

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

BARBARA HALL,

Complainant,

vs.

**DEPARTMENT OF HUMAN SERVICES, PLATTE VALLEY YOUTH SERVICE CENTER,
DIVISION OF YOUTH CORRECTIONS,**

Respondent.

Administrative Law Judge Mary S. McClatchey held the hearing in this matter on June 28, 2002. First Assistant Attorney General Jill M.M. Gallet represented Respondent. Complainant appeared and represented herself.

MATTER APPEALED

Barbara Hall ("Complainant" or "Hall") appeals her disciplinary 5% reduction in pay for six months.

For the reasons set forth below, Respondent's action is **affirmed**.

ISSUES

1. Whether Complainant committed the acts for which she was disciplined;
2. Whether Respondent's action was arbitrary, capricious or contrary to rule or law.

FINDINGS OF FACT

1. Platte Valley Youth Services Center, Division of Youth Corrections ("Platte Valley") is a 120-bed youth detention center and institutional placement in Greeley Colorado. It serves Larimer, Jackson, Weld, Boulder, and Adams Counties.
2. Platte Valley is a maximum security facility for youth charged with serious crimes that would constitute felonies if committed by adults (homicide, assault with a deadly

weapon, sexual assault). It houses youth ages 10 to 18 that have been deemed by the criminal justice system to be a threat to the community, other individuals, or themselves.

3. The primary mission of Platte Valley is to protect the safety and security of the youth housed there. For purposes of this opinion, the youth will be referred to as "clients."
4. This case concerns the escape of a client from Platte Valley on January 11, 2002.
5. Complainant has been a Correctional Officer III-Supervisor ("CO III" or "shift supervisor") at Platte Valley since September 1997, when the facility opened. The shift supervisor is responsible for managing all aspects of the facility, including staff assignments, residential, educational, and medical programs, oversight of service providers, etc. The shift supervisor also represents Platte Valley administration in contacts with the public, such as law enforcement officials, attorneys, visitors, families, etc.
6. Policy 9.6, Security and Control, Shift Assignments and Shift Logs, mandates that the shift supervisor is directly responsible for the overall safety and security of the entire facility during a given shift. He or she is also required to "assure that the shift has and maintains minimum coverage."
7. Policy 9.6 also requires that Control Center Post staff must and "Verify the official count with the admission unit upon the hour (24 hours a day)" and "Verify and record official student counts as directed by PVYSC procedures or the shift supervisor."
8. The shift supervisor job description includes the following duties:
 - A. "Supervise using verbal or written directives and observation of daily activities, and aid subordinate positions in assuring facility security, order, and safety by executing visual or physical inspections or searches of persons, rooms, common areas and all equipment . . . to assure compliance with health, fire, and safety standards; operational memorandums, administrative policy and procedure"
 - B. "Supervises by observation, verbal and written directives and executes formal and informal counts at various times during the shift, by visually accounting for the youth's presence and well being through voice command or physical contact if necessary. Accountability of youth is also determined by making or reviewing entries in movement log book."
 - C. "Enforcement and conformity to rules and regulations."

The Intake Unit

9. When a new client, a youth in custody, enters Platte Valley, he or she enters the

Intake area first. New clients in Intake are strip searched, processed administratively, oriented, and then admitted to the facility. The Intake process takes approximately twenty to thirty minutes per client.

10. New clients often have to wait long periods of time before getting through Intake. During these waits, they are placed in holding cells. There are six holding cells in a row in Intake. A horseshoe-shaped desk area directly faces the holding cell rooms.
11. The Intake Unit is the busiest and most volatile area at Platte Valley. Because new clients entering the facility have not yet been searched, they present unknown risks. They can be intoxicated, angry, violent or confused.
12. The shift supervisor's office is located adjacent to Intake, approximately ten feet away. Shift supervisors can see the Intake area by standing directly outside their office.
13. In late 2001, the lead worker for Intake and Control developed a "Procedures Manual for Intake and Control", under the direction of Dr. Chris Thompson, Assistant Director for Detention Services and Security, Plate Valley. The manual mandates "several steps that must be completed" in Intake once a client is accepted into the facility. Step number 3 is the following:

