

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

Thomas Hampton,

*Appellant,*

v.

Case No. 07-RED-03-0089

Department of Rehabilitation and Correction,  
London Correction Institution,

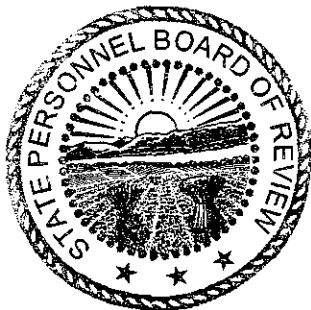
*Appellee.*

**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 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 reduction from the rank of Captain to the rank of Corrections Officer, be **AFFIRMED**, pursuant to O.R.C. § 124.34.



Lumpe - Aye

Booth - Aye

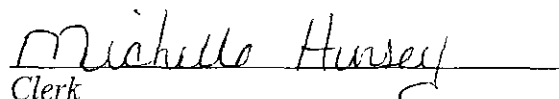
Sfalcin - Aye

  
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J. Richard Lumpe, *Chairman*

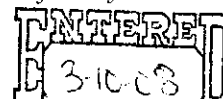
**CERTIFICATION**

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, March 10, 2008.

  
\_\_\_\_\_  
Michelle Hursey  
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**

Thomas Hampton,

Case No. 07-RED-03-0089

*Appellant*

v.

February 14, 2008

Ohio Department of Rehabilitation and Correction,  
London Correctional Institution,

*Appellee*

James R. Sprague  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came to be heard on October 30, 2007. Present at the hearing was Appellant, who was represented by Merl H. Wayman, Attorney at Law. Appellee, Department of Rehabilitation and Correction (DR&C), London Correctional Institution (LCI), was present through its designee, Vickey Justus, Labor Relations Officer, and was represented by Julie M. Pfeiffer and Drew C. Piersall, Assistant Attorneys General. By agreement of the parties, post-hearing briefs were submitted in this matter on or before November 30, 2007.

This cause comes on due to Appellant's March 16, 2007 filing of an appeal with this Board from a disciplinary reduction from the rank of Captain to the rank of Corrections Officer. In regard to that reduction, Appellant received the pertinent R.C. 124.34 order of reduction on March 12, 2007, the date upon which the order was also signed and effective.

Jurisdiction over the subject matter of this appeal was established pursuant to R.C. 124.34.

**STATEMENT OF THE CASE**

Appellant received a disciplinary reduction from the rank of Captain to the rank of Corrections Officer for the following allegations:

This will notify you that you are reduced in pay, from your position of Captain and/or reduced to new position of Corrections Officer effective 03-12-07.

The reason for this action is that you have been guilty of Specifically: Rule 49 – Any violation of ORC 124.34 – and for incompetence, inefficiency, dishonesty, drunkenness, Immoral conduct, insubordination, discourteous treatment of the public; neglect of duty, violation of such sections Of the rules of the director of administrative services or the commission, or any other failure of good behavior, or any Acts of misfeasance, malfeasance or nonfeasance in office. Rule 8 – Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment.

Rule 7: Failure to follow post orders, administrative regulations, policies or directives. Potential Penalties: 1<sup>st</sup>: WR or 1 day, 2<sup>nd</sup>: 2 day, 3<sup>rd</sup>: 5 day, 4<sup>th</sup>: Removal

Rule 25: Failure to immediately report a violation of any work rule, law, or regulation. Potential Penalties: 1<sup>st</sup>: WR or 1 day, 2<sup>nd</sup>: 2 day, 3<sup>rd</sup>: 5 day, 4<sup>th</sup>: Removal

Rule 27: Failure of a supervisor to properly supervise or enforce work rules. Potential Penalties: 1<sup>st</sup>: WR to 2 day or Removal, 2<sup>nd</sup>: 2 day or Removal, 3<sup>rd</sup>: 5 day or Removal, 4<sup>th</sup>: Removal

