

IN THE MATTER OF ARBITRATION

BETWEEN

SEIU/DISTRICT 1199

AND

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Grievant: William Koshover

Case No: 28-02-20071009-0114-02-12

Date of Hearing: January 21, 2009

Place of Hearing: Columbus, Ohio (SEIU office)

APPEARANCES:

For SEIU/District 1199:

Advocate: Joshua Norris, Staff Representative

2nd Chair: Krista Branch

Witnesses:

Andrew Thomas

Ronald Mitchell

Nancy Rhinock

Grievant

For the Ohio Department of Rehabilitation and Correction:

Advocate: George Lopez, Labor Relations Officer

2nd Chair: Allison Vaughn

Marissa Hartley, Office of Collective Bargaining

Witnesses:

Deborah Herubin

Carla Summer

Rebecca Bond

Casey Burns

OPINION AND AWARD

Arbitrator: Dwight A. Washington, Esq.

Date of Award: April 2, 2009

INTRODUCTION

The matter before the Arbitrator is a Grievance pursuant to the Collective Bargaining Agreement (CBA) in effect June 1, 2006 through May 31, 2009, between the State of Ohio Department of Rehabilitation and Correction (DRC) and the SEIU/1199 Chapter (Union).

The issue before the Arbitrator is whether the Standards of Employee Conduct, Rules 7 (failure to follow post orders, administrative regulations, policies or directives) and 41 (unauthorized actions that could harm any individual under the supervision of the Department) were violated when William Koshover (Koshover), the Grievant, allegedly engaged in improper conduct with an offender under his supervision as a Parole Officer. The Grievant was terminated on or about September 29, 2007 and the Union appealed in accordance with Article 7.06 of the CBA.

This matter was heard on January 21, 2009 and both parties had the opportunity to present evidence through witnesses and exhibits. Post-hearing briefs were submitted by both parties on or about February 18, 2009.

BACKGROUND

Koshover was employed as a Parole Officer in the Cincinnati Region. Koshover was responsible for the supervision of offenders in accordance with the policies and procedures of the Division of Parole and Community Services (DPCS). The Grievant's duties included verifying that the offender was following his/her parole guidelines and not engaging in additional criminal conduct while under the supervision of the DRC.

DRC alleges that the Grievant conducted two partial strip searches on offender Carla Summer (Summer) in May 2006 and June 2006 outside the scope of his recognized duties. The first incident occurred at the Grievant's office and the second occurred at Summer's residence.

The Grievant denied conducting the partial strip searches on Summer. DRC also contends that the Grievant failed to follow the policies of DRC when he knowingly engaged in the following behavior: failed to sanction Summer for violations which occurred during her supervision under the Grievant; failed to address positive drug tests of Summer; failed to staff (notify) his supervisor of Summer's arrest for domestic violence and not reporting this information to the State of Indiana;¹ and missed office and treatment assessment appointments. Moreover, the Grievant failed to accurately document his contacts with Summer as required by the Adult Parole Authority in his Field Officers Tablet (FOT). The Employer submits that the Grievant violated the trust and the Department's Standards of Employee Conduct.

Koshover, on the other hand, points out his exemplary work record and questions the credibility of Summer and the other witnesses. The Union argues that the investigation is flawed and numerous discrepancies exist regarding the testimony of ". . . convicted felons with mismatched stories over that of a veteran employee with a proven track record, no prior disciplinary history and countless judges, police officers, and other persons of stature willing to stake their good names on his reputation . . ." (Union Closing Statement, p. 8).

ISSUE

Did the Employer violate Article 8 of the Collective Bargaining Agreement by discharging former employee William Koshover? If so, what shall the remedy be?

¹ Summer was assigned to the Cincinnati office pursuant to the Interstate Compact between the States of Indiana and Ohio. Summer was convicted in Indiana but was under supervision in Ohio where she was residing.

RELEVANT PROVISIONS OF THE CBA AND DRC WORK RULES

CBA ARTICLE 8 – DISCIPLINE

8.01 Standard

Disciplinary action may be imposed upon an employee only for just cause.