"Complete a pat search of resident's person if the resident is the same gender as Intake staff. Be sure to include the resident's shoes as part of the pat search process. If unable to complete the paperwork for the youth at this time [e.g. the Intake packet] the youth is to be secured in a holding cell. When a youth is secured in the holding cell per PVYSC procedures a room check sheet is to be completed and placed on the resident's door. The youth is to be visually monitored every 10 minutes until the Intake process can be completed."
14. Prior to the client escape on January 11, 2002, the line staff in Intake did not follow this procedure, and supervisors at Platte Valley, including Complainant, did not enforce it.
15. The normal practice was to place clients awaiting Intake processing in the holding cells with the doors unsecured. The only time the door was locked was in the event a specific client presented a known security or safety risk.
16. In addition, no check sheet was completed or placed on the holding cell door. In fact, once a student was placed in a holding cell pending Intake processing, no log was made recording which student was in which cell. Instead, a packet on each new client was placed on the Intake desk. If Platte Valley staff sought to count the number of clients awaiting Intake processing, he or she would count the number of packets on the desk.

17. Intake staff informally monitored the presence of clients in the holding cell rooms by having clients leave their shoes outside the doors.
18. One reason Intake staff did not secure the holding cell doors was that if two or more clients shared a holding cell, locking the door could pose a safety threat.
19. It was customary practice for shift supervisors to rely on Intake staff to request additional assistance if needed. The shift supervisor's job description, and the professional standard of care, required that shift supervisors regularly assess staff needs in Intake and throughout the facility.

Friday Nights on the Intake Unit

20. Friday nights on the Intake Unit are always chaotic. The number of intakes increases to approximately 10 or more, because other facilities send groups of inmates to Platte Valley to make room for weekend arrests, and police also bring arrested offenders directly to Platte Valley.
21. On Friday nights, the Intake unit is the shift supervisor's highest priority, due to the high number of clients and the danger posed there. This heightened risk requires that the shift supervisor be sure to periodically check on the Intake unit.
22. It is customary to assign one Correctional Officer I ("CO I") to the Intake Unit, even on Friday nights. However, if the number of intakes becomes excessively high, the shift supervisor can reassign a second CO I to Intake on Friday nights, if staff availability permits.
23. There have never been more than two CO I's assigned to Intake for the entire Friday night shift at Platte Valley.
24. If Intake becomes so busy on a Friday night that a third staff member is needed on a temporary basis, the shift supervisor can pull a third CO I off another post, if available. Occasionally, the shift supervisor assists with strip searches in Intake.

January 11, 2002 - Escape of Gomez

25. The evening shift is from 2:00 p.m. to 10:00 p.m. On January 11, 2002, Complainant was assigned to work only a short shift, from 6:00 p.m. to 9:00 p.m. Complainant was customarily assigned to the day shift. However, for reasons unrelated to this case, she was working only twenty hours per week, on the evening shift.

