

SHERRY DYER, CHAIR
IDAHO PERSONNEL COMMISSION
P.O. Box 83720
Boise, Idaho 83720-0066
Phone: (208) 334-3345

IDAHO PERSONNEL COMMISSION

STATE OF IDAHO

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)	
Idaho Department of Correction,)	
)	
Petitioner/Respondent,)	
)	IPC NO. 97-03
)	
vs.)	DECISION AND ORDER
)	ON PETITION FOR
)	REVIEW
)	
Wayne Weirum,)	
)	
Respondent/Appellant.)	
_____)	

THIS MATTER CAME ON FOR HEARING ON THE PETITION FOR REVIEW on April 16, 1999. Petitioner Idaho Department of Correction (DOC or Department) was represented by Ron Christian, Deputy Attorney General; Respondent Weirum (Weirum) was represented by Howard A. Belodoff, Esq. The petition for review involves the hearing officer's decision dated November 3, 1998. We Affirm.

I.

BACKGROUND AND PRIOR PROCEEDINGS

A. Facts.

Wayne Weirum was hired by DOC in August of 1989 as a Correctional Officer and assigned to the Idaho Maximum Security Institution. Prior to being hired by DOC, Weirum

had spent nine years as a deputy sheriff in Santa Barbara, California, as well as some time as a police officer for Boise City. A year after being hired, in August 1990, Weirum was promoted to corporal and transferred to the Southern Idaho Correctional Institution (SICI).

SICI is a minimum custody facility. Inmates at SICI have substantial freedom of movement within the institution, and to some extent, outside its walls. Inmates wear civilian clothing, drive prison vehicles, and have access to the unit office where correctional officers and other DOC personnel work.

Weirum worked swing shift (2:30 p.m. to 10:30 p.m.) in the main dorm. His direct supervisors were Sgt. Cummings (the Housing Sergeant), and Lt. Bowlin (the Shift Lieutenant). Due to his position and his shift assignment, however, Weirum worked independently much of the time. Weirum had little regular contact with SICI Warden Larry Wright and Deputy Warden of Security Tom Beauclair. Weirum supervised other Correctional Officers, and was responsible for the approximately 190 inmates housed in the main dorm.

In the seven years preceding the circumstances which gave rise to this petition for review, Weirum's employment record was first-rate. Weirum's performance ratings were above satisfactory or superior, he received commendations, and was recognized for his role in capturing an escapee. In the performance review covering the period from February 1995 through February 1996, Sgt. Cummings was laudatory of Weirum, noting that Weirum: "has conducted himself admirably" in maintaining control over all staff and inmates; "solve[s] volatile or difficult inmates (sic) disputes"; "is very reliable"; "is a seasoned officer and supervisor"; "is able to handle all types of problems with staff and inmates"; "is able to deal with inmates and staff by communicating effectively and maintaining appropriate

relationships.” (Ex. 107). The performance review contained no comments regarding inappropriate behaviors with inmates, nor did it identify any violations of DOC policies.

The event which precipitated this appeal occurred on July 23, 1996. Inmates Furlong and Mulligan each received a disciplinary offense report (DOR) and were placed in segregation. The inmates were accused of attempting to smuggle drugs into the institution, based on a letter written by Mulligan and intercepted by DOC. When the inmates were placed in segregation, Furlong told DOC staff that the letter did not refer to drugs, but rather to the fact that Correctional Officer (C/O) Brown was interested in buying a car motor and that Weirum was also interested in purchasing a motor. Both Furlong and Mulligan signed statements dated July 24th regarding Furlong’s statement.

On July 24, 1996, SICI Warden Wright requested permission to investigate Brown and Weirum for allegedly purchasing or attempting to purchase automobile engines from Furlong through a friend. Permission to conduct the investigation was granted on July 26. Warden Wright assigned Sgt. Baird to conduct the investigation into inmate Furlong’s allegations. Also on July 26, Warden Wright notified Brown and Weirum of the investigation and advised them that Sgt. Baird had been assigned to conduct the investigation. Weirum was instructed not to discuss the matter with other staff or with inmates. Brown received no such instructions. Both investigations were conducted simultaneously.

While Baird had received training in conducting investigations and had been involved in some investigations, he had never conducted an investigation involving inmate complaints against staff prior to being assigned the Weirum/Brown investigation.