8.02 Progressive Discipline

The principles of progressive discipline shall be followed. These principles usually include:

- A. Verbal Reprimand
- B. Written Reprimand
- C. A fine in an amount not to exceed five (5) days pay
- D. Suspension
- E. Reduction of one step. This shall not interfere with the employee's normal step anniversary. Solely at the Employer's discretion, this action shall only be used as an alternative to termination.
- F. Removal

The application of these steps is contingent upon the type and occurrence of various disciplinary offenses.

DRC STANDARDS OF EMPLOYEE CONDUCT

		1 st	2 nd	3 rd	4 th
Rule 7:	Failure to follow post orders, administrative regulations, policies or directives	WR- 1 day	2 days	5 days	R
Rule 41:	Unauthorized actions that could harm any individual under the supervision of the Department	WR- 1 day	2 days- R	5 days- R	R

POSITION OF THE PARTIES

EMPLOYER'S POSITION

The Grievant was removed for the following conduct: failing to address positive drug tests of Summer; failing to sanction or staff Summer for behaviors that violated policies/procedures of the Adult Parole Authority (APA); failing to accurately document contacts with Summer; failing to notify the State of Indiana of Summer's domestic violence

arrest; and conducting two (2) partial strip searches of Summer. The Employer became aware of the alleged strip search allegation when Summer advised Brenda Young (Young), Crossroads Center Program Coordinator, of them during counseling sessions on October 5, 2006 and April 23, 2007.

Young was working for Crossroads Center in October 2006 and April 2007 while Summer was attending counseling sessions there as part of her compulsory treatment program. Young informed Troy Peace (Peace), Therapist, of the searches and also told him that the Grievant allegedly displayed unusually friendly behavior toward Summer by inviting her to attend social events with him. Peace informed the Grievant's supervisor Courtney O'Meara (O'Meara), and the investigation commenced.

The Employer's investigation was assigned to Deborah Herubin (Herubin), Auditor/Investigator, to determine whether the Grievant had engaged in inappropriate behavior with Summer. To that extent, Herubin interviewed numerous witnesses and reviewed various policies to ascertain what occurred.

The Employer's investigation concluded that Summer was subjected to two inappropriate partial strip searches by the Grievant. The first search occurred during the initial visit to the Grievant's office on May 9, 2006. Summer was requested to remove her jacket where her arms were checked for IV marks, and he also told her to lower her pants and panties so that he could perform a search of her groin area. Apparently the Grievant was checking for IV track marks due to her past drug history. Summer indicated that Grievant's office door was closed, but she had informed the Grievant prior to the search that she never injected heroin in her groin area. Summer testified that she felt embarrassed but did not tell anyone about the search other than her boyfriend. According to Summer, she did not report the Grievant because ". . . her freedom was

in his hands, [she] was in a custody battle over her kids and [she] felt that no one would believe her.” (Employer’s Post-Hearing Statement, p. 5).

The second partial strip search occurred on June 2, 2006 when the Grievant made a home visit to see Summer. Summer was residing with her mother, Rebecca Bond, on the date of this incident. According to Summer, the Grievant arrived around 7:30 a.m. and asked her to go to the back room to check for needle marks. Bond and the children were asleep at the time. Summer was told to drop her pants and, while the Grievant was visually inspecting her groin area, Bond came into the room and confronted the Grievant. According to Bond’s testimony she said “What the f _ _ _ are you doing? Where’s your female partner?” According to Summer and Bond, the Grievant became nervous and left the residence shortly thereafter.

While under DPSC supervision, Summer was arrested and convicted of domestic violence on September 9, 2006 and placed in treatment with Young at the Crossroads Center by her Hamilton County Probation Officer, Kevin Bonecutter (Bonecutter). On October 5, 2006 Summer informed Young of the strip searches, but Young did not report it to her supervisor or to the Grievant’s supervisor. On April 23, 2007, while still in counseling, Summer again informed Young of the strip searches. Young, in turn, told Peace, who informed Grievant’s supervisor and an investigation commenced.

The Employer also asserted that the Grievant seemed overly-concerned about Summer’s boyfriend and warned her that, because his family had a known criminal record, she would wind up in prison. According to Summer, the Grievant screamed at her during the second office visit with the Grievant and told her that she would be sanctioned if she continued to see her boyfriend. Bond also testified that she heard the Grievant inquire about Summer’s boyfriend while the Grievant was at their residence on June 2, 2006.

