

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

Victoria F. Jackson,

Appellant,

v.

Case No. 08-REM-08-0485

Department of Youth Services Central Office,

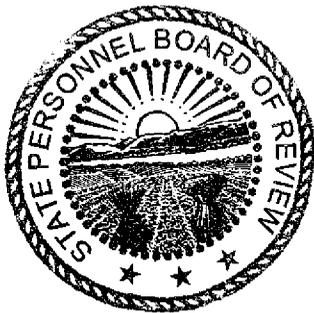
Appellee.

ORDER

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

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

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



Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

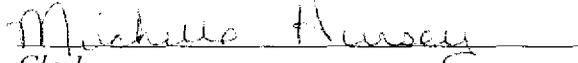


J. Richard Lumpe, *Chairman*

CERTIFICATION

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

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, December 22, 2009.



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**

Victoria F. Jackson

Case No. 08-REM-08-0485

Appellant

v.

October 30, 2009

Department of Youth Services, Central Office

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 February 4 and 17, 2009. The record was kept open until May 8, 2009 for the filing of post hearing briefs. Present at the hearing were the Appellant, Victoria Jackson, represented by Kenneth R. Boggs, Attorney at Law and Appellee Department of Youth Services, Central Office designee Gwendolyn Randall, Superintendent, represented by Pooja A. Bird and Timothy M. Miller, 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 Jackson was removed from her position of Unit Administrator, effective August 19, 2008. The pertinent part of the removal order states as follows:

It has been determined you failed to report inappropriate or unwarranted use of force by a Juvenile Correctional Officer. Your actions are in violation of the Ohio Department of Youth Services' General Work Rules Policy 103.17, specifically Rules 5.9, violation of Ohio Revised Code Section 124.34. (Neglect of Duty), 5.1 Failure to Follow Policy and Procedures (specifically Policy 301.05 Management of Resistant Youth Behavior), 3.7 Failure to Report Physical Force or Verbal Abuse, and 3.1 Dishonesty.

Appellant Jackson filed a timely appeal of her removal.

STATEMENT OF THE CASE

Appellee first called Appellant Jackson, as if on cross examination. Appellant Jackson testified she began her employment with Appellee at Scioto Juvenile Center in 1998 as a Juvenile Correction Officer (JCO) and in 2007, she was promoted to Unit Administrator. In that position, she supervised the JCO's, wrote reports and managed interventions and uses of force. She stated she received training on those areas.

Appellant Jackson identified Appellee's Exhibit B as her position description and stated that for the most part, it was accurate. Appellee's Exhibit C was identified as the training she received in 1999 on the general work rules and youth rights. Appellee's Exhibit L was identified as the General Work rules, revised in 2002. Appellant Jackson testified she was notified of changes to the rules during her employment. Appellee's Exhibit D was identified as Appellant Jackson's acknowledgment of the employee work rules, dated in 2002. Appellee's Exhibit E was identified as a list of topics which were covered at an orientation she attended in 2003. Appellee's Exhibit F was identified as a statement Appellant Jackson signed on September 16, 2003 agreeing to follow all guidelines and procedures.

Appellant Jackson testified she taught half of the trainings listed in Appellee's Exhibit G and identified Appellee's Exhibit H as her acknowledgment form of July 2006, stating that she knew the policies of Appellee were available to her. Appellant Jackson testified she knew and understood the policies pertaining to supervisors and testified she has read and was familiar with the policies contained in Appellee's Exhibits L, M, N, P, Q and R. She stated it was her signature appearing on Appellee's Exhibit I, regarding network security and Response to Resistance (R to R). She explained that R to R meant ensuring safety to self while using minimal force. Appellee's Exhibit J was identified as a Training Agreement she signed on January 14, 2008, stating she will maintain proficiency in the techniques taught. Appellee's Exhibit K was identified as her signature showing she attended an in-service training.