Inmate Barker is on the mental health caseload and began to experience issues during second shift on February 4, 2007. As a result, he was placed on Constant Watch under the Suicide Prevention Policy. When an inmate is placed on Constant Watch, according to policy 67-MNH-09, the safe cell should have been inspected for safety immediately before the offender's placement. The offender should have been strip-searched before being placed in the designated safe cell and then the offender provided with an approved suicide gown and blanket. None of this occurred. Instead, Barker was placed into the cell with his hands cuffed behind his back and his personal clothing still on. At 9:30 p.m., Captain Hampton reported for third shift duty. He was briefed by second shift Captain Foster,

who explained that Barker was on Constant Watch and he refused to give up his handcuffs. At this point, Barker had been in this situation for approximately 4 hours. Captain Hampton took no actions to address the issue with inmate Baker or to verify that proper notifications were made and the proper procedure was adhered to. During the course of third shift, Lieutenants Gause and Adams made at least three attempts to discuss a resolution of inmate Barker's situation with Captain Hampton. Captain Hampton continued to do nothing. Instead, he allowed inmate Barker to remain on Constant Watch with his hands cuffed behind his back and his personal clothing on for an additional 8 hours. Captain Hampton's actions or lack thereof are unacceptable of a supervisor. Captains are expected to identify and resolve problems, train staff, communicate and make sound decisions to ensure the orderly operation of the institution. His decision to not do anything or to follow proper policy and procedure is inexcusable. Captain Hampton did not address this situation; he failed to notify mental health staff, crisis negotiators, the Major, Deputy Warden of Operations or Warden, and no one on third shift even completed an incident report. When first shift arrived at approximately 5:30 a.m., Captain Hampton told Captain Joy that inmate Barker was in the crisis cell, cuffed with his personal clothing on. When Captain Joy inquired as to why Captain Hampton allowed this to continue during third shift, Captain Hampton stated it "was second shift's deal." Captain Hampton's actions are in violation of: Rule 49 – Any violation of ORC 124.34...and for incompetency, inefficiency...neglect of duty ...: Rule 8 – Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment; Rule 7 – Failure to follow post orders, administrative regulations, policies or directives; Rule 25 – Failure to immediately report a violation of any work rule, law, or regulations; and Rule 27 – Failure of a supervisor to properly supervise or enforce work rules.

At hearing eight witnesses testified. Kim Adams serves as a Lieutenant at LCI and was present on second shift and served under then Captain Hampton on the evening of February 4 and the morning of February 5, 2007. Steven Gause is a

Lieutenant at LCI and also served on second shift with then Captain Hampton on the evening of February 4 and the morning of February 5, 2007. Robert Joy served as a temporary working level Captain and was in that position and head of first shift at LCI on the morning of February 5, 2007, following the shift supervised by then Captain Hampton. Bill Kelley served as Acting Deputy Warden of Operations with the rank of Major and his Major position control number slot was designated as a supervisory position over then Captain Hampton's position. Kevin Harrington served as a Lieutenant under Captain Robert Foster on second shift on the evening of February 4, 2007 and is currently serving as a Corrections Officer. Robert Foster served as a Captain and was in charge of second shift on the evening of February 4, 2007. Robert Morris served as a Captain at LCI. Thomas Hampton, Appellant, served as Shift Supervisor for third shift on the evening of February 4, 2007 continuing to the morning of February 5, 2007.

Aside from several factual issues regarding the actual time that Appellant was made fully aware of Inmate Barker's condition and situation, the facts in this case are not in particular dispute and are reasonably and succinctly set forth in Appellee's R.C. 124.34 order of reduction in the instant appeal. While it will be demonstrated, below, that the legal conclusions reached in the narrative contained within the order of reduction are correct, we will, for the present, limit our focus to the facts of this matter.

The facts reflect little dispute that Inmate Barker, who was on the mental health caseload for LCI, refused to stand for his inmate count and, as such, his behavior was considered to have constituted a disciplinary problem. Since Inmate Barker's name was on the mental health caseload, he was taken to the mental health segregation area of LCI.

Inmate Barker was then given the requisite approved mental health segregation self report admission screening form. Because Inmate Barker refused to answer the first question "Do you feel suicidal or feel like hurting yourself?" Inmate Barker was then considered for purposes of the policy to constitute a potential suicide threat and the proper procedures for such should have been immediately instituted.

Those procedures are that Inmate Barker should have been strip searched, he should have been placed in a suicide gown, provided with an approved suicide blanket, and the special safe cell, also located in the mental health segregation unit

should have been searched immediately prior to Inmate Barker's placement therein. (See Policy 67-MNH-09). Further, once Inmate Barker was properly placed in that safe cell, his handcuffs (which were utilized in transporting him from the holding cell to the safe cell) should have been immediately removed. The testimony also reflects that, whereas the holding cell is about a four by four foot cell for limited purposes, the safe cell is a much larger facility that includes a sink, shower and toilet and is designed with surfaces that would not readily allow an individual on suicide watch to hurt himself.