Additionally, the Grievant picked up Summer when he saw her walking on the street and took her to her grandmother's and invited her to lunch on several occasions to celebrate Christmas. None of these contacts were documented in the Grievant's FOT.

Casey Burns (Burns), an offender, testifying as a rebuttal witness, stated that the Grievant conducted two partial strip searches on her while she was under his supervision. The first search occurred during her initial office visit in November 2005 when the Grievant looked at her arms, felt the back of her legs and requested that she unzip her pants so he could check her groin area. According to Burns, the Grievant used his hand to feel around her groin area. No one was present, and the office door was closed. The second search occurred during a home visit in the Spring of 2006. Burns indicated that the Grievant requested that her two children remain in the living room and then escorted her to the bathroom and proceeded to check her arms, legs and again felt around her groin area. Burns indicated that she did not tell anyone because she was scared and did not want to cause trouble. Burns was reassigned to Parole Officer Emily Givan (Givan) after Grievant's removal in January 2008. Burns told Parole Officer Givan of the strip searches. The Employer believes that Burns' testimony adds credibility to Summer's and Bond's versions and corroborates that Grievant engaged in the partial strip searches of offenders.

In summary, the Employer opines that credible evidence exists showing that the Grievant conducted partial strip searches of Summer in violation of Rule 41.

The Employer also asserts that ample evidence exists demonstrating that the Grievant failed to follow the policies and procedures of the Adult Parole Authority, DPCS and/or DRC. The Grievant not only failed to staff with his supervisor certain rule violations committed by Summer but also failed to sanction Summer for her behavior. The investigation confirms that the Grievant neither staffed nor sanctioned Summer for the following conduct while she was

under his supervision: (1) two positive drug tests; (2) an arrest and conviction of domestic violence; (3) missed office appointments; (4) missed treatment assessment appointments; and (5) failure to inform the State of Indiana regarding Summer's arrest/conviction for domestic violence as required by the Interstate Compact. The Grievant admitted to Investigator Herubin that it was an oversight regarding his failure to staff with his supervisor or sanction Summer for the foregoing behavior. The Employer points out that the Grievant had the authority to place Summer in in-patient treatment if he had staffed and issued appropriate sanctions against her. In other words, given the numerous policy violations by Summer the Grievant could have sanctioned her to an in-house drug treatment program, as opposed to Summer being placed in in-patient treatment by Parole Officer Bonecutter after her domestic violence charge.

The Employer further points out that Summer was released from supervision due to her reaching her maximum expiration date and not because of the Grievant's behavior.

Finally, the Employer concludes that the credibility of its witnesses and the undisputed evidence that the Grievant violated the policies/procedures in not staffing or sanctioning Summer, demonstrate that just cause exists for the discipline imposed. As a result, the grievance should be denied.

UNION'S POSITION

The Grievant dedicated his professional career in helping criminal offenders to rehabilitate their lives and enabling them to become functioning members of society. The Grievant's credibility is now challenged by "... seasoned offenders who only sought to further their own personal agendas and did so with absolutely no regard for the truth." (Union Closing Statement, p. 1). The Union opines that the Employer improperly accepted the facts supplied by three convicted criminals (Summer, Bond and Burns) and failed to reconcile the surfeit of

discrepancies which exist in the record. The Union further asserts that the investigation conducted by Herubin is flawed because it was not objective, thorough or complete.

The Union questions the objectiveness of Herubin's investigation and her testimony in several areas: failure to interview several employees such as Brian Hilsinger (whose office was located directly across from the Grievant's) and Andy Thomas (Acting Supervisor of the Grievant when Summer was initially assigned); failure to review or consider the Grievant's performance evaluations; and failure to give any weight to the Grievant's length and good service as a DRC employee. Moreover, critical discrepancies were not addressed by Herubin that directly impact the credibility of Summer, Bond and Burns.