While many facts about the events leading to this appeal remain in dispute, it is fair to say that the following matters are undisputed:

1. Due to the nature of SICI, there is substantial daily interaction between inmates and staff, including conversations of a general nature about topics of mutual interest.
2. Cars are a popular topic of conversation and it was generally known that Weirum had a particular interest in restoring old racecars.
3. While Weirum was conducting a tier check, inmate Furlong engaged Weirum in a brief conversation regarding a Chevy motor. Furlong told Weirum that a friend had the motor for sale. Furlong handed Weirum a piece of paper with the following information on it: the names "Shannon" and "Rhonda," a telephone number, the words "Chevy motor," and "\$150." Weirum did not know who Shannon and Rhonda might be and asked Furlong if the names on the paper were relatives of Furlong. Furlong told Weirum that Shannon and Rhonda were just some people he knew.
4. Weirum did not know that "Shannon" was Furlong's girlfriend.
5. Weirum did not need a Chevy motor, but knew that his cousin, Dick, was looking for one. Weirum called the number and got an answering machine that provided no information as to the identity of the resident. Weirum became uncomfortable not knowing whom he was calling, and left a message with his phone number and his cousin's name, "Dick." His call was returned by an unidentified woman and they had a brief conversation about the motor. The woman told him that the motor belonged to "Rhonda" and gave him her number. The motor was not what Dick was looking for, and Weirum made no attempt to contact "Rhonda."

6. Weirum did not purchase or negotiate to purchase any item from Furlong, Shannon or Rhonda.
7. Sgt. Baird interviewed inmate Furlong on July 24, July 25, and again on July 30, 1996. During the July 25 interview, inmate Furlong was allowed to make a phone call to Shannon. Their conversation was not recorded, and inmate Furlong was allowed to speak freely to Shannon. DOC policy allows inmates in segregation phone calls to their legal counsel only. Allowing inmate Furlong to call his girlfriend was so unusual that it was questioned by several DOC staff, and eventually involved calls to verify authorization, discussions among DOC staff, including Weirum, and the filing of an information report regarding the situation.
8. Sgt. Baird interviewed Shannon once by telephone, after she had spoken with inmate Furlong.
9. Sgt. Baird interviewed Brown once.
10. Sgt. Baird interviewed Weirum twice.
11. During Sgt. Baird's interviews with Weirum, he disclosed conversations with an inmate by the name of Ojeda in which they had discussed cars, and sources for car parts. Ojeda made Weirum aware of two individuals, (Steve Roedel and Bill Jones) who each owned or worked for specialty car parts businesses. Weirum eventually purchased parts from Roedel. Although Weirum contacted Bill Jones, he never purchased anything from him.
12. Weirum was also asked questions about whether he had ever been "counseled" by supervisors regarding "fraternization" with inmates.
13. Sgt. Baird did not contact Rhonda.

14. Sgt. Baird interviewed Ojeda three times. The interviews were not recorded.

On August 8, 1996, Sgt. Baird submitted his investigative report to Warden Wright. The report identified six allegations, and provided investigative results, findings of fact, and identified possible policy violations for each allegation. On the same date, Warden Wright placed Weirum on administrative leave, and requested that Weirum submit a written response to the allegations.

Weirum submitted his written response on August 12. He refuted each of the allegations and denied that he had violated any DOC policies.

On August 16, Warden Wright issued Weirum a Notice of Intent to Discipline based upon Baird's investigation. The notice was based on the investigative report. Warden Wright did not review the original information used to generate the investigative report. The notice identified five separate violations of DOC policy 217A:

1. DOC 217A.1(11)—Engaging in any activity which might compromise the employee's ability to perform his/her work in an efficient, unbiased, and professional manner;
2. DOC 217A.2(5)—Engaging in any business transaction of any nature which is in substantial conflict with the proper discharge of the employee's duties or with the public interest;
3. DOC 217A.2(12)—Failing to obey a lawful order from a supervisor or department head;
4. DOC 217A.2(2)—Failing or refusing to cooperate in an investigation into alleged illegal activities or violations of department regulations;
5. DOC 217A.2(19)—Engaging in any other activity which is deemed detrimental to the proper discharge of duties as an employee of the

Department of Corrections which may come into conflict with the attainment of the goals of the department.

Weirum responded to the notice of intent to discipline on August 20. Weirum referred Warden Wright to his previous responses to the investigative report and again denied violating any DOC policies.