Instead, what transpired was that Lieutenant Kevin Harrington immediately transported Inmate Baker, still in his requisite LCI prison sweats and shoes and underwear, in cuffs to the safe cell. Further, when Inmate Barker refused to give up his handcuffs, Lieutenant Harrington allowed inmate Barker to remain in the safe cell with this full attire and with hands cuffed behind his back.

This was at approximately 5:30 p.m. on the evening of February 4, 2007. Neither Lieutenant Harrington nor any other personnel on second shift searched the safe cell prior to Lieutenant Harrington's placing Inmate Barker in that cell. Further, at some point during the shift, Lieutenant Harrington also apprised his superior, Captain and Shift Commander Foster, of this situation.

Ultimately, while it appears that second and third shift personnel at LCI did follow the policy to have Inmate Barker on uninterrupted watch with personnel present at all times in logging in appropriately, nonetheless these events ultimately resulted in Inmate Barker being held in the safe cell with his hands handcuffed behind his back in his requisite full LCI clothes for at least a continuous 12 hour time period.

The facts further reflect that, upon the shift change from second shift to third shift on February 4, 2007, at approximately 9:30 p.m., Captain Foster reported to and briefed Appellant. At this time, Captain Foster explained to Appellant that Inmate Barker had been on constant watch for approximately four hours and that he refused to give up his handcuffs.

It was apparently at this point that Appellant ascertained that it was neither his problem nor his shift's problem to rectify the situation with Inmate Barker or to rectify any related policy violations that had transpired. This was because, in Appellant's

estimation, second shift should have already dealt with this problem and someone other than Appellant or his subordinates would have to deal with it.

Appellant indicated that while he was aware that Inmate Barker was in the safe cell with his hands cuffed behind his back. However, Appellant asserted that Appellant was not aware that Inmate Barker was still in his requisite LCI clothing until approximately 3:00 a.m. Even this 3:00 a.m. time frame would have left Appellant with several hours on his third shift to rectify the situation with Inmate Barker.

Yet, there is credible testimony in the record presented both by Lieutenant Gause and Lieutenant Adams to indicate that, on multiple occasions, these two subordinates went to Appellant and requested that the requisite remedial procedure for rectifying the situation with Inmate Barker be initiated but were turned down on numerous occasions. Those requests appear to have included: a request that an extraction team be assembled to extract Inmate Barker from the safe cell; a request that third shift reinstate the procedures to strip search and place Inmate Barker in the requisite gown with requisite blanket; and a request that the safe cell be searched immediately prior to inmate Barker being placed within that cell, obviously removing his handcuffs once he was properly placed in that safe cell.

Further, there was a request that a mental health staff member be contacted to review and assess Inmate Barker's condition, a request that medical personnel be contacted to assess inmate Barker's situation and to standby if an extraction team was needed, and a request that a crisis negotiator be summoned to attempt to deal with Inmate Barker's refusal to give up his cuffs and to hopefully persuade him to do so. Appellant appears to have refused to grant any of these requests from his subordinates.

Ultimately, then, Inmate Barker stayed in the safe cell with his hands cuffed behind his back on constant watch during the entire eight hours of Appellant's shift.

The record further reflects that, during the shift change from Appellant's shift to Captain Robert Joy's shift, Appellant apprised Captain Joy of the situation. The facts further reflect that, thereafter, Captain Joy initiated the procedures that Appellant should have initiated and assembled an extraction team, alerted the requisite personnel and was able to utilize a negotiator to persuade Inmate Barker

to voluntarily give up his cuffs. The proper procedures for the suicide watch were then instituted.

Appellant offered testimony that he was not aware at least until 3:00 a.m. of the full extent of Inmate Barker's situation (namely that Inmate Barker was still in his LCI clothes). Yet, Appellant's recollection of the facts of the situation provides an insufficient basis to challenge the accuracy of the narrative set forth in instant R.C. 124.34 order of reduction. This is particularly so when one compares Appellant's testimony to the consistent and less-interested testimony offered by Lieutenants Gause and Adams. As well, Appellant failed to substantiate his assertion that it was a standard and accepted procedure for the shift commander to "wait an inmate out" under these circumstances.