The Union contends that Bond's version of the alleged second partial strip search is compromised by her inability to recall whether the home visit occurred in September of 2005 or June of 2006. Bond's written statement states the visit happened in September 2005 whereas her hearing testimony indicated June 2006. According to the Union, Bond's confusion on the date is problematic because the investigation also fails to disclose whether Herubin inquired about Bond's sobriety at the time of the alleged search. Also, Herubin testified on cross examination that Summer admitted using marijuana and cocaine sometime prior to making the strip search allegations, but the investigation report is silent as to Summer's sobriety on April 9, 2006 or June 2, 2006. The Union asserts that the Employer's acceptance of Bond's and Summer's veracity on face value given their history of drug abuse defies logic.

According to the Union Summer's motivation for creating these allegations was to obtain early termination from supervision. The Union points out that Herubin denied any knowledge of Summer's early termination, even though Summer testified that Herubin informed her that early

termination “was the least we could do after all you have been through.” (Union Closing Statement, p. 3).

Regarding the alleged partial strip searches, the Union denies that either occurred. Regarding the first search, Union witnesses testified that the Grievant’s office door is rarely closed and always open if clients were in the office, and that clients do not exit out of the back door unless they are being transported to jail as a result of an arrest. The likelihood of the Grievant having his door closed while an offender was in the office is remote.

Regarding the second partial strip search, the Grievant testified that Bond was asleep when he arrived and that she remained asleep during his visit. The Union also attacks Bond’s and Summer’s versions of the alleged search, arguing that the Grievant’s height of approximately 6’3” would prevent him from seeing Summer’s genitalia due to her height of 5’1” and her overweight condition; to-wit, Summer’s stomach was too large for the Grievant to see anything but her stomach and possibly her legs. Therefore, even if Bond’s and Summer’s versions are credited regarding the partial strip search, it would have been physically impossible for the Grievant to view Summer’s genitalia.

The Union also asserts that Bond’s testimony concerning the second search is at odds with the written statement she provided on June 6, 2007. (Joint Exhibit (JX) 4(C), pp. 25-26). At the hearing, Bond testified that when she saw the Grievant staring at Summer’s groin area, she stated “What the f_ _ _ are you doing, and you get the f_ _ _ out of my house.” Upon cross, the Union pointed out that Bond’s written statement indicated that she asked the Grievant what he was doing, and he indicated that he was checking her groin for needle marks. Her written statement is void of the “F” word. A discrepancy thus exists between her written statement and her testimony. Another example regarding the credibility of both Summer and Bond involves

whether or not Summer's boyfriend was in the house during the second search. Summer testified that he was present but asleep whereas Bond testified that the boyfriend was not in the house during the visit.

The Grievant testified that he is a Certified Chemical Dependency Counselor (CCDC). The Grievant considered himself a productive employee with no prior discipline during his career with the Employer. The Grievant denied any search of Summer's or Burns' groin areas and indicated that his office door was open during the initial visits of both Summer and Burns. The Grievant stated that he did make a home visit to Summer's residence but indicated that he only visually checked her arms and legs for needle marks and remained in the front room at all times.

With respect to the policy violations, the Grievant admits a failure to staff with his supervisor but does assert that confusion resulted from the domestic violence arrest in that an arrest header was not issued to officially notify him of Summer's arrest. The Grievant's past practice was not to sanction offenders on each violation but to work with them on minor matters. If he sanctioned Summer for missed appointments, he would have required her to only reschedule the appointment.

The Grievant also presented evidence of a polygraph exam he took which indicated he didn't request Summer to remove any clothing to enable him to view her groin area. (Union (UN) Exhibit (X) 1). The polygraph exam was administered on September 23, 2008. The Grievant admitted that it is not unusual for him to run into either current or former offenders in the area he lives, and that was what happened when he picked up Summer off Warsaw Avenue and drove her to her grandmother's home.

Regarding Burns' testimony, the Grievant denies all of Burns' allegations and states that he never requested that she remove any clothing or do anything inappropriate while she was under his supervision. The Union also objects to Burns' testimony as a rebuttal witness because she was not on the witness list and none of Burns' information was disclosed prior to the fourth step of the grievance procedure. The Union also opines that Burns had previously worked with Summer at Bob Evans and they had known each other for a long time and that Burns was an offender who believed if she stated that the Grievant inspected her groin area, she would be released from supervision earlier. Finally, the Grievant testified that he was willing to undergo a second polygraph exam regarding Burns' allegations.

