

**IDAHO PERSONNEL COMMISSION**  
**P. O. Box 83720**  
**Boise, Idaho 83720-0066**  
**Phone: (208) 854-3052**

**IDAHO PERSONNEL COMMISSION**

**STATE OF IDAHO**

<b>BRUCE WORMAN,</b>	)	
	)	
<b>Petitioner/Appellant,</b>	)	<b>IPC NO. 04-24</b>
	)	
<b>vs.</b>	)	<b>DECISION AND ORDER</b>
	)	<b>ON PETITION FOR REVIEW</b>
<b>IDAHO DEPARTMENT OF CORRECTION,</b>	)	
	)	
<b>Respondent.</b>	)	
_____	)	

This matter came for hearing on petition for review on April 24, 2007. The Idaho Department of Correction (“hereinafter “Respondent” or “IDOC”) was represented by Brian B. Benjamin and Appellant Bruce Worman (hereinafter “Appellant” or “Worman”) was represented by Kevin E. Dinius.

The petition for review concerns Hearing Officer Kail Q. Seibert’s (hereinafter “Hearing Officer”) decision dated January 24, 2006 upholding IDOC’s termination of Appellant.

I.

**BACKGROUND AND PRIOR PROCEEDINGS**

**A. Factual Background**

On July 27, 2004, Worman had been employed by IDOC approximately 21 years when the incident between he and Inmate Bull occurred on Unit 8 of the Idaho State Correctional Institution (“ISCI”). He had extensive training and teaching experience in the area of use of force and many related areas.

Inmate Bull was a “Rider” housed on A-tier of Unit 8 at ISCI. A Rider is an individual housed at the prison for a short time in association with drug rehabilitation. Unit 8 is comprised of three tiers: A, B, and C, all of which can be seen from a glass enclosed control center known as the “Bubble”. One Correctional Officer mans the control center at all times and has multiple responsibilities including maintaining a log reflecting all activity and individuals in Unit 8 and controlling all doors in the Unit.

On July 27, 2004, Randy Blades was the ISCI Warden, Henry Atencio was the Deputy Warden of Security, and Lt. Jimmie Crosby was the Shift Commander. Worman was the Correctional Sergeant responsible for the subordinate officers, the inmates, and the Riders on Unit 8. Correctional Officer Breagan Chadwell was manning the control center. Correctional Officers Tim Ellis and Steve DeCamp were Unit 8 floor officers who worked on the tiers and essentially managed the inmates, kept the peace, and ensured the rules were followed.

**1. The Incident.**

On the morning of July 27, 2004, Worman was conducting a tier check, and observed graffiti on Inmate Bull's cell. He directed Inmate Bull to clean the graffiti off the wall. It is standard practice and policy in Unit 8 to have inmates clean their cells whether or not they were the authors of the graffiti or other items which required cleaning. When Inmate Bull refused, Worman issued a second instruction for him to clean his cell and then went to the control center. Officers Chadwell, Ellis, and DeCamp were all in the control center at this time. Inmate Bull did not clean the cell but went to the A-tier dayroom where he was seen pointing and glaring at Worman.

At this point, Worman quickly headed to the A-tier dayroom. Officer Chadwell, who had to operate the doors, observed Worman go to A-tier and bang his fist on the window of the dayroom at least twice and make arm motions indicating to Inmate Bull to come out of the dayroom into the sallyport (an area enclosed by bars and/or glass that separates the tier, the dayroom, and the general hallway; no two doors of the sallyport are ever open at the same time). Officer Chadwell opened the door to the A-tier dayroom and Inmate Bull entered the sallyport.

When Inmate Bull entered the sallyport, he was turned to the wall, restrained with handcuffs, and turned back around by Worman. While being turned around, Inmate Bull fell. At some point during these actions, Inmate Bull's shower slipper (plastic flip-flop) came off.

Inmate Bull was helped up by Worman and Officer Ellis. Worman and Officer DeCamp returned to the control center. Officer Ellis took Inmate Bull to a strip cage off of A-tier and then returned to the control center. When Worman and Officers Ellis and DeCamp all returned to the control center after the incident, Worman said "I fucked up. I could lose my stripes." Worman admitted he made these statements during the investigation of the matter (See Appellant's Exhibit 18, Transcribed Interview of Worman by OPS Investigator Wes Greer on August 4, p. 2, Ls. 20-22, p. 5, Ls. 1-3, hereafter referred to as "Appellant's Exhibit 18") but questioned whether or not he made the statement when he testified at the hearing on this matter. Inmate Bull called a family member from a telephone he could reach from the strip cage. When Officer Chadwell reported this, Worman very quickly went with Officer Ellis to the strip cage, hung up the telephone, moved Inmate Bull to another room without access to a telephone, and returned to the control center.

Inmate Bull's mother complained via telephone to Shift Commander Lt. Crosby regarding Worman's treatment of Inmate Bull. She claimed Worman threw Bull to the ground. Lt. Crosby initially discussed this accusation by telephone with Worman, who had gone to his office which is outside the control center. During that first telephone call with Lt. Crosby, Worman, by his own admission, attempted to portray that the incident was provoked by Inmate Bull and minimized his actions concerning the incident. Appellant's Exhibit 18, p. 8, Ls. 9-12; Worman Appeal dated November 1, 2004, pp. 1, 5; (hereafter referred

to as “Worman Appeal”); Appellant’s Response to the NOCA, Appellant’s Exhibit 2, p. 2 (hereafter referred to as “Appellant’s Exhibit 2”).

**(a) The Incident Reports.**

Lt. Crosby went to Unit 8 and spoke with Worman and the three officers about the incident with Inmate Bull. He also instructed them to write incident reports. In his incident report, Worman summarized the incident as one where Inmate Bull was belligerent; he was forced to put his hand on his shoulder, direct him to face the wall, and restrain him with handcuffs; when he turned a passively resistant Inmate Bull back around he tripped on his shower shoe and fell to the floor on his butt. Appellant’s Exhibit 13.

