**OCB AWARD NUMBER: 2179**

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| **SUBJECT:** | **ARB SUMMARY # 2179** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **24-04-20111208-0018-01-04** |
| **DEPARTMENT:** | **Developmental Disabilities** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Thomas J. Nowel** |
| **GRIEVANT NAME:** | **Ralph McMillen** |
| **MANAGEMENT ADVOCATE:** | **Melinda Armstrong** |
| **UNION ADVOCATE:** | **Tim Watson** |
| **ARBITRATION DATE:** | **08/20/2012** |
| **DECISION DATE:** | **09/19/2012** |
| **DECISION:** | **Denied** |
| **CONTRACT SECTIONS:** | **Article 24.01 - Discipline** |
| **OCB RESEARCH CODES:** | **118.01 – Discipline in General** |

**HOLDING: Grievance denied. The Arbitrator found that the grievant did in fact violate his last chance agreement when he physically subdued a resident after the resident became disruptive towards a Therapeutic Program Worker (TPW) and hit her in the stomach. The grievant used physical force to subdue the resident that was not an approved method of restoring order, and violated a DoDD and Federal work rule regarding resident restraint. The grievance was denied.**

Ralph McMillen was a 27 year employee with DoDD at the time of the incident. He was a TPW at the Cambridge Developmental Center with several disciplines on his record. TPW McMillen signed a last chance agreement on August 5, 2011 for violating Work Rule E3. The last chance agreement stated that if within 24 months from the date of the agreement the employee commits any performance related violations of the DoDD disciplinary grid or Cambridge Developmental Center’s work policies, he will be removed for violation of the last chance agreement.

The incident in question took place on November 9, 2011. A resident became disruptive and a TPW asked the resident to return to his designated area. The resident hit the TPW and started throwing things around. The grievant had come into the area to assist with the situation. The resident was then observed lying on the floor. There were several TPW’s that witnessed and testified to seeing the grievant physically subdue the disruptive resident with an arm across the neck and shoulders dragging him to the ground.

The Union argued that no violation of any work rules took place. The grievant testified that after he saw the grievant get disruptive and physically strike another TPW, he came over to assist with the situation and coerced the resident with dialogue to cease his actions and return to his appropriate area. The resident then laid down on his own accord, which he has been known to do. The Union argued that the two witnesses who supposedly saw the whole action unfold were not credible for they offered conflicting statements of what they actually saw and that they were biased against the grievant because of previous interactions regarding Union activities years ago. The Union maintained that the grievant used the appropriate and legitimate course of action to control the disruptive resident’s situation and he did not violate his last chance agreement.

Management argued that the two TPWs that witnessed the grievant physically take down the resident did not have conflicting statements at all, but in fact confirmed the physical action taken by the grievant. Both witnesses were able to describe in detail the method of which the grievant physically subdued the resident and dragged him to the floor. Management further stated that both of the witnesses, which were also TPWs of 24 years and 16 years respectively, were within several feet of the actual incident and were able to describe the grievant’s actions with consistency. Management pointed out that the grievant had a history of these kinds of incidents and was on a last chance agreement for a similar violation.

The Arbitrator found that based on the eye witness testimony, that the grievant did indeed physically restrain the disruptive resident in a manner that violated a DoDD work rule. The Arbitrator found that the Union did not substantiate any of its claims regarding the witnesses’ credibility, or lack thereof and the Union was not able to produce any evidence or testimony that corroborated the grievant’s version of events. The Arbitrator found that because the grievant physically restrained a resident that violated a performance work rule, the grievant therefore violated his last chance agreement. The grievance was denied in its entirety.