On August 28, 1996, Deputy Warden of Security Tom Beauclair issued a final decision on the disciplinary matter. Deputy Warden Beauclair based his decision on the investigative report. He did not review the original materials which were used to create the report. Deputy Warden Beauclair found that Weirum had violated four of the five DOC policies cited in the notice of intent to discipline:

1. DOC 217A.1(11), for accepting information and/or phone numbers of inmates as referrals and then contacting those individuals;
2. DOC 217A.2(5), for accepting information and/or phone numbers of inmates as referrals and then contacting those individuals;
3. DOC 217A.2(12), for allegedly discussing the investigation with others after being instructed not to; and
4. DOC 217A.2(19), for allegedly continuing to fraternize with inmates after being counseled not to.

Based on the enumerated policy violations, Deputy Warden Beauclair decided that Weirum would be demoted to the position of Correctional Officer with a commensurate reduction in pay.

Weirum filed a grievance over his demotion. The matter was reviewed by an impartial review panel which determined that Weirum had not violated any of the DOC policies relied upon by DOC in its disciplinary decision. The panel did state that Weirum

had used poor judgment with regard to those policies and recommended that he be placed on a three-month probation at the reduced status and pay. At the end of the period, if no further problems have arisen under the cited policies, Weirum should be returned to the status quo ante.

On December 12, 1996, DOC director James Spalding issued his final decision. Director Spalding did not accept the recommendation of the impartial review panel. Weirum's demotion to Correctional Officer and commensurate 10% reduction in pay became effective on December 15, 1996.

B. Appeal to Personnel Commission.

Weirum filed a timely appeal to the Commission and the matter was assigned to hearing officer Kenneth G. Bergquist. Hearing on the appeal was heard in March and April 1997. The hearing officer issued his Findings of Fact, Conclusions of Law, and Order on November 3, 1998. The hearing officer concluded that DOC had proven none of the four policy violations by a preponderance of the evidence and ordered that Weirum be reinstated with back pay and benefits. The hearing officer also awarded Weirum attorney fees and costs.

In his findings and conclusions the hearing officer characterized Sgt. Baird's investigation as flawed. Finding of Fact 27 states:

“However, his [Baird's] reports were inaccurate and misleading. They were not based upon the actual statements made by witnesses. Words and phrases were taken out of context or made to appear to be responsive to questions by Baird which were taken out of sequence. Information and statements were deleted which distorted the entire meaning of a witness's answer in order to support Baird's version of the events.”

The hearing officer went on to note that both Warden Wright and Deputy Warden Beauclair testified that they based their decision to discipline Weirum on Sgt. Baird's daily investigative

reports and his final written report. Neither read the transcripts of interviews nor reviewed the documentation upon which Sgt. Baird relied in preparing his written report.

DOC filed a timely petition for review. The petition challenged nineteen of thirty-two findings of fact and ten of the twelve conclusions of law. In general, the petition claims that the findings and conclusions are not supported by substantial, competent evidence, and that there were errors on legal evidentiary rulings.

II.

ISSUES

- A.** Did the hearing officer err in defining DOC Policies 217A.1(11), 217A.2(19), and 217A.2(5)?
- B.** Did the hearing officer err as a matter of law in determining that DOC failed to prove, by a preponderance of the evidence, that Weirum violated DOC Policies 217A.1(11), 217A.2(19), and 217A.2(5)?
- C.** Is there substantial, competent evidence in the record to support findings which would lead to the reversal of Conclusions of Law IV, V, and VII?

III.

STANDARD AND SCOPE OF REVIEW

The standard and scope of review on disciplinary appeals to the IPC is as follows:

When a matter is appealed to the Idaho Personnel Commission, it is initially assigned to a Hearing Officer. I.C. § 67-5316(3). The Hearing Officer conducts a full evidentiary hearing and may allow motion and discovery practice before entering a decision containing findings of fact and conclusions of law. In cases involving Rule 190 discipline, the state must prove its case by a preponderance of the evidence. IDAPA 28.01.01.201.06. That is, the burden of proof is on the state to show that at least one of the proper cause reasons for dismissal, as listed in I.C. § 67-5309(n) and

IDAPA 28.01.01.190.01, exist by a preponderance of the evidence.

On a petition for review to the Idaho Personnel Commission, the Commission reviews the record, transcript, and briefs submitted by the parties. Findings of fact must be supported by substantial, competent evidence. *Hansen v. Idaho Dep't of Correction*, IPC No. 94-42 (December 15, 1995). We exercise free review over issues of law. The Commission may affirm, reverse or modify the decision of the Hearing Officer, may remand the matter, or may dismiss it for lack of jurisdiction. I.C. § 67-5317(1).