In a subsequent conversation Lt. Crosby instructed Worman not to review or get involved with the reports Officers Ellis, Chadwell, and DeCamp were required to write. Transcript of Proceedings, Volume II, p. 503, Ls. 15-17; p. 504, Ls. 17-18. (hereafter referred to as “Tr., Vol. \_\_, pp. \_\_\_\_, L.(s) \_\_\_\_”). However, these instructions were not passed on to Officers Ellis, DeCamp and Chadwell, whose reports were provided to their supervisor, Worman per standard procedure. Lt. Crosby did not inform Ellis, DeCamp and Chadwell to change the normal procedure. All three officers later submitted revised incident reports stating they had lied on their first reports. Lt. Crosby and Worman also submitted single incident reports.

**(i) Officer Ellis**

At the hearing, Officer Ellis testified that he and Officer DeCamp agreed they would lie on their incident reports and say Inmate Bull tripped on his shower

shoe to protect Worman out of loyalty and because they liked him. Tr., Vol I, p. 64, L. 4 – p. 66, L. 3. Both Officers Ellis and DeCamp had specifically bid to work in Unit 8 with Worman. Officer Ellis later acknowledged during his testimony at the hearing that he told Investigator Wes Greer he lied because he worked in a hostile environment and the unit was fear driven. Appellant's Exhibit 31; Tr., Vol. I, p. 104, Ls. 1-7.

Officer Ellis initially reported Inmate Bull failed to comply with Worman's multiple orders to return to the tier; Worman then ordered Inmate Bull to face the wall; he (Ellis) then looked away, and when he looked back Inmate Bull was falling and his shoe was off. Appellant's Exhibit 9. He claimed he felt guilty about submitting a false report and called Lt. Crosby that evening to admit he lied and request a meeting with him and Deputy Warden Atencio. After their meeting, Officer Ellis completed a second incident report wherein he stated Worman was yelling at Inmate Bull to return to the tier but blocked him from complying with the order; Worman then ordered Inmate Bull to turn around and face the wall; Inmate Bull complied; Worman cuffed him; Worman took Inmate Bull by the collar and spun him around with enough momentum to bring him to the ground. Appellant's Exhibit 10.

In his testimony at the hearing, Officer Ellis added observations like Worman looked angry and he had Inmate Bull by the collar and spun him around too hard, forcing Inmate Bull to go down face first and hit his chin on the floor. He said it looked like Inmate Bull was thrown down by Worman in anger and that

Inmate Bull had not provoked Worman. He believed Worman's actions and force were unnecessary and a violation of IDOC policy. Tr., Vol. I, pp. 47-55.

**(ii) Officer Chadwell**

Officer Chadwell initially reported he did not see anything. Appellant's Exhibit 6. After Officer Ellis filed a second report, Officer Chadwell filed a second report where he asserted Worman grabbed Inmate Bull by the collar; pushed him into the wall, restrained him, grabbed the back of Inmate Bull's jumpsuit, and spun him around causing Inmate Bull to fall to the floor. Appellant's Exhibit 7. Officer Chadwell wrote a third report in which he added that when Worman was in the control room he said "he really fucked up this time." Appellant's Exhibit 8.

Later, Officer Chadwell testified Worman had a low tolerance for the inmates (Tr., Vol. I, pp. 196-97); he immediately grabbed Inmate Bull's jumpsuit when he entered the sallyport (*Id.* at p. 209, Ls. 6-11, p. 215, Ls. 11-13); he pulled Inmate Bull into the wall with more force than needed (*Id.* at p. 211, Ls. 12-15); after he handcuffed Inmate Bull he grabbed him by the back of the jumpsuit and spun him around. *Id.* at p. 221, Ls. 1-3. Officer Chadwell claimed it looked like Worman wanted Inmate Bull to hit the floor. *Id.* at p. 223, Ls. 11-12. He added that Inmate Bull was thrown down with speed and force and hit his head and chest on the floor. *Id.* at pp. 223-25. Officer Chadwell testified he thought the force used was unnecessary and in violation of use of force policy. Tr., Vol. I, p. 226, L. 16 – p. 227, L. 22.

**(iii) Officer DeCamp**

Officer DeCamp's first report was very different from the reports of Officers Ellis and Chadwell. He claimed he saw Worman order Inmate Bull to clean his cell; Inmate Bull refused and argued; Worman then turned Inmate Bull around and put him in restraints and directed him to exit the tier; during the directed movement, Inmate Bull's shoe came off causing him to stumble to the floor. Appellant's Exhibit 11. His second report stated Worman escalated a verbal exchange by yelling at Inmate Bull, not listening, and being so physically close to Inmate Bull that he probably could not comply with the order to move; Worman turned Inmate Bull to the wall restraining him with authority, efficiency, and some force; and he then spun Inmate Bull around with so much force Inmate Bull was spun to his knees, but did not strike his upper body or head. Appellant's Exhibit 12.

At the hearing, Officer DeCamp testified he did not want to change his initial report because it was correct and maybe Inmate Bull was being passively resistant and Worman could not turn him around. He now said Inmate Bull was provoking Worman. Worman gave Inmate Bull three direct orders to clean his cell but Inmate Bull wanted to debate him. Worman turned Inmate Bull around and restrained him (Tr., Vol. II, pp. 372-73); he then grabbed Inmate Bull and forcefully and quickly turned him around; Inmate Bull hit the ground due to the momentum; he fell to his knees and tipped forward but did not hit his head, torso, or chin. Tr., Vol. II, pp. 375-377. Further, he stated he believed Worman violated IDOC policy concerning use of force; that it was unnecessary. *Id.* at pp. 385-386.