26. John Fults, a CO II, was assigned to be acting shift supervisor during the periods Complainant was not present on January 11, 2002. It was common for him to serve as acting shift supervisor. Early in the shift, the CO I assigned to Intake informed Fults that she would be receiving a high number of intakes from the Boulder facility that evening, and requested extra staff assistance. Fults removed a CO I from another post and reassigned him to Intake for the duration of the shift. He also informed the Intake officer that he would use staff from other areas of the building to conduct the strip searches in the Visiting area, so that she and her back-up officer would be able to dedicate themselves solely to Intake.
27. The back-up officer reassigned to assist in Intake on January 11, 2002 was a probationary employee with only a few months of experience at Platte Valley. He had been trained in Intake.
28. At 6:00 p.m., when Complainant arrived, Fults gave her report. He informed her in part that Intake would be "slammed" that night, and that he therefore had assigned a second officer to the Intake Unit for the entire shift, and that additional relief officers would be sent to assist with searches on a periodic basis. Complainant agreed with this staffing plan.
29. Complainant's first task upon arrival was to resolve a time-sensitive issue over the telephone, assisting a police officer with overcoming hurdles to admitting a juvenile to the facility. This took her approximately 45 minutes. During this period, at approximately 6:30 p.m., Complainant entered the Intake Unit to obtain a phone number, and noticed that it was chaotic and busy. Instead of bothering the Intake staff for the phone number she needed, she left, so as not to interfere with their work.
30. Complainant did not re-enter the Intake unit for the remainder of her shift, through 9:00 p.m. She sat at her desk inputting timekeeping information for 16 employees on her computer.
31. January 11 was the last day of the week, and Complainant was aware that failure to complete timekeeping could be a performance issue. Despite her half-time schedule, Complainant was expected to complete full-time administrative duties.
32. Just prior to 7:00 p.m., eight clients from the Boulder facility were delivered to Intake to await processing.
33. By 7:00 p.m. that evening, Intake had approximately 14 clients awaiting processing. The average number of intakes on a Friday night is approximately 10 to 12.
34. At approximately 7:55 p.m., Joshua Gomez, a highly dangerous gang member with a history at Platte Valley, was brought to the facility. The lead Intake officer placed him in Room I110, one of the six holding cells in the Intake unit, to await processing.

She did not lock the door to room I110, nor did she place his name on a room check sheet on the door.

35. At 8:15 p.m., Fults made his routine security check of the entire building and entered the Intake area. He noticed that Dan Danielson, CO I, was in Intake assisting with strip searches for a short period. Fults thought that Intake looked "busy, but ok."
36. At 9:00 p.m., Fults, to whom Complainant was to give report as he re-assumed acting shift supervisor duties, was unavailable. He was nowhere near the Intake Unit, working with students in the gymnasium. Complainant gave report to the other CO II on duty that evening, and asked him to pass on report to Fults. After giving report, Complainant went home.
37. At 9:15 p.m., Fults, in his capacity as CO II, returned to Intake to open a safe for a juvenile that was being released. While on the unit, he encountered a situation necessitating that he separate two clients sharing holding cell I108. He removed one student from cell I108 and placed him in I110, which at that time was empty and unsecured.
38. Fults had no reason to know that Gomez had previously been placed in I110 for holding; therefore, he had no knowledge that Gomez was "missing" at that time.
39. Gomez escaped from the Intake area some time between his 7:55 p.m. arrival and 9:15 p.m.
40. At 10:35 p.m., the lead Intake officer asked her assisting officer if he had done Gomez's intake. At that time, they discovered his absence. After a search of the building, it was concluded that Gomez had escaped.

Administrative Response to the Escape

41. The day after the escape, Thompson sent a memo to all facility staff. It directed "all staff who work in Intake/Control (i.e. any security staff) [to] ensure the following current procedures are strictly enforced 1. Document all intakes immediately upon entry; 2. Pat search all intakes and place in a locked holding cell; 3. Ensure a check sheet is on the door of every occupied room; 4. Control ensure all youth leaving our custody . . . are escorted to the lobby using appropriate sally-port procedure; 5. Shift Supervisor ensure staffing levels for Intake/Control to meet demands (i.e. assign additional staff during high volume intakes or releases);" and 6. additional training on Intake and Control procedures.
42. After the escape, there was significant community response. Gomez was a known gang member widely considered a serious threat to the community.