Soong v. Idaho Dep't of Health and Welfare, IPC No. 94-03 (February 21, 1996), *aff'd*, 132 Idaho 166, 968 P.2d 261 (Ct. App. 1998).

IV.

ANALYSIS

Although DOC's framing of the issues suggests that this appeal involves mixed questions of law and fact, DOC challenges only two minor points of the hearing officer's findings of fact. The bulk of their argument focuses on whether the hearing officer misinterpreted the three DOC policies that Weirum was charged with having violated. These are questions of law.

A. Preliminary Matters

1. Motion to Exceed Page Limit.

Weirum filed a Motion to Exceed Page Limit at the same time that he filed his brief. Weirum's brief exceeded the page limit by four pages. While we do not encourage the filing of over-long briefs, the overage was *de minimus* and Petitioner filed no objection. Weirum's Motion to Exceed Page Limit is granted.

2. Credibility Issues

As in several other cases which have come before this Commission recently, witness credibility was a key factor in the outcome of this matter. It has long been the position of

this Commission that it will not overturn credibility decisions of hearing officers without some cogent reason for doing so. This is consistent with the applicable court ruling on the subject, *Department of Health and Welfare v. Sandoval*, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987). In that case, as in this, the indicia upon which the Commission might decide to overturn the hearing officer's credibility determinations are absent. In fact, in this case, the record supports the hearing officer's credibility determinations.

Here, the credibility problems began with the faulty investigation which was performed by DOC's Sgt. Baird. This investigative report was adopted by SICI management without any attempt to validate the investigatory process, and without reviewing the original documents which were used in creating the final report. The investigative report was the sole basis for the disciplinary action which was instituted against Weirum. This chain of events caused the hearing officer to question the credibility of Sgt. Baird, Deputy Warden Beauclair, and Warden Wright.

Apparently unwilling to defend the investigation, DOC argues that it can prove its case by a preponderance of the evidence without relying on *anything* that appears in the investigative report. In its brief and again in oral argument, the Department is careful to cite only to written documentary evidence and hearing testimony to support its arguments. This approach, while novel, is unsound. The notice of intent to discipline and the final decision were both based on the discredited investigation. Since these documents form the foundation upon which a disciplinary action is built, DOC's approach turns the appeal process on its head. At its extreme, it allows an agency to discipline an employee, then use the appeal process to try and obtain evidence in support of the disciplinary decision.

Sgt. Cummings was also called as a witness by DOC. Sgt. Cummings was Weirum's supervisor and had completed Weirum's complimentary performance evaluation

immediately preceding the genesis of this matter. Sgt. Cummings' testimony pertained to a report he wrote in August 1996 (after the investigation of Weirum had begun) at the request of Sgt. Baird. The report addressed events which had occurred the preceding April and involved the perennial problem of inmates spending time in the unit office. Sgt. Cummings' testimony characterized the April events as something for which Weirum had been responsible and which had been documented in his personnel file. In fact, the documents concerning the April events which were submitted as part of the record do not indicate that Weirum was the problem, but rather part of the solution. The documents in the personnel file which would have supported Sgt. Cummings' testimony were never produced.

DOC also called Sgt. James to testify at the hearing. Sgt. James' testimony addressed several issues, only one of which remains at issue at this time. Sgt. James testified that he had on several occasions verbally expressed concerns to Weirum and Weirum's supervisors regarding the number of inmates who were spending time in the unit office during Weirum's shift. Sgt. James could not provide a time frame for his communications, and there was no written documentation. Assuming that Sgt. James was a credible witness, his testimony was not particularly probative on the three policy provisions which remain at issue in this petition.

Finally, DOC called Phyllis Blunck, the personnel manager for DOC. Although Ms. Blunck testified on a number of issues, the record is clear that the only area where her expertise provides any insight pertains to Weirum's training record. Ms. Blunck was not involved in drafting DOC Policy 217A, had no experience in the operational end of running a correctional facility, and had no first hand knowledge of the events which led to the investigation. Ms. Blunck did testify that once the matter became disciplinary in nature, she

was involved in drafting correspondence and that she did review the investigative report, and some of the documents on which it was based.

The bottom line on credibility is that the witnesses who could have provided support for DOC's position were compromised by the investigation and their unquestioning adoption of it. The remaining witnesses, while they may have been credible, were not privy to the events in question and were not in a position to substantiate DOC's contention that Weirum violated DOC policies.