In conclusion, the Union asserts that the Employer failed to provide the quantum of evidence necessary to meet the just cause standard. The Employer's investigation was not objective, and the discrepancies were accepted by the Employer if the stories were "close enough." In this case, where it's a "he-said/she-said" tug of war, justice demands that the testimony of the Grievant, who has a long history of being trustworthy, reliable and honest, receive greater weight than that of Summer, Bond and Burns.

DISCUSSION AND CONCLUSIONS

Based upon the sworn testimony presented at the hearing, the exhibits, and the arguments of the parties, the grievance is denied. My reasons are as follows:

The Grievant worked for DPCS, which is an administrative division within DRC. This division also includes the APA. The APA provides offender parole services and employs parole officers to supervise the offenders. Part of parole officers' duties is to share information "... which follows a course of action which will help facilitate the supervision of an offender, protection of the community, and ensures that all aspects of supervision and investigation meet

agency standards.” (JX 4(C), p. 79). The parole officer is required to maintain contact with the offender and, if custody violations warrant it, an offender’s revocation of release can occur. The parole officer plays a critical role in determining whether an offender remains physically free or returns to incarceration.

The record demonstrates that the Grievant had actual knowledge of certain behavior of Summer that was contrary to her supervised plan, such as: (1) on July 12, 2006, Summer tested positive for marijuana and cocaine; (2) on September 18, 2006, Summer tested positive for marijuana; (3) on September 12, 2006, Summer was convicted of domestic violence in Hamilton County; (4) Summer missed office visits in 2006 and 2007; and (5) Summer missed a treatment assessment evaluation. In Herubin’s interview with the Grievant on May 18, 2007, he admitted to the above information and then confirmed the same at the hearing. (JX 4(C), pp. 11-15). The Grievant further acknowledged that he failed to staff with his supervisor or sanction Summer for any of the above conduct. O’Meara, the Grievant’s supervisor from August 2006, indicated that offenders are required to be sanctioned for positive drug tests and any new conviction. (JX 4(C), p. 9). Moreover, the Grievant failed to complete any report for the State of Indiana, since Summer’s case was subject to the Interstate Compact, indicating she was arrested for and convicted of domestic violence. The above unrefuted conduct of the Grievant violates Rule 7, and just cause exists to impose discipline. Grievant’s failure to staff or sanction Summer for any of the obvious violations makes no sense and violates established DRC/DPCS policy.

If the Rule 7 violations were the only violations at issue, removal would be unduly harsh and, in my opinion, inappropriate given the Grievant’s background and length of service. However, what occurred during Summer’s first office visit and the residential visit on June 2, 2006 lies at the heart of this dispute and supports his termination.

Credibility is pivotal in determining whether the Employer's evidence supports the Grievant's removal for allegedly violating Rule 41. Both parties addressed the "credibility" issue extensively in their closing statements and at the hearing.

The Employer believes that the Grievant violated the public trust when he required that Summer submit to partial strip searches in violation of Rule 41. The Employer submitted unrefuted evidence that the APA does not have a policy authorizing strip searches of offenders and O'Meara stated that a "plain view" observation of arms and neck may occur without any physical contact or rolling up pants, removing socks or viewing any other area that is covered by clothes.

During the first office visit, Summer stated that the Grievant closed the door and asked her to remove her jacket. After checking her arms for IV marks, he asked her to drop her pants and underwear so he could check for needle marks in and around the groin area. Prior to the visual check, both Summer and the Grievant admit that she had shared that her drug of choice was heroin. Summer further indicates that she was upset and at the conclusion of the interview, the Grievant walked her down the steps of the office to the rear door and gave her two bus tokens. Summer testified that she told her boyfriend what happened during this visit.

The Grievant denies each of the above allegations and offers evidence to refute Summer's version. The Grievant testified that his office door is open when interviewing offenders and that he checked Summer's arms, elbow areas and knee areas for needle marks. To examine her knee area, the Grievant requested that Summer roll her pants up. The Union presented several other witnesses who verified that it is the policy of parole officers to have office doors open during offender interviews and that the back door to the office is typically used for an arrest, not to escort someone out the back door. (Testimony of Andrew Thomas). In fact

Ronald Mitchell (Mitchell), a twenty-year parole officer, testified that the door is only used if you're going to jail and that the door automatically locks when you leave.