43. Brent Nittman, Director of Platte Valley, is Complainant's appointing authority. Director Nittman determined that he should have an unbiased, outside agency investigate exactly what had led to the escape. This would ensure that no bias within the facility interfered with the investigation, and that the community would have complete confidence in the integrity of the investigation's findings.
44. Nittman asked the Weld County Sheriff's office to investigate what led to the escape. On February 4 it issued its ten-page, single-spaced report, based on a series of interviews. The report appears to be an unbiased and accurate assessment of how Gomez escaped, what actions facility staff took and did not take on that evening, and what, if any, systemic errors led to the escape.
45. The report found that Gomez was able to escape in the following manner: he first left the Intake area by entering Room 6, a room in Intake which also contains a second door leading directly into the Visiting area. This door was left open, enabling him to enter the Visiting area. Once in the crowded Visiting area, he mingled there until the Control Center staff officer unlocked the security doors to allow visitors to enter into the Lobby area. Once in the Lobby, he again mingled there until the Control Center officer unlocked the security doors, enabling him to sneak out of the building with other people.
46. The report concluded the following:
 - A. Intake officers failed to keep the door that exits room 6 into the Visiting area closed. This general practice led to Gomez leaving the Intake area and escaping through the Visiting area.
 - B. The Control Center officer failed to monitor those who entered and exited the building by requiring all those who had signed in, to sign out prior to exiting the facility. The Control Center officer failed to identify Gomez, and failed to require him to sign out, prior to allowing him to leave the Lobby area.
 - C. When Intake releases a student, the Intake officer does not notify the Control Center officer that the student is being released.
 - D. The shift supervisor on duty should have noticed that the Control Center officer was not accurately maintaining the visitor log book, i.e., was not requiring all those who had signed in to sign out. It is the shift supervisor's duty to "monitor and assure that all logs and reports are complete and correct."
 - E. Since new arrivals in Intake are not counted until after the Intake process is completed, the supervisor who was relieved and took report and head count at 10:00 p.m. was completely unaware that Gomez was missing.

- F. The report concluded that if the Control Center officer had strictly enforced use of the visitor log book by all those leaving the building, it is doubtful the escape would have occurred.
47. All staff present on the evening of the escape filled out incident reports. Complainant's Incident Report, written on January 12, 2002, describes how she spent her time during her three-hour shift. First, she states that she spent forty-five minutes assisting a police officer with the admission of a client, as related above. Regarding the remaining two hours and fifteen minutes, she wrote, "I then worked on Kronos [the computer timekeeping program] for the rest of my shift. John Fults and Clyde Humphrey kept me informed as to the status of the pods, but in general things were very quiet on the floor. I was not aware of any problem at intake, but did know that they were very busy."
48. Nittman reviewed the investigative report, the Incident Reports of staff working on January 11, and numerous security policies and procedures, prior to scheduling an R-6-10 pre-disciplinary meeting with Complainant.
49. At the R-6-10 meeting, Complainant elected to have no representative present. Nittman had Thompson present as his representative.
50. The record discloses almost nothing about what occurred at the R-6-10 meeting, other than Complainant's statement that when she entered Intake early in her shift, it was so busy that she left. This statement was deeply troubling to Nittman, as it indicated to him that Complainant should have assessed whether additional assistance was needed at that time, or should have simply provided assistance herself.
51. Nittman considered his internal obligation, as director of Platte Valley, to establish and develop the workplace culture of maintaining safety and security. He felt that if he failed to take decisive action, to articulate a clear standard of performance, such a failure would reflect poorly on his own position.
52. In addition, Nittman considered the perception of community members who had a concern that Platte Valley had compromised community safety by allowing the escape to occur. Gomez had made threats to die at the hands of a police officer.
53. Prior to making a decision, Nittman discussed his options with the department human resources specialist, with the performance improvement office, and with his own boss, Paul Cooper.
54. Nittman determined that the escape was so serious, and Complainant's violation of her basic mission of maintaining security in the facility, was so serious, that bypassing corrective action and imposing disciplinary action was appropriate. He felt that given the shift supervisor's preeminent role to maintain security in the

facility, Complainant had failed to do so by not monitoring the Intake area closely enough and either arranging for more assistance or providing assistance herself. He believes the client would not have escaped if "we had accelerated the process of intake" on that evening.

55. Nittman sought to impose the lowest level of discipline, however, since he felt that Complainant was in general a valued employee.

56. On March 26, 2002, Nittman issued his disciplinary action letter to Complainant. It imposed a 5% reduction in pay for six months and mandatory supervisory training. It also noted that the escape incident would be reflected on her performance evaluation. The letter stated in part: "Your response to the Intake area work demand earlier in the evening by leaving and not offering assistance may have contributed to the later escape by extending the workload further into the evening. From your statements made in the R-6-10 [meeting] and the result of the disciplinary investigation your practices associated with counts and shift change both were deficient in terms of procedural demand as well the evening of the escape."