**(iv) Sergeant Worman**

In his incident report, Worman described his initial encounter with and orders to Inmate Bull. He stated after returning to the control room he noticed Inmate Bull was still in the dayroom and he gave Worman an angry glare. He went to the dayroom and knocked on the glass more than once to motion Inmate Bull to come out. He claims when Inmate Bull entered the sallyport he stepped to within 6” to 8” of his face and refused to clean his cell; Inmate Bull continued to argue, Worman directed him to face the wall by placing his hand on his shoulder and turning him and then placed him in handcuffs; and Inmate Bull accused Worman of force, made disrespectful comments, and refused orders which escalated the situation. Worman indicated Inmate Bull was passively resistant when he turned Inmate Bull around to move him to a strip cage, and Inmate Bull tripped on one of his shower shoes and fell to his butt. Appellant’s Exhibit 13.

Worman admitted to Wes Greer he was angry when dealing with Inmate Bull in the sallyport (Appellant’s Exhibit 18, p. 1); he used his emotions rather than logic (*Id.* at p. 4); and when he first spoke with Lt. Crosby he attempted to make it look like it was more a provoked thing on the inmate’s part. *Id.* at p. 5. He stated because Inmate Bull was passively not complying with his directions he swung Inmate Bull too fast and he fell off the shower shoe. Worman further admitted that the “[n]umber one thing” that caused Inmate Bull to go to the floor was “that I swung him around too hard.” *Id.* at p. 9, Ls. 6-13.

In his response to the NOCA, Worman stated he grabbed Inmate Bull “by the collar after he stepped into the A-tier Sallyport on his own power; stepped to

within 6” to 8” of my face and began to argue with me in a raised voice.” Appellant’s Exhibit 2, p. 1, A. 1. He affirmed that “[o]n Aug. 4, 2004 I admitted to using unnecessary force on the inmate.” *Id.* He further stated the “inmate did absolutely trip, fall over, or loose [sic] his shower shoe or just it fell off, I don’t know which one.” *Id.* at A. 2. He twice more admitted he used unnecessary force. However, he complained Mr. Greer’s report did not specify Inmate Bull’s improper actions and his statements. *Id.* at A. 3; *Id.* at p. 3, D. 3. Worman told Warden Blade that he read the Officers’ incident reports, but did not have any involvement in their writing and didn’t in any way tamper with the statements. *Id.* at p. 2, C. 2.; D. 1.

In his November 1, 2004 appeal, Worman denied he was blaming Inmate Bull’s fall on the shower shoe or that he had changed his testimony about the shoe. He stated he did not know the shower shoe came off until he was told after the fact and after reflecting on the incident, realized the shower shoe had very little to do with the incident. Worman Appeal, p. 2. Worman again complained Inmate Bull’s actions had not been included or considered. *Id.* He admitted he read the reports after they were delivered to him in his office and explained this as a “curiosity of the cat” issue. *Id.* at p. 3; Appellant’s Exhibit 18, p. 11, L. 14-19; Tr., Vol. III, p. 695, Ls. 12-19. He admitted in his initial phone call to Lt. Crosby he minimized his actions but afterwards reclaimed he was totally honest. *Id.* at p. 4. Worman’s summary specified he is guilty of only two actions:

- “1) Using unnecessary (excessive force) on an offender”; and
- “2) Minimizing my actions to my supervisor in my initial contact with him about this incident.”

Worman Appeal at p. 5.

Explaining his statements to Mr. Greer, Worman testified at the hearing he unwittingly answered Mr. Greer's numerous leading questions. Tr., Vol. III, p. 711, Ls. 10-15. Worman claimed (1) he never used unnecessary force (*Id.* at p. 726, Ls. 19-21); (2) he did act reasonably while handling Inmate Bull (*Id.* at p. 726, L.22 -727, L. 1); (3) his original incident report was as true and accurate as it could be at that time from his perspective (*Id.* at p. 728, Ls. 1-9); (4) he never changed his report (*Id.* at Ls. 10-11); (5) he did tell Lt. Crosby he had used force when Lt. Crosby was in his office (*Id.* at p. 669, Ls. 14-16.) (6) he affirmed he told Lt. Crosby he had seen the Officers' incident reports as he left work on the day of the incident (*Id.* at 729, Ls. 5-12); (7) that "unnecessary" means there were alternatives and he could have had his Officers handle the situation with Inmate Bull (*Id.* at p. 733, Ls. 8-17); and (9) he felt the force he used was justifiable. *Id.* at Ls. 18-23.

## **B. Procedural History**

Worman was placed on administrative leave on August 2, 2004 while IDOC conducted an investigation into the events outlined above, including interviewing of witnesses and Worman, himself. A report of the investigation was issued on or about August 11, 2004 (See Appellant's Exhibit 27) and on August 30, 2004, IDOC provided Worman with the NOCA containing allegations and supporting evidence for imposition of disciplinary action based on the incident and surrounding events. Appellant's Exhibit 1. Worman responded to the NOCA on or about September 7, 2004. Appellant's Exhibit 2. IDOC provided Worman

with notice of his termination on September 27, 2004. IDOC specified four factual bases for his termination:

- (1) use of excessive force when dealing with an inmate;
- (2) failure to perform his duties appropriately by filing a false report;
- (3) insubordination to his supervisor when given a direct order not to review the witness Incident Reports filed by his subordinates regarding the alleged use of force on Inmate Bull; and
- (4) conduct unbecoming a state employee and detrimental to good order and discipline by influencing subordinate employees to file false reports.

Appellant's Exhibit 4.

Worman timely appealed his termination to the Commission on November 1, 2004 and a three-day hearing was held November 16-18, 2005 before the Hearing Officer. On January 25, 2006 the Hearing Officer filed her Findings of Fact, Conclusions of Law, and Preliminary Order finding IDOC had met its burden of demonstrating by a preponderance of the evidence that Worman:

- (1) had violated IDOC policies governing use of force when dealing with Inmate Bull on July 24, 2004;
- (2) had failed to perform his duties appropriately by filing a false report; and
- (3) was insubordinate to his supervisor in disobeying a direct order.

*Findings of Fact, Conclusions of Law, and Preliminary Order* dated January 24, 2006.