Appellant Jackson explained that Planned Intervention training deals with the situations where one may have to get physical with a youth. She stated someone in her position or above is in charge of the planned intervention. That person is responsible for turning on the camera, explaining the titles of everyone involved and

what is going to take place. Appellant Jackson testified she obtains the camera right before the intervention. Usually she receives a call from someone that a youth is being non-compliant and what should they do. She stated the camera is supposed to be in her office, but sometimes others borrow it or take it, so at some point, she brought in her own camera and kept it in her office.

During an intervention, Appellant Jackson testified it was her responsibility to run the camera and give verbal direction throughout the intervention. The goal was to restrain the youth, put on the handcuffs and move the youth to seclusion. Witness statements are completed and the youth completes a Youth Behavior Incident Report. These reports must be turned in by the end of the shift and given to the Operations Manager.

On April 2, 2008, Appellant Jackson testified JCO Dorsey told her a youth was being non-compliant. She stated she was in her office and JCO Dorsey called her on the phone. Appellant Jackson testified she grabbed the camera, went to the youth and asked him what was going on and why he was being non-compliant. The youth said the staff was picking on him and he was still non-compliant but not combative. She stated she tried verbal strategies and continued to talk to him, telling him he had to give her something. Appellant Jackson testified she was by the television area and at first JCO Dorsey and Evans were not by the youth, but eventually they walked over to him. The youth still did not comply and he stood and got in JCO Dorsey's face. There was an exchange of words and JCO Samuels then walked over to where the youth was. Appellant Jackson testified that the next thing she knew was that the youth and JCO Samuels fell into a chair and they were both scooting across the floor.

Appellant Jackson stated that at first, she was standing beside the youth and when he stood and jumped up at JCO Dorsey, she turned on the camera. She stated that at first, she did not hear or see JCO Dorsey. Appellant Jackson testified she attempted to film the incident, but she did not think it was going to turn into a use of force. She stated she also had thirty-two other youth to provide safety and security to while trying to film the incident. Appellant Jackson testified she video taped the incident while still trying to talk to the youth, as at that point, he was very combative. The youth was on the ground with JCO Dorsey and Samuels was on top of the youth. She heard a lot of commotion and could not tell what JCO Dorsey was saying. Appellant Jackson testified she did not see JCO Dorsey punch the youth or make a motion to punch him.

She stated she would never give her camera to someone else in order to join into the mix. Her role is to keep all safe and if a JCO becomes too aggressive, then she would say something to the JCO and possibly move him out of the way. Appellant Jackson testified she would not become involved though as that would make her a victim.

Appellant Jackson testified she did not have a radio on her during the incident, but stated the JCOs had radios. The JCO's did not trigger their "man down" button and she stated hers did not work. Appellant Jackson testified she could not call any other JCOs for assistance as they were the only three there. She stated she felt it was a very dangerous situation. There was not a phone near enough that she could reach and still run the camera. She did not tell the JCOs to hit their "man down" button because the tilt switch should have activated automatically. Appellant Jackson stated she did not feel she was responsible for checking the battery in the "man down" button as the control center should do that since they issue the buttons. She testified she just prays that she does not need it and she does not check it to see if it is working. Appellant Jackson stated she tried to call the Operations Manager but there was no response. All the paperwork was turned in by a JCO although she stated she did not know when.

Appellee's Exhibit V was identified as the DVD which shows the incident. The DVD shows a social worker, three JCOs and Appellant Jackson. Appellant Jackson testified she did not see the social worker until much later and she denied touching anyone, as she was trying to stay out of the way. She stated she did not tell the social worker to get handcuffs, but she followed Appellant Jackson into her office to get them.

Appellant Jackson testified she talked to Investigator Haynes and recalls telling him what happened. She told him she saw JCO Dorsey with his arm in the air but she didn't recall using the word "punch". While looking at a still shot from the video, Appellant Jackson saw herself leaning over the youth and stated to Investigator Haynes that "maybe I did tap him", but she still believes she did not touch JCO Dorsey. She testified the reports she writes are usually very accurate as to the description of an incident and she does not usually go back and correct anything.