57. Complainant has never received any type of prior verbal or written counseling, or corrective or disciplinary action.

DISCUSSION

I. Standard of Proof

Certified state employees have a property interest in their positions and may only be terminated for just cause. Colo. Const. art. 12, §§ 13-15; §§ 24-50-101, *et seq.*, C.R.S.; *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). Such cause is outlined in State Personnel Board Rules R-6-9, 4 CCR 801, and generally includes:

- (1) failure to comply with standards of efficient service or competence;
- (2) willful misconduct or violation of the State Personnel Board rules or the rules of the agency of employment;
- (3) willful failure to perform or inability to perform duties assigned; and
- (4) final conviction of a felony or any other offense involving moral turpitude.

In this *de novo* disciplinary proceeding, the agency has the burden to prove by preponderant evidence that the acts or omissions on which the discipline was based occurred and that just cause warranted the discipline imposed. *Kinchen, supra*. The Board may reverse Respondent's decision only if the action is found arbitrary, capricious or contrary to rule or law. Section 24-50-103(6), C.R.S.

II. Complainant committed the acts for which she was disciplined

As shift supervisor from 6 - 9 p.m. on January 11, 2002, Complainant was directly responsible for the overall safety and security of the Platte Valley facility. On Friday night, the Intake area is the most dangerous and volatile area, and should be the primary focus of the shift supervisor's attention.

Complainant's job description required that she enforce all rules and regulations, that she execute formal and informal counts at various times during her shift, by visually accounting for the youth's presence, and that she supervise by observation. Security procedures mandate she was directly responsible for monitoring all staff to assure performance of their duties and responsibilities. Those security policies required the Control Center officer to "verify the official count with the admission unit upon the hour." The Procedures Manual for Intake and Control required the use of room check sheets on each holding cell room to count the number of clients awaiting Intake processing.

From 6:45 p.m. through 9 p.m., the busiest and most critical time in Intake, Complainant sat at her desk inputting timekeeping information on the computer. She never once got up from her desk.

Complainant's failure to actively assess and monitor the Intake unit was a violation of her primary mission of ensuring security. By remaining in her office, Complainant failed to supervise her staff by observation, failed to assure staff performance of their duties, failed to assure compliance with the above policies, and failed to execute formal and informal counts. These omissions constitute a breach of her duties as shift supervisor.

III. The Appointing Authority's action was not arbitrary, capricious, or contrary to rule or law

Complainant argues that Respondent should have used progressive discipline and imposed a corrective action. State Personnel Board Rule R-6-2 permits disciplinary action in the absence of prior corrective action if the act "is so flagrant or serious that immediate discipline is proper." State Personnel Board Rules, 4 CCR 801.

Complainant presented evidence that it was "building practice" not to conduct hourly counts and not to utilize the count sheets on holding cell doors in Intake. She therefore argues that Platte Valley administration has inappropriately "passed the buck" to her for neglecting to enforce facility policies and procedures, and that she should have received a corrective action instead of disciplinary action.

This argument overlooks Complainant's leadership role as shift supervisor. It was Complainant's job to know Platte Valley policies and procedures and to enforce them. If line staff are routinely disregarding a facility policy or procedure, managers of a facility like Platte Valley appropriately expect the shift supervisor to identify the policy violation and correct it. "Building practice" does not define the standard to which shift supervisors and

line staff must adhere. If that were the case, then the leadership component of being a shift supervisor, with responsibility for enforcing policies and procedures, would have no meaning.

Complainant also argued on her appeal form that "building procedures were unclear." The evidence did demonstrate that there was ambiguity regarding the policy of securing the Intake holding cell room doors. It appears that staff may have been directed to keep the doors open if there ere more than one client in a room, in order to protect their safety. Notably, however, Nittman did not discipline Complainant for failing to enforce that policy; it is not mentioned either in the disciplinary action letter or in his testimony.