The Hearing Officer found IDOC had not met its burden of proving that Worman had influenced his subordinates to file false reports. *Id.* at p. 21. IDOC did not appeal that ruling. Worman timely filed its Petition for Review with the Commission on February 28, 2006.

## II.

### ISSUES

(1) Whether there is substantial and competent evidence to support the Hearing Officer's decision finding Worman used unnecessary force on Inmate Bull in violation of IDOC policy.

(2) Whether there is substantial and competent evidence to support the Hearing Officer's decision finding that Worman filed a false report regarding the incident in violation of IDOC policy and IDAPA 15.04.01.190.01 (hereinafter referred to as "DHR Rule 190.01").

(3) Whether there is substantial and competent evidence to support the Hearing Officer's decision that Worman was insubordinate in violation of IDOC Policy 217 and DHR Rule 190.01 e. when he read the other officers' incident reports.

## III.

### STANDARD OF REVIEW

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.

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). The

Commission exercises 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).

In cases involving Rule 190 discipline, the state must prove its case by a preponderance of the evidence. IDAPA 15.04.01.201.07. 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 15.04.01.190.01, exist by a preponderance of the evidence. Once a single violation is established on any proper cause issue, it is not the function or the jurisdiction of the Commission to second-guess the state's decision on the level of discipline imposed. *Webster v. Idaho Department of Health and Welfare*, IPC No. 96-14, 1997 IPC Reporter at 74; *Cheney v. Department of Correction*, IPC No. 97-15, IPC Reporter at 76.<sup>1</sup>

#### IV.

#### DISCUSSION

##### **A. There is Substantial and Competent Evidence in the Record to Support the Hearing Officer's Findings That Sgt. Worman Violated Department Policy Concerning the Use of Force on an Inmate.**

In her decision, the Hearing Officer cites IDOC Administrative Policy 307 and Directive 307.02.02.001, governing use of force. IDOC Administrative Policy 307.01.00.00, page 1, first paragraph, (and IDOC Directive No. 307.02.01.001.01.00.00) provide as follows:

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<sup>1</sup> "Discipline is a discretionary function retained by the agency – in this case, the DOC. It is this Commission's function to ensure that proper cause is duly proven. It is not this Commission's function to impose its views regarding an appropriate type of discipline upon agencies that may have management concerns and exigencies that are beyond our expertise or understanding". *Cheney*, 1999 IPC Reporter at 85. For this reason, the Commission lacks jurisdiction to consider the appropriateness of IDOC's chosen level of discipline (termination) on Worman. See Appellant's Petition for Review, p. 2, paragraph II.

It is the policy of the Idaho Board of Correction that the Department of Correction ensure that only necessary force is employed to control offenders in its custody, in order to ensure that such persons receive fair, humane treatment and are not subject to avoidable injury.

(Emphasis added.)

IDOC Directive No. 307.02.01.001.01.01.00, first paragraph, provides as follows:

The Division of Prisons authorizes staff to use force only as a last alternative after all other reasonable efforts have failed to resolve a situation, or where the urgency of the situation does not allow other non-force alternatives. Staff members shall use only the force necessary to gain control of the situation, to protect staff, offenders, and others, to stop or prevent escapes, to prevent serious property damage or to ensure facility security and good order. Staff members shall recognize that any act not in accordance with this directive, to include but not limited to excessive force, corporal punishment, provoking an offender so that force may appear justified, harassment, or retaining an offender using chemicals or electronic devices, is prohibited. Any such behavior is subject to disciplinary action up to and including dismissal.

Appellant's Exhibits 23 and 24. (Emphasis added.)

Although these are the only sections providing guidance regarding what constitutes excessive or unnecessary force, the Hearing Officer found that the witnesses agreed that "excessive force" is force used when it is no longer necessary. *Findings of Fact, Conclusions of Law and Preliminary Order*, p. 13. This finding is supported by substantial testimony in the record. Further, "excessive force" is specifically listed as a prohibited act under Directive No. 307.02.01.001.01.01.00 which, as stated, mandates that only the force necessary to gain control of a situation be used. An interpretation that "excessive force" is unnecessary force (force used when no longer necessary) is well within reason.

Correctional Officers Ellis, DeCamp, and Chadwell have years of experience and training with respect to IDOC's use of force policies. While the Hearing Officer noted slight differences or inconsistencies in the respective testimony of Correctional Officers Ellis, DeCamp, and Chadwell, she noted that each of their testimonies, including Worman's, contained a thread of commonality with respect to the critical facts of this incident as they relate to unnecessary/excessive use of force. As the Hearing Officer noted, not only did Officers Ellis, DeCamp, and Chadwell all testify that Worman grabbed the inmate by the collar while the inmate was facing the wall, restrained in handcuffs and turned him around with sufficient force and speed to cause the inmate to fall to the ground, but each testified that they believed the force used by Worman was unnecessary, excessive, and in violation of IDOC policies.

After describing how he witnessed Appellant restrain the inmate in cuffs, grab him by the collar and spin him around, Correctional Officer Tim Ellis testified as follows:

Q: Okay. I might want to stop you there for a second. I want to ask you, in your experience as a correctional officer, and your knowledge of IDOC policy that you've been trained on, do you believe that Sgt. Worman's use of force on Bull was unnecessary?

A: Yes sir.

Q.: Why?

A: Because Inmate Bull wasn't doing anything that I could see that would warrant that kind of use of force being used on him.

Q: Do you believe it was excessive?

A: I believed it was uncalled for.

Q: Okay. How do you define "excessive use of force"?

A: Beyond what it takes to control someone.

Q: Okay. So if force is unnecessary, you consider it excessive?

A: Yes sir.

Q: Inmate Bull was in restraints at the time?

A: Yes sir.

...

Q: And in your opinion and your experience did Bruce Worman violate the Department's policy with regard to his actions and how he treated Inmate Bull?

A: Yes sir.

Q: Why do you say that?

