutenant to Correction Officer is **AFFIRMED**, pursuant to R.C. 124.03 and R.C. 124.34.



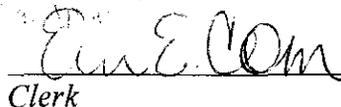
Casey - Aye
Lumpe - Aye
Tillery - Not Present


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, November 19, 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 November 27, 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 Numbers: 2015-RED-03-0025 & 2015-MIS-03-0031

Transcript Costs: \$379.50 Administrative Costs: \$25.00

Total Deposit Required: * \$404.50

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: December 4, 2015

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

John Wood

Appellant

v.

Department of Rehabilitation and Correction,
Warren Correctional Institution

Appellee

Case Nos. 2015-RED-03-0025
2015-MIS-03-0031

October 22, 2015

James R. Sprague
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These cases came to be heard on September 29, 2015. Present at the hearing was Appellant, who appeared *pro se*. Appellee, Department of Rehabilitation and Correction (DR and C), Warren Correctional Institution (WCI), was present through its designee, Norman Evans, Labor Relations Officer (LRO), and was represented by Ryan D. Walters and Robert E. Fekete, Assistant Attorneys General.

These causes come on due to Appellant's March 16, 2015 timely filing of appeals from his reduction from Correction Lieutenant (Lt.) to Correction Officer (C.O.). Appellant's pertinent R.C. 124.34 Order of Reduction was signed, served, and effective on March 11, 2015. Additionally, on June 11, 2015, a pre-hearing was held in these matters.

Jurisdiction over the subject matter of these appeals was established pursuant to R.C. 124.03 and R.C. 124.34.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

The pertinent language in Appellant's R.C. 124.34 Order of Reduction reads:

You have violated the following Standards of Employee Conduct Rules: **#25** Failure to immediately report a violation of any work rule, law, or regulation; **#27** Failure of a supervisor to properly supervise or enforce work rules or failure to properly process employee payroll forms; **#38** Any act, or failure to act, or commission not otherwise set

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forth herein which constitutes a threat to the security of the facility, staff, any individual under the supervision of the Department, or a member of the general public; **#50** Any violation of ORC 124.34-? [sic] 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 ... On 12/25/14 you witnessed another employee (Christopher Carnes-RN) threaten a Residential Treatment Unit inmate by thrusting a nursing vitals machine into his facial area. As a supervisor of the/that area (RTU), you not only failed to intervene and take immediate and appropriate action, you also failed to report and document the incident. (emphasis added)

First to testify at hearing was **Appellant John Wood**, who testified on as if on cross examination. At the time of hearing, Appellant had served at WCI for a little more than 26 years. Appellant served as a Correction Lieutenant at WCI from March 11, 2000 until the instant reduction placed him in a C.O. position at WCI. On the day and shift in question, Appellant was functionally supervising the Residential Treatment Unit (RTU), which is WCI's psychiatric and related medical treatment unit. Please note that the RTU's medical staff is supervised by Medical Administrator Jim Lawson.

Next to testify was **Teresa Cunningham**, a Registered Nurse who serves as a Psychiatric/Mental Health Nurse in WCI's RTU and who observed most of the events pertinent to Appellant's instant reduction.

Next to testify was **Paul Caver**, a C.O. at WCI who was under Appellant's supervision on the day in question and who also observed most of the events in question.

Next to testify was **Greg Craft**, who serves as WCI Institutional Investigator and who investigated the pertinent events in question.

Next to testify was **Norman Evans**, WCI's LRO who also served as the designee for Appellee at hearing.

Next to testify was **George Crutchfield**, who serves as the Warden at WCI and who also who serves as Appellant's Appointing Authority.

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Next to testify was **Christopher Carnes**, a Registered Nurse who also served in WCI's RTU until the time of his own removal. Mr. Carnes' removal appeared to be in some stage of the collective bargaining grievance process at the time of record hearing.

Finally, **Appellant John Wood** testified on direct and on redirect off as if on cross examination.