On direct examination Appellant Jackson testified she did not see the youth punch JCO Dorsey, although the youth stated he did. She stated the youth was non-compliant when she tried to talk to him and remained so when the other JCOs walked over toward him. She estimated there was between two and five minutes from the time she received the call about the youth until the time she began to talk to the youth.

Appellant Jackson testified she always contacted an Operations Manager after an incident and she tried to call that person from her office. She was later told by the Operations Managers that they were at another incident when she called and that was why she could not reach them. Appellant Jackson stated she is equal to an Operations Manager.

The camera Appellant Jackson used had an eye piece and also a square to show what is being filmed. She stated she was trying to look through the eye piece. Appellant Jackson testified she does not know why the film she took was not reviewable and stated she never saw the film. Appellant Jackson explained that anyone involved in the incident could call in medical. JCO Dorsey made a medical report for being punched in the head.

On re-cross examination Appellant Jackson testified that two days after the incident, the youth stated he was hit by JCO Dorsey. On the day of the incident, the youth refused to talk to medical. She stated she never heard JCO Dorsey threaten the youth nor say to him that he wanted to fight him. She stated JCO Dorsey was also removed from his position and the first time she heard the allegation that he hit the youth was when the youth went to medical.

Appellee's next witness was Dominic DiPietro, an employee of Appellee for approximately fifteen years and an Administrative Assistant for approximately ten years. He stated he works with computers and does IT support. He is also responsible for maintaining the cameras and fence security. Mr. DiPietro testified there are three different kinds of cameras on the units or general areas. Both the digital and video cameras take still shots and there are 128 fixed cameras in different areas. Those cameras record in the administration building on eight digital recorders and is a twenty-four hour operation. The film is normally stored for thirty days and can be recorded from a DVR to another disc or transferred to a disc. Mr. DiPietro testified that once the images are transferred, he is not aware of any

method to alter the video in any way. He stated he assisted David Haynes in transferring the video of Appellant Jackson's incident from the DVR to a disc.

Appellee's next witness was Gwendolyn Randle, Superintendent of Scioto since August 2008. As such, she is responsible for oversight of the entire facility, comprised of approximately 334 staff and approximately 180 youth. Ms. Randle has twenty-two years experience in corrections.

Ms. Randle testified that in the spring of 2008, she was the Acting Deputy Superintendent and Appellant Jackson's direct supervisor. She identified Appellee's Exhibit B as the position description for a Unit Manager and stated it accurately described Appellant Jackson's duties. Ms. Randle stated there are twenty to thirty youth on a unit and each unit has its own television room. The youth are permitted in the television area until approximately 8:30 p.m., when they must go to their rooms. She stated if a JCO needs help, they contact their Unit Manager.

On April 2, 2008, Ms. Randle testified she and others were at a conference when they received a call from the Operations Manager informing them there had been an incident on Appellant Jackson's unit where a youth had to be restrained and there was an allegation that a staff member had punched the youth. Ms. Randle explained forms are usually completed by staff and witness statements are taken. Those are then logged into the computer system. When there is an allegation of youth abuse, she reviews all the documents and video, which she did as Deputy Superintendent. She then reviewed and discussed the events with then Superintendent Ms. Money and the Chief Inspector's office conducted an investigation.

Ms. Randle testified the incident of April 2, 2008 involved a planned use of force because the staff exhausted their verbal skills to try to get the youth to comply and the youth remained non-compliant. It was Appellant Jackson's responsibility to manage the incident and there should have been a plan in place, with Appellant Jackson informing the staff of their roles. Ms. Randle testified that when there was a verbal altercation between the staff and the youth, Appellant Jackson's responsibility was to separate them as soon as possible. She should have directed someone to intervene or she should have intervened herself and called for assistance either on the phone or by her "man down" button. Ms. Randle testified Appellant Jackson's actions were not appropriate. She should have moved the staff away from the youth and she should have called the Operations Manager for

assistance. If the Operations Manager did not answer, then she should have called the control center and they would have sent someone.