A: It was totally unnecessary for – he was already under control, and there was no need to throw him to the ground.

Tr., Vol. I, p. 53, L. 11 – p. 54, L. 6; p. 55, Ls. 10-17.

Correctional Officer Breagan Chadwell, after describing the incident he witnessed and his observation that Appellant spun Inmate Bull to the ground out of anger, testified as follows:

Q: From what you observed, do you believe that the force – from what you observed, spinning him to the floor, do you believe that was necessary?

A: I do not believe it was necessary.

Q: Why not?

A: Because I don't believe that – it didn't appear to me that Bull had provoked or using actions for that kind of force. I believe it was excessive, depending on his actions. I didn't see any actions on Bull's behalf.

Q: How many years have you been a C.O. with the Department?

A: Nine.

Q: And I believe you testified you're familiar with the IDOC policy use of force?

A: Yes.

Q: And based on your experience and training, based on what you observed, did Worman violate that use of force policy with how he treated Inmate Bull that day?

A: I believe so.

Q: Why?

A: Because I believe it was excessive use of force.

Q: Which parts were excessive use of force?

A: I believe it was excessive use of force even in grabbing Bull by the back of the jumpsuit when he even entered the sallyport. And even after restraining him, spinning him

around forcefully enough into the ground. I believe he probably could have had Bull do whatever he wanted just by words. But that's just what I observed.

Tr., Vol. I p. 226, L. 16 – p. 227, L. 22.

Finally, Correctional Officer Steven DeCamp, after describing what he witnessed regarding this incident, testified as follows:

Q: After witnessing this incident, and based on your observations, do you believe that Sergeant Worman's force on Inmate Bull was excessive?

A: Yes I do.

Q: And why?

A: From my experience, my training, my observation.

Q: Okay. And based upon that, what did Sgt. Worman do that was excessive?

A: Everything.

...

Q: What else was excessive?

A: The way he turned him around. The way he put handcuffs on him. The way he spun him around.

Q: You believe all of that was excessive force?

A: Yes, I do.

Tr., Vol. II, p. 381, Ls. 6-15; p. 382, Ls. 1-5.

**1. Establishing Proper Cause for Disciplinary Action Under Idaho Code § 67-5309(n) and DHR Rule 190.01 for violation of IDOC Policy and Directive Concerning Use of Force Does Not Require IDOC to Establish the Inmate Sustained Injury as a Result of Appellant's Use of Force.**

Appellant argues that he cannot be held to have used unnecessary or excessive force because Inmate Bull sustained no injury from the incident. Appellant cites a four-part test under the Supreme Court case *Kessler v. Barrowsky*, 129 Idaho 647, 656 (1996), for the proposition that Appellant's conduct must meet this four-part test before it can be determined that he

engaged in excessive force against Inmate Bull. The decision in *Kessler* and the four-part test cited therein are not applicable to this proceeding and Appellant's reliance thereon is misplaced. The *Kessler* case is a wrongful death case arising out of an arrest. Among some of the various claims the plaintiffs brought against the defendants, who were law enforcement officers, was a civil rights claim under the Federal Civil Rights statute 42 U.S.C. § 1983. The four-part test cited in the case is to determine whether there is liability and damages for a civil rights claim of being subjected to excessive force by police officers.

This proceeding before the Commission is significantly different. In this proceeding, IDOC has the burden of proving by a preponderance of the evidence that Appellant was properly subject to disciplinary action pursuant to Idaho Code § 67-5316. A determination of whether Appellant is properly subject to discipline is a function of determining whether the Department can establish "proper cause" for disciplinary action under one of the 17 enumerated reasons for proper cause under Idaho Code § 67-5309(n) and DHR Rule 190.01.

In this case, the Hearing Officer found that proper cause has been established under DHR Rule 190.01a, b, and e. Various other policies of IDOC, and in particular their use of force policy and directives, come into play by virtue of the expectations, obligations, and duties IDOC reasonably should expect from its security personnel. None of this analysis has anything to do with a four-part test to establish liability for a civil rights claim of excessive use of force in the civil context and therefore such analysis has no bearing on this matter.

A plain reading of IDOC Policy 307 indicates there is no requirement of injury to an inmate for there to be a violation concerning use of force. Appellant's argument is without merit.

**2. Appellant's Admissions in the Record in Using Excessive/Unnecessary Force are in Response to Specific Allegations Regarding This Incident and His Attempts to Distinguish Definitions of "Excessive" and "Unnecessary" Use of Force are Without Merit.**

While she did consider substantive testimony of the eyewitnesses, the Hearing Officer heavily relied upon noted admissions by Worman in relation to this incident. Specifically, admissions by Worman that the force he used on Inmate Bull was unnecessary and/or excessive. *Findings of Fact, Conclusions of Law and Preliminary Order*, pp. 14-16. Appellant attempts to explain his admissions by arguing that the words "excessive" and "unnecessary" are not synonymous in the context of IDOC's use of force policy and, therefore, cannot be used as evidence of his alleged misconduct. In making this argument, Appellant states that the words excessive and necessary are not defined in the IDOC use of force policy and that the warden and/or deputy warden did not sit down with him and explain their definition of excessive/unnecessary force to assure that Appellant was in agreement with the use of those words. See Appellant's Brief, p. 8.

The clear wording of IDOC's use of force policy states that its intent is to "ensure that only necessary force is employed to control offenders in its custody, in order to ensure that such persons receive fair, humane treatment and are not subject to avoidable injury." Appellant's Exhibit 23. IDOC Prisons Directive No.

307.02.01.001 states unequivocally that staff may “use force only as a last alternative after all other reasonable efforts have failed to resolve a situation, or where the urgency of the situation does not allow for non-force alternatives.” Even then, staff “shall use only the force necessary to gain control of the situation . . . or to ensure facility security and good order.” Appellant’s Exhibit 24.