If the facts in this matter only involved Summer's initial office visit, the credibility determinations would have been difficult for this Arbitrator. Given the Grievant's work record, his performance evaluations, and the "he said/she said" factor, the facts would have been insufficient to find that just cause existed for a violation of Rule 41 or the Grievant's removal. The Arbitrator must question why, if Summer immediately told her boyfriend what occurred in the office, there was no witness at the hearing to corroborate her story.

The testimony concerning that residential visit is critical in determining the outcome of the credibility divide between Summer and the Grievant. A second strip search is alleged in this matter, and Summer testified that the Grievant called around 6:30 a.m. and, when the Grievant arrived around 7:00 a.m. or so, Bond, her children, and her boyfriend were asleep. Summer and the Grievant proceeded to the back bedroom, and the Grievant instructed Summer to drop her pants and panties so he could check for needle marks. According to Summer, Bond walked in the room while the Grievant was looking at her exposed groin area.

The June 2, 2006 search inserts Bond into the credibility debate due to her presence and her ability to provide first-hand information regarding what occurred. Bond's statement of June 6, 2007 indicates that the visit occurred in September 2005. Bond was asleep when the Grievant arrived but was awakened when she heard voices. Bond proceeded to the back bedroom where she observed the Grievant slightly bent at the waist looking at Summer's groin area checking for needle marks. The Union points out that Bond's statement is at odds with her testimony at the hearing. At the hearing, Bond stated that she said "What the f _ _ _ are you doing?" However, her written statement, which was provided over a year after the occurrence of the second

incident, is void of those words. The Union questioned Bond's believability when her written statement indicated that the incident happened in September 2005, although it actually occurred in June 2006. The Union also points out that Bond is a convicted felon and a past drug user as well.

The Arbitrator finds that the alleged discrepancies between Bond's testimony and her written statement are cured by other reliable evidence or, simply, are not relevant. Bond's written recollection that the residential visit occurred in September 2005 is cured by the Grievant's notes that indicate that the visit happened on June 2, 2006. The specific words Bond did or did not use when she entered the bedroom are not problematic to this Arbitrator because what Bond observed is at issue here - the Grievant was bent over and inspecting her daughter's exposed groin area.

The Grievant's FOT on June 2, 2006 indicates that a home visit occurred and ". . . no signs of IV drug use was evident." (JX 4(C), p. 14). The Grievant further admits that he told Summer that he wanted to check her arms and legs for IV drug use but refutes checking any other areas for IV use. The Grievant's testimony is not believable considering Bond's testimony, the Grievant's notes, his desire to employ his CCDC training, and the unrefuted evidence that the Grievant required Summer to remove her jacket to check her arms and to roll up her pants to check her legs during the first visit.

Summer and Bond agree on the basic facts regarding the second partial search. The Union argues that the investigation failed to address the sobriety of Summer and/or Bond and indicates that Summer had used marijuana within twenty-four hours of the visit. No evidence was offered presenting the inference that Summer was unable to recall what occurred on the morning of June 2 due to her prior marijuana use. Moreover, the Grievant testified that he was a

Certified Chemical Dependency Counselor (CCDC) and, if her physical and/or mental state was sufficiently disoriented, the Grievant should have noted such condition in his FOT.

The alleged strip searches were not reported by Summer until October 5, 2006 when, in a group counseling session, Summer shared this information with Young. Young initially failed to act or inform anyone of Summer's allegations. In April 2007, Summer disclosed to Young that the Grievant wanted to meet her for lunch, but Summer appeared alarmed and fearful and, at this time again informed Young of the strip search incidents. Young alerted the appropriate authorities within APA and consequently, Herubin's investigation commenced regarding the Grievant's conduct. (JX 4(C), pp. 7-8).

The delay of almost eleven months is primarily attributable to the failure of Young to take seriously Summer's complaint in October 2006. Summer shares responsibility for some of the delay, but not all. Summer's sobriety, family and employment challenges, the custody battle for her kids and the resultant domestic violence conviction, and the Grievant's behavior, were some of the many stressors she was experiencing. Therefore, Summer's inability to file an internal grievance against the Grievant immediately after either of the alleged searches is understandable considering her circumstances in 2006.