B. Hearing Officer's Interpretation of DOC policy 217A

As noted in the factual discussion, *infra*, Sgt. Baird's investigation found that Weirum's actions could have involved six separate policy violations. By the time DOC issued its notice of intent to discipline, five violations were cited. The final decision to demote cited only four policy violations. DOC's briefing on the petition for review did not challenge the hearing officer's findings of fact and contest the hearing officer's rulings on only three of the alleged policy violations. DOC urges that the hearing officer misinterpreted three DOC policies and that this mistake led to the legal conclusions which are challenged in this proceeding.

1. DOC Policy 217A.1(11)

DOC Policy 217A.1 identifies a number of activities which are strictly prohibited. Subsection (11) on that list states: "Engaging in any activity which might compromise the employee's ability to perform his/her work in an efficient, unbiased, and professional manner." The hearing officer correctly stated this policy in his Finding no. 4.

DOC correctly notes that in his Conclusion IV, the hearing officer paraphrases the policy, leaving out the word "might." DOC relies on Conclusion IV in arguing that the hearing officer misinterpreted the policy to require that Weirum's ability to perform *must*

actually be compromised, whereas the policy only requires that Weirum's ability to perform *might* be compromised.

We find DOC's argument unpersuasive. First, it is clear that the hearing officer knew what the policy said. He cited it correctly in his findings of fact. The hearing officer concluded that the credibility of DOC's witnesses was so compromised that they could not prove a violation of the policy by a preponderance of the evidence. DOC failed to prove that Weirum "might be compromised" just as it failed to prove that he was "actually compromised."

Secondly, this Commission is uneasy with the language of the DOC rule. "Any activity which might compromise . . ." is a rather vague prohibition. There was no testimony presented regarding who determines what *might* compromise an employee, and nothing to aid in interpreting or narrowing the application of the policy. The policy provides little guidance to direct an employee's actions before the fact, but can be easily applied to find a violation after the fact.

Clearly, the hearing officer knew what DOC Policy 217A.1(11) said. The language was correctly set out in the findings of fact and there is nothing to indicate that his decision was based on anything other than the correct statement of the policy. As the hearing officer made clear, it was a credibility problem which caused the failure of proof on this allegation.

2. DOC Policy 217A.2(19)

DOC Policy 217A.2(19) lists "other prohibited activities and conduct as follows: (19) Engaging in any other activity which is deemed detrimental to the proper discharge of duties as an employee of the Department of Corrections which may come into conflict with the attainment of the goals of the Department."

We find that the hearing officer correctly stated the language of this policy provision both in Finding no. 4 and in Conclusion VII. It is difficult to surmise on what basis DOC argues that the hearing officer used an incorrect interpretation of this policy in making his determination. Whatever DOC's reasoning, we find the argument unpersuasive. The substance of this allegation was that Weirum continued to "fraternize" with inmates after he was "counseled." The hearing officer found DOC's proof on this point lacking due to witness credibility problems and because no supporting or corroborating documentation was introduced.

Again, this Commission expresses its unease with the vagueness of the policy at issue. In our view, the language of the policy is so vague as to be virtually unprovable.

3. DOC Policy 217A.2(5)

DOC Policy 217A.2(5) prohibits:

Engaging in any business or transaction of any nature which is in substantial conflict with the proper discharge of the employee's duties or with the public interest.

In keeping with this policy, an employee may not do any of the following:

- A. Directly or indirectly accept any compensation, gift, loan, entertainment, favor, or service intended to influence the employee in the discharge of official duties.
- B. Use his/her position to secure special privileges or exemptions for others or his/herself.
- C. Release confidential information, which is acquired due to his or her position, to any person or group not entitled to receive the confidential information. An employee may not use the information for his/her personal gain.
- D. Sell to or hold a substantial financial interest in any company that sells products or services to the Department of Corrections, unless the sales are made after public notice and competitive bidding.

DOC does not allege that Weirum violated any of the specific items enumerated in subsections A-D of the policy. DOC argues that the hearing officer misinterpreted DOC Policy 217A.2(5) by limiting the definition of "business transaction" to consummating a

business deal and disregarding the exchange of information and negotiation that precedes the actual purchase. Because Weirum admits questioning inmate Furlong about the contents of the note, and initiating a call to the number Furlong had given him, DOC contends that they have proven this allegation. DOC also argues that when Weirum contacted Steve Roedel and Bill Jones (both individuals engaged in the sale of auto parts to the public) after inmate Ojeda had mentioned them, he violated this provision. It would be absurd to take the position that a correctional employee was forbidden to do business with any retailer who happened to be mentioned by an inmate. Clearly the concept of “engaging in any business or transaction” may be something less than a consummated transaction and may be something more than a mere mention of a retail business.