IDOC’s use of force policy and directives do not require a general definition for the words “excessive” or “unnecessary” in order to implement this policy. The policy itself recognizes that the need for and/or the amount of force to be used is dependent upon the circumstances in which it may arise. Henry Atencio, Deputy Warden at ISCI, testified at the hearing about the plain meaning of the IDOC policy and the difficulty (or impossibility) of defining what amount of force is allowable before it becomes unnecessary or excessive. After reading the policy, Atencio stated:

Q. “. . . Staff members shall use only the force necessary to gain control of the situation to protect staff, offenders, and others to stop or prevent escapes, to prevent serious property damage, or to ensure facility security and goodwill.” Now, it seems to me that even in the purpose of this, the Department uses the word “necessary”, force necessary to gain control.

And I think you testified, correct me if I’m wrong, that one way to explain excessive force is to use force that is no longer necessary to gain control of the situation.

A: That’s correct.

Q: Is that a pretty – I mean, I know it’s a basic explanation, but is it an accurate one?

A: I believe it is an accurate one.

Q: Okay. And would you agree with me that defining what amount of force is necessary, or when it becomes unnecessary it’s almost impossible, if not is impossible to define what that means in every situation?

- A: It's very impossible in every situation. Every situation is different. It's hard to tell what's going to be excessive or unnecessary. It's just almost impossible.
- Q: So it's a situational – I mean, it can only be defined by the situation and what happens?
- A: Correct.

Tr., Vol. III, p. 615, L. 19 – p. 616, L. 15.

Appellant's admissions of using unnecessary force were in direct response to specific allegations regarding his actions in this incident set out in the NOCA or asked of him during the investigation of this matter. These admissions were not made in a vacuum under some differing definition of "unnecessary" or "excessive" use of force. Appellant was provided a written NOCA which cites *verbatim* the IDOC policy and directive regarding use of force which he is alleged to have violated. Appellant could not at the hearing, nor can he now, pretend he did not know the operational definition of IDOC's use of force policy, nor can he credibly create his own definition for unnecessary force (that there were alternatives to his admitted course of action). See Tr., Vol. III, pp. 733, Ls. 8-17; 736, Ls. 8-15.

Each of the officers that testified in this hearing, including Worman, testified that they had received extensive training on use of force toward inmates. This included direct training from the IDOC policy, restraining techniques of inmates, Correctional Emergency Response Team ("CERT"), and self-defense. This use of force training is a continuing training received by all officers. See Tr., Vol. I, Officer Ellis' testimony, pp. 16-17; Officer Chadwell's testimony, pp. 189-191; and C.O. DeCamp's testimony, Tr., Vol. II, pp. 347-348. Worman also testified that he was a field-training officer, a self-defense instructor, and that he

had training not only at the academy, but that he was a tactical officer on several tactical teams (CERT) as well. See Tr., Vol. III, pp. 648, Ls. 10-25. It is not plausible that Worman, a 21-year correctional officer at IDOC, with his extensive training background and broad experience, did not understand the concept of unnecessary/excessive use of force under IDOC's use of force policy and directive. His behavior and statements ("I fucked up. I could lose my stripes"- See Appellant's Exhibit 18, p 2, Ls. 20-22, p.5, Ls. 1-3.) immediately following the incident detail as much.

The Hearing Officer cited several of Appellant's own admissions that he used unnecessary or excessive force. First is Appellant's interview with the investigator assigned to the incident, Wes Greer. Appellant explained to Greer his feeling that he had "screwed up" with the inmate. Appellant explained that he chose to deal with the inmate from an anger standpoint rather than from a management or inmate supervision standpoint. Appellant's Exhibit 18, p. 4, Ls. 14-18. Appellant agreed with Greer when he was asked if he was acting out in emotion rather than logic during the incident:

GREER: Okay, so you used emotion rather than logic at that particular time?

WORMAN: Yes, I did.

GREER: Are you admitting to that fact?

WORMAN: Yes, I did.

Appellant's Exhibit 18, p. 4, Ls. 19-22.

GREER: Okay, so you feel that, that . . . you escalated the situation rather than de-escalated it?

WORMAN: I'd have to say that's . . .

GREER: Would you say that's accurate?

WORMAN: Yeah, that's accurate.

Appellant's Exhibit 18, p. 7.

When Greer questioned Appellant regarding the shower shoe and its involvement in the incident, Appellant stated as follows:

GREER: Now, after having looked back on the whole situation that he went down to the floor because . . . of your . . . as we determined as your excessive use of force, pulled him off the wall, would you agree that would be a correct statement?

WORMAN: Well, what I believe what I meant to say is that I swung him around. I swung too fast and him being ah passively not complying with my directions, I swung him around too fast. He was not complying with my directions and he fell off the shower shoe. I think it's a three-stage thing.

GREER: Okay.

WORMAN: Number one thing is that I swung him around too hard though.

Appellant's Exhibit 18, p. 9. (Emphasis added.)

Worman's Appeal to the Personnel Commission also contains admissions, stating as follows:

1. Excessive force on an inmate.

The 9-27-04 document [Appellant's Exhibit 4] II.A.4. says I admitted using unnecessary force in my written response dated 9-7-04 [Appellant's Exhibit 2]. This is an implication that I did not admit this before. In other words, lying about the incident prior to my written response.

Fact: I fully admitted my actions from the very beginning accept [sic] for the initial phone call to the Watch Commander where I attempted to minimize my actions to him . . .

My statement:

I allowed an inmate to make me angry . . . I am not asking a blind eye be turned to this incident. *I am guilty of only two actions:*

- (1) *Using unnecessary (excessive force) on an offender*

- (2) Minimizing my actions to my supervisor in my initial contact with him about this incident.

Worman Appeal at pp 1 and 4-5. (Emphasis added).

The Hearing Officer was clearly within her purview to rely on Appellant's own admissions of misconduct. Her findings are supported by substantial and competent evidence. The Hearing Officer's finding on this issue is affirmed.