Ms. Randle stated Appellant Jackson has been trained on the above procedures. She explained that the video is used during a planned intervention for liability reasons and a Manager should not be the one video taping, as they should be managing and giving direction to the staff. Ms. Randle testified it is very high risk for other youth to get involved as it could have cause a major disturbance and could have turned into a very dangerous situation.

On cross examination Ms. Randle identified Appellee's Exhibit 5 as the report of the investigation. Ms. Randle confirmed that none of the employees interviewed talked in terms of a "planned intervention". She identified Appellee's Exhibit Q as the Standard Operating Procedures and Appellee's Exhibit R as the R to R continuum. She stated that the camera is kept in the Unit Manager's office since it is a secured office and she confirmed that an unplanned intervention may not be filmed since it happens spontaneously.

Ms. Randle testified that when a youth is spitting and calling staff members names, at the least that is considered to be active resistance. She stated that the reports established that verbal tactics were used to try to talk the youth down and during that time, an intervention could have been planned. Ms. Randle testified that every time a camera is on, there should be a planned intervention and the Unit Manager should try to diffuse the situation. She stated that if Appellant Jackson exhausted her verbal strategies and the youth was still non-compliant, then Appellant Jackson should have gone to a planned intervention. She should have taken a statement from the youth or assigned someone to do so and she should have called the medical team.

With regard to equipment, Ms. Randle testified it is the responsibility of each employee to report if their equipment is not working and to test the equipment to ascertain if it is working properly. She stated that to her knowledge, the handheld camera Appellant Jackson used was sent to the Ohio State Patrol and they determined the film to be corrupt, as there was nothing to see and no voice recordings were heard.

Appellee's next witness was David Haynes, a Senior Investigator in Central Office for approximately six months. Prior to that, he was an Investigator in the office of the Chief Inspector for approximately ten years. He currently supervises five Investigators, who investigate critical incidents throughout the department. Mr. Haynes explained the Operations Managers report into the Activity Management System or AMS, and each day when the reports are complete, Mr. Haynes' office reviews the reports. He testified his supervisor assigned him to investigate the report from April 2, 2008. He reviewed the AMS and all attachments and interviewed those involved. He looked at the video and upon completion of his report, he turned it into his supervisor, who then forwards it to the Superintendent. The Superintendent then determines if the employee should be disciplined. He then identified Appellee's Exhibit S as his investigation report, which he prepared. Mr. Haynes testified he concluded Appellant Jackson failed to report an inappropriate use of force by JCO Dorsey. He stated the incident started out as a planned use of force and the policy was not followed, as there was no call for assistance during the intervention. He explained that if the Unit Manager is physically present prior to any physical force taking place, then it is a planned intervention. The report was not done properly, as it was not noted if Dorsey did or did not throw a punch or that he was still trying to go after the youth after the youth had been restrained. Mr. Haynes testified JCO Dorsey acted unprofessional, as he took his "man down" belt and tried to go after the youth. Appellant Jackson was there the entire time and she did not report his actions.

Appellant Jackson could have called for assistance to show the youth there were many staff members there, so maybe he would have complied then. If not, then she should have given directions for a planned intervention. Mr. Haynes stated the youth was a large male who refused to go to his room. The potential for injury to the youth, staff or other youth on the unit was great and an unsafe condition could have been created. He testified it is never appropriate for staff to be in a verbal confrontation and Appellant Jackson should have told the JCO to step away.

On cross examination, Mr. Haynes testified he viewed the tape from Appellant Jackson's camera before it became compromised, stating he was informed that the video camera malfunctioned due to people trying to view the video. He testified he saw what looked like a motion of the JCO throwing a punch. Mr. Haynes stated there is a two hour time gap between when the incident happened and when the report was entered in the AMS and no one has been able to explain the gap in time. He testified the JCOs on duty were Dorsey and Evans

and Dorsey called Samuels to assist. Another JCO was going to the unit on other business but was not called to the unit. Mr. Haynes explained that all employees are assigned a radio when they start their shift. He also stated it is the responsibility of the Unit Manager to record the incident.