### **FINDINGS OF FACT**

Based upon the testimony presented and evidence admitted at hearing and upon the post hearing briefs submitted by the parties, I make the following Findings:

First, I note that based upon its accuracy and succinctness, the facts and analysis of rules set forth in the instant R.C. 124.34 order of reduction should be adopted and I adopt same herein in its entirety. Further, I find as a matter of fact that Appellant violated policy 67-MNH-09 in failing to follow the requisite three required procedures involving inmate Barker. Certainly to the extent that, when faced with an unacceptable situation, Appellant stood in the way of his subordinates in an effort to immediately rectify an intolerable situation. As a result of his refusal to recognize the obvious and appropriate suggestions of his subordinates (who, unfortunately, did not take their concerns to the major, Deputy Director of Operations, or Warden), inmate Barker was left to remain standing with his hands cuffed behind his back for another eight hours before Captain Joy and his requisite subordinate team were able to intervene and successfully remediate the problem.

### **CONCLUSIONS OF LAW**

This case presents this Board with the question of whether a DR&C Corrections Captain, who, when faced with an untenable situation in direct violation of policy, not only refuses to act to rectify this violation but also refuses the grant the legitimate and timely requests of his subordinates to rectify same, should be reduced from Captain to Corrections Officer? Based on the findings above and for

the reasons set forth below we must answer this question in the affirmative, and, so, should affirm the reduction of Appellant from the rank of Captain to the rank of Corrections Officer.

It is essentially beyond cavil that Appellant violated work rules 7, 25, and 27. Appellant clearly failed to follow policies and failed to adhere to Policy 67-MNH-09. Appellant violated rule number 25 when he failed to immediately report the violation of Policy 67-MNH-09. Appellant violated rule number 27 when he failed to properly supervise and enforce work rules and failed to rectify the situation involving Inmate Barker and in countermanding the legitimate and necessary requests of his subordinate Lieutenants to rectify that problem. Further, by violating rule 7, 25, and 27, and as set forth below, Appellant has committed incompetency, inefficiency, and neglect of duty and, as such committed multiple violations of R.C. 124.34, which constitutes a violation of rule 49.

We begin with the assertion that Appellant was incompetent in his actions and inactions on February 4, and February 5, 2007. Black's Law Dictionary defines "incompetency" as:

Lack of ability, knowledge, legal qualification, or fitness to discharge the required duty or professional obligation. A relative term which may be employed as meaning disqualifications, inability or incapacity and it can refer to lack of legal qualifications or fitness to discharge the required duty and to show want of physical or intellectual or moral fitness. (Further citations omitted). Black's Law Dictionary Deluxe 6th Edition at page 765.

Clearly, Appellant's inability to properly recall and utilize the requisite policies and procedures of DR&C or his refusal to do same constitute incompetency in continuing in the position of Captain.

Black's Law Dictionary defines "efficient" as:

Causing an effect; particularly result or results contemplated.  
Adequate in performance or producing properly a desired effect.  
(Further citations omitted). Black's Law Dictionary Deluxe 6th  
Edition at page 515.

Appellant failed to cause the proper result in this situation, which would have been to rectify the situation into which second shift had placed Inmate Barker and failed as a result to have performance that was adequate or producing a desired affect, namely the implementation of Policy 67-NMH-09. Accordingly, Appellant was inefficient in his actions and has committed inefficiency.

Black's Law Dictionary defines "neglect" to mean:

May mean to omit, fail, or forbear to do a thing that can be done, or that is required to be done, but it may also import an absence of care or attention in the doing or omission of a given act. It may mean a designed refusal, indifference or unwillingness to perform one's duty. (Further citations omitted). Black's Law Dictionary Deluxe 6th Edition at page 1032.

There is no question in this situation that Appellant failed to perform an act that should have been done, namely rectifying the situation resolving Inmate Barker. Further, Appellant appeared to show a calculated indifference for a continuing violation of DR&C policy regarding Inmate Barker and this indifference proximately resulted in Inmate Barker spending more than twelve hours with his hands cuffed behind his back before the situation was rectified by Captain Joy and his team of subordinates.

Accordingly, I find that Appellant has committed incompetency, and inefficiency and neglect of duty. For these reasons, Appellant's reduction from Captain to Corrections Officer should be affirmed.

Thomas Hampton  
Case No. 07-RED-03-0089  
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### RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** Appellant's reduction from the rank of Captain to the rank of Corrections Officer, pursuant to R.C. 124.34.



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James R. Sprague  
*Administrative Law Judge*

JRS:dIm