The more informative analysis is the actual or apparent motivation of the parties. It is obvious the Grievant's reputation and job are at stake regarding the outcome of the allegations. On the other hand, it is unclear what Bond's and Summer's motivation would be to lie regarding the June 2, 2006 incident.

The record indicates that Bond and Summer had inconsistencies in their testimony regarding such events as: the actual words spoken by Bond to the Grievant; whether Summer's boyfriend was in the residence that day; and Bond's inability to recall the date of the visit.

However, the record also contains believable, consistent, and credible evidence from Bond and Summer that is at the heart of this matter: Bond was asleep when the Grievant arrived; Summer was checked for IV marks on her arms and legs; the Grievant and Summer were not in the front room of the apartment when the visual examination occurred; Summer was checked for IV marks by the Grievant in a back room of the apartment; the Grievant was looking at Summer's exposed groin area when Bond entered the room; and the Grievant discussed Summer's boyfriend and the possibility of her going to prison if she continued to see him.

On June 2, 2006, Summer was in her first month of supervision with the Grievant, and no facts suggest that she was non-compliant with her plan of supervision. Also, no credible evidence exists to suggest that Bond had any reason to misrepresent any of the material facts regarding the June 2, 2006 incident. Although the Union contends that the investigation was flawed because Herubin failed to inquire into Bond's sobriety, the Union presented no contra evidence to indicate that Bond has not been drug free since 1995. In fact, Bond's testimony corroborates key elements of Summer's testimony and Bond's former past status as a convicted felon was given little weight by this Arbitrator regarding her ability to recall the relevant events of June 2, 2006.

The Union further opines that if the Grievant was in fact looking at Summer's groin area, he couldn't actually see anything because Summer was allegedly overweight and short and "... her belly would prevent Mr. Koshover from being able to see anything whatsoever, other than possibly her legs and stomach." (Union Closing Statement, p. 4). The "belly defense", although imaginative, fails to address the fact that a parole officer cannot perform strip searches on offenders regardless of their weight or size.

The tipping point factually occurred when the Grievant testified upon cross examination that he had never conducted partial strip searches while employed by DRC. Over the Union's objections, Burns was called as a rebuttal witness. The Union argues that Burns was not listed on the Employer's witness list and no information of Burns was provided prior to the fourth step. A rebuttal witness is permitted to rebut material evidence offered by a party. If the Grievant had admitted to conducting partial searches, Burns' testimony would have been moot and excluded.

Burns testified that she came under the authority of the APA and the Grievant's supervision in November 2005. During the initial office visit with Burns, standard paperwork was completed and while the door was closed, the Grievant inquired about her drug usage, among other things. The Grievant told Burns that he had to check for IV marks, whereupon he looked at her arms and touched the back of her legs. The Grievant, according to Burns, told her that he had to check her groin area. Burns testified that she unzipped her pants and the Grievant used his hands to feel around her groin area. The Grievant did not touch her vagina or put his hands underneath her underwear. Burns testified that she was scared and did not inform anyone of the search because she did not want to cause trouble.

Burns continued under the Grievant's supervision and states that a second search occurred in the spring of 2006 at her apartment. The Grievant and Burns went into the bathroom while her children remained in the living room, and he proceeded to perform a search for IV track marks. According to Burns, the Grievant checked her arms, legs and felt her around her groin area again. Upon cross examination by the Union, Burns testified that she did not know Summer, Summer's boyfriend or Bond. Burns was under the supervision of the APA at the time of the hearing.

After being transferred to Parole Officer Givan, Burns was informed that the Grievant no longer worked for APA. At that time, Burns informed Givan of the alleged partial strip searches the Grievant conducted on her. The Grievant denied ever conducting any searches of Burns' groin area and was willing to take a second polygraph examination.