Appellee's next witness was Christopher Baker, Deputy Superintendent since November 2008 and an employee of Appellee for approximately eighteen years. As Deputy Superintendent, Mr. Baker is responsible for all safety and security of the institution and is familiar with all policies. He testified the supervisor is responsible for planning a response and must assess the situation and determine if there is a need for a particular number of staff and what each staff will do. He stated this is true for a verbal or physical intervention.

Mr. Baker identified Appellee's Exhibit K as the training session report for employees on planned interventions and Appellant Jackson attended the training. He stated there are four different camera angles on each living unit. Mr. Baker testified that the camera shows Appellant Jackson gone from frame 79 to frame 127 and he testified she should not have been gone for any period of time, as she should have directed someone else to leave for whatever reason she had to leave. Appellant Jackson should have also documented the swing taken by JCO Dorsey.

On cross examination Mr. Baker testified the film shows Appellant Jackson leaving the area where the incident was taking place and walking toward the area where his office is located.

Appellant Jackson testified she was employed for approximately nine and one-half years with Appellee. On April 2, 2008, she stated she was in her office and JCO Dorsey called her. She grabbed her camera and went to talk to the youth. JCO Samuels was on the left of the youth and JCO Dorsey was on the youth's right. The youth and JCO Dorsey exchanged words and both fell into the chair, which began sliding across the room. They fell out of the chair and both were on the ground. JCO Samuels tried to help and Appellant Jackson testified she was still talking to the youth, giving direction and filming. She stated she remembers hearing the youth spit and she kept trying verbal re-direction with the youth.

Appellant Jackson stated that she was talking to the youth but when JCO Dorsey moved to the right of the youth, that "pissed off" the youth and he jumped up. At that point, Appellant Jackson turned the camera on. She testified she did

not have a radio and did not have her "man down" button, but stated that the JCOs should have had their radios and their "man down" buttons. Appellant Jackson testified the youth was a big kid, approximately 5 foot 9 or 10 inches and weighing approximately 230 pounds. She testified she did not see anyone throwing punches and she did not see a punching motion, although when she viewed the taped from the overhead cameras, she did see the punching motion.

JCO Samuels tried to gain control of the situation and Appellant Jackson testified she continued to talk to the youth to try to calm him. After the incident, she stated she called medical and wrote her report. She then called the Operation Manager and found out he was not available as he was on another unit dealing with another incident. Appellant Jackson testified the Control Center should have been able to see all the things going on and could have sent people to help. She testified she never stated the incident was a planned intervention and stated she would have reported any wrong doing.

On cross examination Appellant Jackson testified there was no time for her to pull JCO Dorsey out and have another JCO go in. She stated she never had a planned use of force and explained that she always takes the camera, as sometimes the presence of the camera is enough to get the youth to comply. She testified she did not tell anyone to hit their "man down" button or to use their radio to call the control center. Appellant Jackson testified she did not feel she had any reason to correct anyone during the incident until she viewed the video and saw JCO Dorsey's arm come up. She stated she asked at the pre-disciplinary hearing if she could amend the statement she gave to Mr. Haynes since after viewing a still photo from the video, it appeared that JCO Dorsey did take a swing at the youth and that she "tapped out" Dorsey. Appellant Jackson testified she did not make the statement that the youth bruised easily.

FINDINGS OF FACT

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

1. Appellant Jackson had been employed by Appellee for approximately nine and one-half years at the time of her removal on August 19, 2008.