Compared to some disciplinary cases that come before this Board, the facts of this case are relatively simple and are presented, below.

DR and C classifies WCI as a Security Level 3 institution (*i.e.* close security). According to Warden George Crutchfield, WCI has one of the highest levels of inmate-on-staff and inmate-on-inmate acts of violence of any of DR and C's correctional institutions.

The seminal event here involves RN Christopher Carnes using a nursing vitals machine – the standard apparatus with a stem and wheels used for taking blood pressure, temperature, *et cetera* -- to jab at the face of a restrained inmate (Inmate Moore) who was compliant with all instructions. Appellant failed to report Nurse Carnes' unauthorized use of force on Inmate Moore.

Inmate Moore was on mental health watch and escort. Warden Crutchfield stated that Inmate Moore may have suffered from PTSD as a result of his service in the Marines, was known to have violent fits, and was incarcerated for a robbery conviction. The Warden also observed that the incident involving Inmate Moore and Nurse Carnes occurred at a particularly unfortunate time. This is because the incident occurred on Christmas day, when there are higher levels of depression and suicidal ideation among inmates.

The record reflects that Inmate Moore was deeply affected by the incident in question. This is based on the Warden's personal discussion with Inmate Moore, during which the Warden apologized to Inmate Moore and during which Inmate Moore started crying and said "I just want to go home."

On December 25, 2014, Inmate Moore was under observation or close watch at WCI and was in the requisite observation cell in compliance with DR and C's mental health protocol. The cell door has a Lexan panel or panels in it, which

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Inmate Moore was repeatedly kicking. I take administrative notice that Lexan is an acrylic/polycarbonate that is transparent.

Due to concerns for damage to property and for the disturbance that Inmate Moore was causing, Inmate Moore was given "verbal directions" or "verbal instructions" to stop kicking the door. Inmate Moore refused to comply with those instructions and WCI staff, in accordance with protocol, then used "OC" (aka "Pepper Spray") on Inmate Moore.

Inmate Moore was then compliant and staff applied cuff restraints and a belly belt to Inmate Moore. The belly belt goes around the inmate and helps to limit the mobility of the inmate's arms.

Again, in accordance with protocol, Inmate Moore then was taken to the Medical area to be examined following the application of OC. Inmate Moore was escorted into the Medical area by Appellant, C.O. Paul Caver, and a second C.O., who left the area shortly thereafter. The RTU was at that time staffed by RN Teresa Cunningham and RN Christopher Carnes.

During the shift in question, Appellant, as a senior Correction Lieutenant, was the functional supervisor over the RTU. Therefore, he was tasked with overall responsibility for the RTU, even though the medical staff reported to a different direct supervisor.

Inmate Moore was initially taken into the Nurses Office. However, the Nurses Office lacked the necessary ventilation to adequately clear the air regarding the residue of OC left on Inmate Moore. Accordingly, the escort team was instructed to take Inmate Moore out into the better ventilated hallway by the Nurses Office, and the escort team did so.

The escort team then seated Inmate Moore a little way down the hall from the Nurses Office and C.O. Caver stood back a short distance behind Inmate Moore, who was quiet and non-resistant. Inmate Moore had complained that his eyes hurt from the OC and he was going to be medically attended regarding that issue.

Nurse Cunningham was seated at a station a short distance away from Inmate Moore and she began to fill out the paperwork for Inmate Moore's exam. Apparently, Nurse Carnes and Inmate Moore knew each other from another DR and C institution and may have engaged in some banter at this point.

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Nurse Carnes was at this time on a meal break and was standing in the Medical area hallway eating his meal out of a bowl. Nurse Carnes put down his bowl. He then appeared to be getting ready to assist Nurse Cunningham with the exam by taking Inmate Moore's vitals, or so the staff thought.

During the course of Nurse Carnes' dialogue with Inmate Moore, Nurse Carnes referenced Inmate Moore's service with the Marines and said something to the effect that "You'll know about this". Then, Nurse Carnes picked up the vitals machine, carried it the short distance over to Inmate Moore and used it to lunge at Inmate Moore's face. Inmate Moore flinched and pulled back but the vitals machine still came within inches of Inmate Moore's face.