**B. IDOC has not met its burden in demonstrating Worman filed a false incident report in violation of IDOC policy and DHR Rule 190.01.**

The Commission finds that IDOC hasn't proven by a preponderance of the evidence that Worman filed a false report in violation of IDOC policy and DHR Rule 190.01 a. and e. The crux of the Hearing Officer's determination on this issue hinges on Worman's characterization of the shower shoe's involvement in the incident report. The Hearing Officer noted:

However, Sgt. Worman did state in his Incident Report "As I turned him, Bull was passively resistant to my directions and tripped over one of the shower shoes he was wearing and fell to his butt." In Sgt. Worman's reply to Wes Greer's investigator's report which was sent out to Warden Blades, he changed his statement somewhat by saying "the inmate did absolutely trip, fall over, loose [sic] his shower shoe or just it [sic] fell off, I don't know which one." In Sgt. Worman's taped interview by Wes Greer he stated "I swung him around a little too much . . . As I turned him around . . . swung him around, he fell down, fell off the shower shoe. He lost a plastic flip flop, a shower shoe that we give them in Unit 8. He fell down.

*Findings of Fact, Conclusions of Law, and Preliminary Order at 16-17.*

Nothing in the record contradicts any fact regarding the whereabouts of or the impact of the shower shoe in Inmate Bull's fall to the ground. And at no point has Worman recanted his belief that the shower shoe played a contributing role in Inmate Bull falling to the ground. In particular, Worman testified as follows:

Q: And I think since this incident has occurred, you've admitted now, through the investigation and through some other things, you've admitted now that it wasn't the shower shoe that made the inmate go to the floor?

A: The shower shoe issue – the shower shoe issue is a whole – is a whole package by itself. The shower shoe was somewhere involved in some way. When he got to the strip cage, he didn't have this shower shoe. I'm not the – I never saw the shower shoe. I[t] was later reported, before Crosby reported – came to the unit, that the inmate had tripped on his shower shoe. It was told to me. I never saw the shower shoe. I never noticed the shower shoe. It wasn't an issue until I was told. And this was prior to Crosby coming down to the unit during the incident.

Tr. Vol. III, p. 659, Ls. 10-25. Later, Worman further testified:

Q: You did tell – or you at least talked about the shower shoe with Lieutenant Greer; right?

A: Yes.

Q: During the incident when you're pulling the inmate off the wall, how close to him are you?

A: Close enough to touch him.

Q: Okay. Can you see his feet? Are you paying attention to his feet?

A: No.

Q: When you put in your report that he stumbled or tripped on the shower shoe as you're turning him, while he's passively resistant, did you actually see that, or is that an assumption you drew after the incident was over?

A: I never saw the shower shoe. It's – I drew that assumption afterwards, after discussing it with the officers shortly after the incident.

Q: And the fact that Inmate Bull lost the shower shoe during the incident?

A: It was still sitting in the A Tier sallyport.

*Id.* at p.732, Ls.12-25, p. 733, Ls.1-7.

Worman also made elaborating statements about the incident not included in his incident report regarding the shower shoe. In his interview with Greer, he explained that “I swung him too fast and he being ah, passively not complying with the directions, I swung him around too fast. He was not complying with my directions, and he fell off the shower shoe . . . it’s a three stage thing. Number one thing, is that I swung him around too hard though.” Appellant’s Exhibit 18, p. 9. In his November 1, 2004 Appeal, Worman stated, “I did not know the shower shoe came off. I was told this. After reflecting on the incident, I realized the shower shoe had very little to do with this incident and I did not attempt to place blame on it or away from myself.” Worman Appeal, p. 2.

These elaborating details are not inconsistent with how Worman portrayed the incident in his initial report filed with IDOC. The evidence and testimony demonstrates that in citing to the issues relating to the shower shoe’s contribution to Inmate Bull’s fall to the ground, Worman was relying on information provided to him by other officers as well as the objective evidence at the scene in order to compile an incident report in the moments following the event. The record demonstrates that in filing his report Worman relied on his own recollection of the events, information provided to him by other officers, and objective evidence at the scene. His elaborating statements, made in the days following the incident during the investigation stages, don’t prove Worman had intent to file or did, in fact, file a false incident report on July 27, 2004 in those immediate hours after the incident.

There is not substantial and competent evidence to support the Hearing Officer's finding on this issue. The Commission holds there is not sufficient evidence to demonstrate that Worman filed a false report on July 27, 2004. The Hearing Officer's finding on this issue is reversed.

**C. There is Insufficient Evidence in the Record to Support the Hearing Officer's Finding That Worman was Insubordinate When He Read the Other Officers' Incident Reports.**

"Intentional insubordination" is a deliberate or willful refusal by an employee to obey a reasonable order or directive which an employer is authorized to give and entitled to have obeyed. *Whittier v. Department of Health and Welfare*, 137 Idaho 75, 79, 44 P.3d 1130, 1134 (2002). IDOC contends Worman was insubordinate because he read the incident reports completed by three subordinate correctional officers who witnessed the incident with Inmate Bull despite a direct order from his Watch Commander to not to review or get involved with the reports. On July 27, 2004, Lt. Crosby, as Watch Commander of the Institution, responded to this incident. Lt. Crosby completed an incident report that day in which he stated:

I advised Sgt. Worman to stay away from Bull and also not to review the staff's reports or get involved with the reports. This was done to ensure staff felt comfortable writing factual reports. I also advised Worman to be very professional around his staff, especially when expressing his views about this offender. I instructed the staff of what was needed and then exited the unit.

Respondent's Exhibit 14.

Sgt. Worman has never denied that he read the officers' incident reports. In fact, he admitted he did from the very start. He first admitted seeing them

when Lt. Crosby asked him when he was leaving work on the day of the incident.

Tr., Vol. III, p. 729, Ls. 5-12. He also admitted it to Investigator Greer:

GREER: (coughing) You'll have to excuse me, I've got some kind of crud going on here. Did Lt. Crosby advise you not to have any contact with Bull, and not to get involved with the staff reports?

WORMAN: Yes, he did.