2. At the time of her removal, Appellant Jackson was a Unit Manager, responsible for the safety and supervision of approximately twenty to thirty youth and the supervision of approximately twelve JCOs.
3. Appellant Jackson attended frequent and various trainings at the Appellee and was familiar with the standard operating procedures, work rules, the policies regarding Response to Resistant Youth Behavior and the Response to Resistance Continuum.
4. On April 2, 2008, Appellant Jackson was the Unit Manager on duty. As such, for her unit, she was the person in charge.
5. After being notified that a youth was being non-compliant, Appellant Jackson took her video camera and went to where the youth was. She talked with the youth and while doing so, two JCOs approached the youth. The youth stood and began arguing with one of the JCOs. Appellant Jackson then began filming the incident.
6. Appellant Jackson did not provide direction to the JCOs during the incident and she did not try to contact additional help. She did not activate her "man down" button and did not have a radio with her. When JCO Dorsey and the youth ended up on the floor, JCO Dorsey made a motion as to punch the youth. Appellant Jackson did not intervene at that point and she did not include in her report JCO Dorsey's movement to punch the youth.
7. During the incident, there were other youth standing outside their doors.

CONCLUSIONS OF LAW

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

Appellant Jackson was a Unit Manager and as a supervisor and the person in charge of an entire unit, she is held to a high standard. During the incident of April 2, 2008, Appellant Jackson did not carry out her responsibilities as provided in the work rules and policies. She was charged with a neglect of duty and the evidence established she did neglect her duty.

Appellant Jackson basically did nothing other than run the camera during the incident on April 2, 2008. According to policy 301.05 (Appellee's Exhibits O, P and Q), Appellant Jackson correctly tried a verbal response to the youth's non-compliant behavior. The policy then states that if the youth's behavior increases to the point of a planned intervention, the Unit Manager is to request the presence of the Operations Manager, plan the intervention, assign roles to staff, request additional staff if needed and provide direction. Appellant Jackson did not do any of those requirements.

Appellant Jackson stated she took her camera with her as sometimes the mere presence of the camera is enough to diffuse the situation. According to the policy, the camera is only to be used for planned interventions. Appellant Jackson certainly should have been aware of the policy and if she took her camera with her, she must have thought it may be necessary to use it. When she began filming, she had not devised a plan, did not assign roles to any JCO and did not introduce anyone on camera. She basically filmed the situation as it developed and did nothing to control what could have been a very dangerous situation.

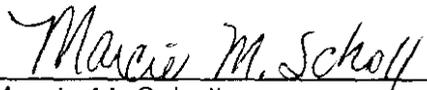
The evidence established that no one activated their "man down" button. Appellant Jackson testified she did not think hers worked and she did not take any action to have it tested or fixed. It is her responsibility to notify the control center that her equipment doesn't work. Appellant Jackson did not provide any direction to any of the JCOs involved in the incident and she did not try to separate the youth and JCO Dorsey when they began their verbal altercation. She did not direct anyone else to separate the two and she did not call for assistance. There were many other youth standing along the wall, watching the incident and any one of them could have become involved at any time. Appellant Jackson basically took no action throughout the entire incident, except to run the camera and even that did not provide a viewable tape.

Appellant Jackson was also charged with dishonesty and the failure to report the use of physical force. In viewing the tape from the room camera it is clear that JCO Dorsey definitely raised his arm in a punching motion toward the youth when they were both on the floor. Appellant Jackson did not report such motion from JCO Dorsey. She first stated she did not see any punch being thrown by JCO Dorsey, then after viewing the tape, she stated she wanted to change her statement to reflect the punch. Appellant Jackson was present during the entire incident and was filming the youth. The camera was to be focused on the youth and as such, she

Victoria F. Jackson
Case No. 08-REM-08-0485
Page 13

certainly should have seen the punch being thrown by JCO Dorsey. She did not report it and when confronted with the evidence, she then tried to change her statement.

As a Unit Manager, Appellant Jackson was required to manage. She did not do so on April 2, 2008 when the incident took place. As such, Appellee has met its burden of proof and it is my **RECOMMENDATION** that Appellant Jackson's removal be **AFFIRMED** pursuant to section 124.34 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge

:mms