It must be noted that Summer's and Burns' disclosures occurred either during counseling sessions or when the Grievant was no longer responsible for their supervision. Summer informed Young while she was undergoing in-patient services at Crossroads, and Burns informed Givan after the Grievant was no longer her parole officer. Summer and Burns testified that they were fearful of what might happen to them, since the Grievant had the authority to sanction, which could result in extended supervision or revocation of probation. I also find somewhat disconcerting and borderline threatening the Grievant's statements that Summer would go to jail if she didn't stay away from her boyfriend. The hesitancy of Summer and Burns to inform anyone at APA about the searches was not unreasonable considering their status as offenders under the Grievant's supervision.

Burns' testimony regarding the partial searches is similar in substance to Summer's in all material aspects and strongly tips the credibility scale in Summer's favor. At the hearing, Burns appeared somewhat nervous to testify, but she was forthright in her demeanor and answers. No evidence exists to infer that Burns' testimony was motivated by any bias or prejudice toward the Grievant. No evidence exists that Burns or Summer was sanctioned by the Grievant in a disparate matter in comparison to other offenders. Additionally, no evidence exists to infer that Burns and Summer were in collusion against the Grievant. Burns' testimony provides the undeniable inference that the Grievant engaged in unauthorized strip searches of Summer.

I find that credible evidence exists through the testimonies of Summer, Bond and Burns to conclude that the Grievant violated Rule 41 on both May 9, 2006 and June 2, 2006 when the Grievant conducted partial strip searches on Summer. Furthermore, the intrusiveness of the behavior violates the public trust expected of a parole officer warranting discipline, including removal. The Employer, based upon the record, did not act arbitrarily, capriciously or unreasonably, and just cause existed to remove the Grievant.

The Union contends that the Grievant's longevity and good service should act as mitigation to lessen the discipline. The Grievant's fourteen (14) years of good service and work record would ordinarily entitle him to receive good credit for his past deeds. In Re International Extrusion Corporation, 106 LA 371 (Selvo 1996). That is not the case here.

The Grievant presented his credentials which included his status as a CCDC. However, the investigation is also clear that the Grievant as a parole officer is not authorized to administer body searches to check for IV marks. The Grievant was required to utilize the DARS (Drug and Alcohol Recognition System) to determine if someone is using drugs. DARS training is similar to conducting field sobriety tests administered by police officers if they suspect a driver is operating a vehicle under the influence of alcohol and/or drugs. At odds with the Grievant's obvious knowledge in this area was his failure to perform any field tests and/or collect urine samples or perform a rapid or lab test if he believed that either Summer or Burns was using drugs during the Grievant's residential visits. Moreover, the Grievant admitted during the investigation and the hearing that the APA did not train him nor require that he inspect offenders for IV marks.

The Grievant presented himself at the hearing as extremely articulate and intelligent. The plethora of reference letters submitted on his behalf indicates that he is highly regarded and held

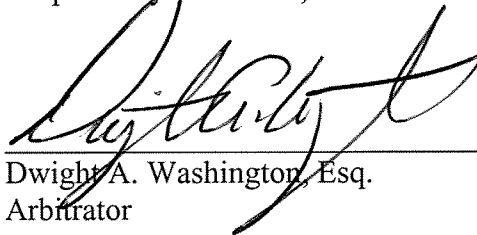
in high esteem by many. The Arbitrator carefully weighed the conduct of the Grievant against the mitigating factors cited above, and concludes that to place the Grievant back into that environment under any circumstances would not be prudent. The Grievant's past record and community status was considered but fails to mitigate his removal or exonerate his behavior, which was a serious breach of the conduct required of a parole officer.

The Arbitrator also considered the Union's position on other issues raised at the hearing such as: Summer's failure to pay supervision fees prior to her termination; Summer's belief that she was released for supervision early due to reporting the Grievant; Summer's failure to recall she belonged to a gang at age 13 or 14; Summer's and Burns' inability to recall what was on the back of the Grievant's office door; the passing of a polygraph exam by the Grievant on September 23, 2008; and the failure of Herubin to interview certain witnesses. Singularly or cumulatively, the resolution of any of the foregoing factors in favor of the Grievant would not supplant the credibility issue and the other evidentiary findings indicating the Grievant's conduct violated Rules 7 and 41.

RECOMMENDATION

Grievance denied.

Respectfully submitted,



Dwight A. Washington, Esq.
Arbitrator