GREER: Or, review the staff reports or get involved with the reports?

WORMAN: He did.

GREER: And did you review those reports?

WORMAN: They handed them to me as a packet and I did read them. I did not speak to them about them in any way.

Appellant's Exhibit 18, p. 11.

However, while Worman has clearly acknowledged from day one that he read through the incident reports filed by his subordinate officers while taking them to Lt. Crosby, the record is equally clear that Worman in no way got directly involved in the reports or had any impact on the drafting, creation or other oversight review of the reports. The testimony of the correctional officers substantiates this fact. *Id.* at p. 159, Ls. 21-23, p. 280, Ls. 6-15. Additionally, during the hearing on this matter, Lt. Crosby testified about his instructions to Worman in the following manner:

Q: Okay. What did you do after you got done talking with Inmate Bull?

A: I went back to – I went back to Sergeant Worman and instructed him to write a report. I also explained I was going to have the staff write reports. And I instructed him to stay away from Offender Bull and also not to review the staff's reports or get involved with the reports.

Q: Okay.

A: And I told him to be very professional around his staff, especially when expressing his views of Mr. Bull.

Q: Why did you instruct him not to review the – or get involved with the staff reports?

A: Because I didn't want the staff to feel they were influenced in any way to write a report. Once I left Sergeant Worman's office, I went to the staff and instructed them I needed full and factual reports about this incident, what happened. And told them I would have somebody come down and pick them up. If there was any kind of legal issue or anything, because we did have an offender saying he had been assaulted by staff, any kind of legal issue, I didn't want it to appear as though Sergeant Worman had any kind of influence over those reports. So I left him out of that chain to basically protect Sergeant Worman and make sure that it didn't have any appearance of him having any influence on those reports and how they were written.

Q: And that's why you instructed Sergeant Worman not to read them?

A: I told him not to review them or have anything to do with the report process.

Tr., Vol. II, p. 503, Ls. 10-25, p. 504, Ls. 1-18. Thus, the fundamental basis for this directive to Worman was to protect and prevent Worman from having any influence on the drafting of Ellis, DeCamp, and Chadwell's reports. While Worman has admitted to briefly reading portions of the reports, which were brought to his office, there is absolutely no evidence that following his discussion with Lt. Crosby he in anyway was involved with the drafting, creation or other review of those reports. Nor is there any evidence that after talking with Lt. Crosby Worman had any influence on the reports. At the hearing, Worman testified as follows:

As I stated before, Crosby gave me the general statements that are always given in a situation like this. It was a casual conversation. I

was – I was not to have any involvement in the information reports. I knew that [w]as going to be the case, and I wasn't going to have any involvement. As I stated in one document, curiosity got the cat. An officer brought the documents down to my office, set them on the chair there and handed them to me.

*Id.* at p. 696, Ls. 10-19. While it is unclear whether Worman was handed the reports or whether they were left on his office desk, Worman was presented with the officers' incident reports. In fact, according to Lt. Crosby, this was not an unusual process for officers in this unit – to involve their sergeant in the incident report review process. Tr., Vol. II, p. 507, Ls. 11-20. In fact, Officer Ellis testified that in Worman's unit, it was the standard, although it wasn't required. Tr., Vol. I, p. 73, Ls. 17-20; p. 74, Ls. 1-4. After writing their incident reports, the officers would deliver them to Worman who would review/look over the reports for content and might suggest grammatical and structural changes. *Id.* at p. 73, Ls. 20-25. After his discussion with Worman, Lt. Crosby did nothing to let Officers Ellis, DeCamp, and Chadwell know that they were not to follow the normal procedure of providing the reports to Worman. Therefore, the reports were left with Worman in his office.

Beyond the simple fact that Worman briefly glanced/read through the reports that were left in his office (the initial reports at issue are short paragraphs – See Appellant's Exhibits 6, 9 & 11), there is no other evidence in the record demonstrating Worman had any involvement or influence on the drafting of the reports or involvement in any review/correction process. That was what he was ordered to avoid. He was ordered not to review or get involved in the incident reports.

Worman's actions in simply reading the reports that were provided to him as part of an standard practice in his unit, absent corrective review or other involvement with the reports does not constitute a willful and deliberate refusal to obey Lt. Crosby's order. While the Hearing Officer's factual findings are supported by substantial and competent evidence in the record, the Commission finds IDOC has not proven insubordination in violation of DHR Rule 190.01 e. The Hearing Officer's finding on this issue is reversed.

## V.

### **CONCLUSION**

The Commission finds (1) IDOC did not meet its burden in demonstrating Worman filed a false report; and (2) Worman was not insubordinate in reading the other officers' incident reports. However, there is substantial and competent evidence to uphold the Hearing Officer's decision finding Worman used unnecessary force on Inmate Bull in violation of IDOC Policy. The Department has demonstrated there was proper cause for discipline by a preponderance of the evidence and Worman's termination is upheld.

## 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 \_\_\_\_ day of \_\_\_\_\_, 2007.

BY ORDER OF THE  
IDAHO PERSONNEL COMMISSION

\_\_\_\_\_  
Mike Brassey, Commission Chairman

\_\_\_\_\_  
Pete Black, Commissioner

\_\_\_\_\_  
Clarisse Maxwell, Commissioner

\_\_\_\_\_  
John Cowden, Commissioner

\_\_\_\_\_  
Evan Frasure, Commissioner

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by the method stated below on this \_\_\_\_ day of \_\_\_\_\_, 2007.

### FIRST CLASS MAIL

Kevin E. Dinius  
WHITE PETERSON, P.A.  
5700 E. Franklin Rd., Ste 200  
Nampa, ID 83687-7901

Brian Benjamin  
Deputy Attorney General  
Statehouse, Room 210  
P.O. Box 83720  
Boise, ID 83720-0010

Kail Q. Seibert  
Hearing Officer  
P.O. Box 6473  
Boise, ID 83707

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Secretary, Idaho Personnel Commission