Nurse Carnes then put the machine back down where he had found it. Inmate Moore may have then said "Oh, you got me. You got me."

Testimony reflects that Appellant at that point said at least one of the following phrases: "Whoa!"; "Cut it out."; or "Get back to work.". Testimony also reflects that Appellant may have had an additional conversation with Nurse Carnes perhaps one and one-half hours later admonishing him regarding the vitals machine incident.

However, Appellant *did not* fill out a Use of Force Incident Report by the end of his shift – or at all. Appellant *did not* instruct C.O. Caver to fill out a Use of Force Incident Report by the end of C.O. Caver's shift – or at all. Appellant *did not* apprise his Captain of this incident by the end of shift – or at all. Appellant *did not* review the video of the incident prior to the end of his shift. Appellant *did not* apprise the supervisor of the RTU medical staff of the incident.

Indeed, the only way this incident came to light was because Nurse Cunningham slipped an anonymous note under a medical supervisor's door suggesting that the supervisor review the RTU video from a particular time during the date in question. It was this anonymous note that began a series of events that culminated in the reduction of Appellant, the removal of Nurse Carnes, and other less severe discipline for C.O. Caver and Nurse Cunningham.

Based on the record, it does not appear that Appellant could have prevented Nurse Carnes' actions on the day in question, since those actions appear to have been spontaneous and took perhaps four seconds from start to finish. What Appellant failed to do was to report or follow up sufficiently according to DR and C rules and protocol.

Based on the testimony presented and evidence admitted at hearing, I make the following Findings:

First, I incorporate by reference any finding set forth, above, whether express or implied.

I find that DR and C communicated the standards, rules, and policies at issue in this case to Appellant in a timely manner and that Appellant had a good working knowledge of same.

I find that DR and C provided Appellant with his requisite pre-disciplinary procedural due process rights.

I find that Appellant violated DR and C Standards of Employee Conduct (SEC) Rule #25 when he failed to immediately report Nurse Carnes' violation of work rules.

I find that Appellant violated DR and C SEC Rule #27 when he failed to properly supervise the RTU and when he failed to properly enforce work rules in the RTU on the day in question.

I find that Appellant violated DR and C SEC Rule #38 when he failed to report a (totally unauthorized) use of force on Inmate Moore, which could have and perhaps did exacerbate Inmate Moore's mental health challenges.

I find that Appellant violated DR and C SEC Rule #50 when he violated the work rules of the Director of the Department of Rehabilitation and Correction and for committing nonfeasance, as further reviewed, below.

CONCLUSIONS OF LAW

These cases present this Board with the question of whether a senior Correction Lieutenant who functionally supervised an area, yet who completely failed to report an unauthorized use of force in that area and who failed to instruct his subordinate to report same, should be reduced to Correction Officer? Based on the findings set forth, above, and for the reasons set forth, below, this Board should answer in the affirmative and, so, should affirm Appellant's reduction.

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I have found, above, that Appellant violated DR and C SEC Rule #25, SEC Rule #27, and SEC Rule #38. I have also found that, by violating those Rules, Appellant also violated SEC Rule #50.

Further, by Appellant's failure to properly supervise and his failure to report, Appellant has committed the R.C. 124.34 disciplinable offense of a "...violation of any policy or work rule of the officer's or employee's appointing authority,".

Moreover, by Appellant's failure to properly report Nurse Carnes' unauthorized use of force, Appellant has committed the R.C. 124.34 disciplinable offense of nonfeasance. This is because Appellant failed to do an act which was required of him; in response to another DR and C employee's egregious act committed in the presence of Appellant in an area over which Appellant had functional control.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** Appellant's instant **REDUCTION** from Correction Lieutenant to Correction Officer, pursuant to R.C. 124.03 and R.C. 124.34.


James R. Sprague
Administrative Law Judge