If some security procedures were unclear, it was Complainant's duty to obtain clarification from Platte Valley administration, and then to enforce the procedures as clarified. Complainant did not prove that there was any ambiguity regarding the policies, procedures, and leadership responsibilities she was found to have breached.

There is significant mitigation in this case. First, Complainant was aware that Intake had more staff than usual for a Friday night on January 11. Second, she had only a three-hour shift that evening. Third, she was expected to perform 100% of her administrative duties in 50% of the normal time, leading to a backlog in timekeeping on January 11, the last day of the workweek. These mitigating factors are insufficient to defeat the appointing authority's decision to impose disciplinary action, because her breach of leadership responsibilities and facility policies, and the escape of a client, were both serious. Rule R-6-2.

Complainant also argues that Nittman's disciplinary action letter indicated only that her failure to monitor and assist in the Intake area "may" have contributed to Gomez's escape. Therefore, there is no conclusive proof that her omissions were a direct cause of the escape. Nittman is not obliged to prove that Complainant's acts or omissions were a direct cause of Gomez's escape. He concluded, and Respondent proved at hearing, that Complainant violated her primary mission of ensuring facility safety and security, and neglected to enforce a number of critical security policies. This evidence forms a sufficient basis upon which to base discipline.

CONCLUSIONS OF LAW

1. Complainant committed the acts for which she was disciplined.
2. Respondent's action was not arbitrary, capricious, or contrary to rule or law.

INITIAL DECISION

Respondent's action is affirmed. Complainant's appeal is dismissed with prejudice.

Dated this 29th day of July, 2002.

Mary S. McClatchey
Administrative Law Judge
1120 Lincoln Street, Suite 1400
Denver, CO 80203
303-894-1236

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS

1. To abide by the decision of the Administrative Law Judge ("ALJ").
2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is mailed to the parties. Section 24-4-105(15), C.R.S. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is mailed to the parties. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990); Sections 24-4-105(14) and (15), C.R.S.; Rule R-8-58, 4 Code of Colo. Reg. 801. If the Board does not receive a written notice of appeal within thirty calendar days of the mailing date of the decision of the ALJ, then the decision of the ALJ automatically becomes final. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990).

PETITION FOR RECONSIDERATION

A petition for reconsideration of the decision of the ALJ may be filed within 5 calendar days after receipt of the decision of the ALJ. The petition for reconsideration must allege an oversight or misapprehension by the ALJ. The filing of a petition for reconsideration does not extend the thirty-calendar day deadline, described above, for filing a notice of appeal of the decision of the ALJ.

RECORD ON APPEAL

The party appealing the decision of the ALJ must pay the cost to prepare the record on appeal. The fee to prepare the record on appeal is **\$50.00** (exclusive of any transcription cost). Payment of the preparation fee may be made either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 45 days of the date of the designation of record. For additional information contact the State Personnel Board office at (303) 894-2136.

BRIEFS ON APPEAL

The opening brief of the appellant must be filed with the Board and mailed to the appellee within twenty calendar days after the date the Certificate of Record of Hearing Proceedings is mailed to the parties by the Board. The answer brief of the appellee must be filed with the Board and mailed to the appellant within 10 calendar days after the appellee receives the appellant's opening brief. An original and 7 copies of each brief must be filed with the Board. A brief cannot exceed 10 pages in length unless the Board orders otherwise. Briefs must be double-spaced and on 8 1/4 inch by 11-inch paper only. Rule R-8-64, 4 CCR 801.

ORAL ARGUMENT ON APPEAL

A request for oral argument must be filed with the Board on or before the date a party's brief is due. Rule R-8-66, 4 CCR 801. Requests for oral argument are seldom granted.

CERTIFICATE OF SERVICE

This is to certify that on the _____ day of July, 2002, I placed true copies of the foregoing **INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE and NOTICE OF APPEAL RIGHTS** in the United States mail, postage prepaid, addressed as follows:

Barbara Hall
3308 Conestoga Court
Evans, CO 80620

and in the interagency mail, to:

Jill M.M. Gallet
First Assistant Attorney General
Employment Law Section
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