The hearing officer correctly set out the provisions of DOC Policy 217A.2(5) in both his findings and in his conclusion. Although DOC made a valiant attempt to promote its interpretation at the hearing, the hearing officer was not persuaded. Nor are we. While DOC Policy 217A.2(5) provides a number of unambiguous activities which are prohibited, Weirum was not charged with violating any of the specific subsections. Instead, he was charged under the “catch all” introductory provision. This provision prohibits: “Engaging in any business or transaction of any nature which is in substantial conflict with the proper discharge of the employee’s duties or with the public interest.” The hearing officer did not misinterpret the policy, he just didn’t believe that Weirum’s admitted conduct rose to the level of being a business transaction nor was it in substantial conflict with the discharge of his duties or with the public interest.

We agree with the impartial review panel’s statement that Weirum exercised poor judgment in making the call to the number given him by inmate Furlong. Weirum admits exercising poor judgment. But poor judgment is not a *per se* violation of the DOC policy.

Here, DOC just couldn't prove by a preponderance of evidence that Weirum's conduct under the facts of this case rose to the level of a policy violation.

B. Summary

DOC's third issue on appeal is that there was substantial competent evidence in the record to support a reversal of Conclusions of Law IV, V, and VII. Once again, such an approach would turn the appeal process on its head. The question on appeal is not whether there is substantial competent evidence to support alternative findings, but whether there is substantial competent evidence to support the findings that the hearing officer actually made. DOC challenged only two non-substantive issues in the hearing officer's Findings of Fact, and focussed their briefing and argument on the hearing officer's interpretation of the relevant DOC policies. These are questions of law which we freely review. The hearing officer correctly identified and stated the DOC policies which were the basis of the disciplinary action against Weirum. The hearing officer applied the pertinent policies to the largely undisputed facts to reach his conclusion. DOC's actions against Weirum arose from an investigation which was faulty and which made subsequent agency actions difficult to defend. This difficulty was exacerbated by the lack of clarity in policy that otherwise may have allowed the hearing officer or this Commission to reach a contrary position.

D. Attorney Fees

The hearing officer awarded attorney fees to the employee after finding that there was "no reasonable basis in fact or law" for the actions of the agency. In support of this finding, the hearing officer noted DOC's choice of an investigator, the reliance by management upon the seriously flawed investigation without undertaking even a cursory review of the process and conclusions, its failure to evaluate and seriously consider Weirum's responses to the investigative report, and its failure to consider the recommendations of the

impartial review panel. DOC does not dispute the amount of fees and costs awarded below, but does dispute the award of any fees and costs. Our review of the proceedings convinces us that the hearing officer properly awarded attorney fees to Weirum.

We also find that DOC acted without a reasonable basis in fact or law in filing this petition for review and award attorney fees and costs on the petition for review to Weirum.

V.

CONCLUSION

For the reasons stated above, we AFFIRM the decision of the hearing officer, including the award of attorney fees and costs. Weirum is awarded attorney fees and costs on the petition for review. DOC is ordered to reinstate Weirum to his former classification and pay grade with full back pay and benefits.

VI.

STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the commission do not as a matter of law support the decision. Idaho Code § 67-5318.

DATED this 13th day of May, 1999.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION

/s/
Sherry Dyer, Chair

/s/
Peter Boyd

/s/
Ken Wieneke

/s/
Don Miller

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Final Decision and Order in *Idaho Dep't of Correction v. Weirum*, IPC No. 97-03, was delivered to the following parties by the method stated below on the 13th day of May, 1999.

FIRST CLASS MAIL

Howard A. Belodoff
Attorney at Law
2402 W. Jefferson St.
Boise, ID 83702

Kenneth G. Bergquist
Hearing Officer
Idaho Personnel Commission
P. O. Box 1775
Boise, ID 83701

STATEHOUSE MAIL

Ronald D. Christian
Deputy Attorney General
Statehouse, Room 210
Boise, ID 83720-0010

/s/
Val E. Rodriguez
Secretary to Executive Secretary

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