BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

BRUCE MUNN, Appellant, v. DEPARTMENT OF CORRETIONS, Respondent.	)	Case No. RED-04-0051 ORDER GRANTING RESPONDENT'S MOTION TO DISMISS APPEAL

I. INTRODUCTION

1.1 **Consideration of Respondent's Motion to Dismiss.** This matter came before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member, on November 14, 2005, for consideration of Respondent's Motion to Dismiss Appeal. This matter was considered on written documents without oral argument.

1.2 **Representation.** David La Raus, Assistant Attorney General, represents Respondent Department of Corrections. Tracey A. Thompson, Senior Staff Attorney for Teamsters Local Union No. 117, represents Appellant Bruce Munn.

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including: Respondent's Motion to Dismiss, with attachments, filed October 21, 2005; Supplementary Declaration in Support of Respondent's Motion to Dismiss Appeal, with

attachments, filed October 27, 2005; and Second Supplementary Declaration in Support of Respondent's Motion to Dismiss, with attachments, filed October 27, 2005.

II. BACKGROUND

2.1 By letter dated October 14, 2004, former James C. Spalding, Superintendent, notified Appellant that he was being disciplined and would be reduced in salary as a Cook A/C effective November 1, 2004 through January 31, 2005. Respondent charged Appellant with neglect of duty, gross misconduct, and willful violation of agency policy. Appellant filed a timely appeal on November 18, 2004.

2.2 By letter dated October 13, 2005, Ken Quinn, Superintendent, rescinded the reduction in salary action which is the subject of this appeal. Respondent notified Appellant that the discipline had been rescinded, and that Appellant would be reimbursed for the loss of pay.

2.3 On October 21, 2005, Respondent filed a Motion to Dismiss, arguing that because the agency withdrew the disciplinary action prior to the hearing on the appeal, there is no relief that the Board can grant to the Appellant. Respondent further indicated that the Department of Corrections was taking steps to ensure that Appellant would be wholly reimbursed for the monies previously deducted from his pay.

2.4 On October 27, 2005, Respondent filed a Supplementary Declaration in Support of Respondent's Motion to Dismiss Appeal, with attachments. In a sworn statement, Mary K. Davis, Payroll Supervisor for the Monroe Correctional Complex (MCC), declared that a requisition for payment to Appellant had been issued for his lost pay due to the reduction in pay imposed from November 1, 2004, through January 31, 2005, in the amount totaling $217.91.

2.5 Respondent also filed a Second Supplementary Declaration in Support of Respondent's Motion to Dismiss Appeal, dated October 27. In a sworn statement, Linda L. Sutherland, Fiscal Technician for the Washington Correctional Center for Women (WCCW), where Appellant is currently employed. Ms. Sutherland declared that on October 25 she personally handed Appellant a check issued to him by the department in the amount of $217.91.

2.6 Neither Appellant nor his representative filed a response to the motion.

III. DISCUSSION

3.1 The Board may decide an appeal by motion if the documents on file, depositions and affidavits show there is no genuine issue as to any material fact and the appeal should be dismissed as a matter of law. WAC 358-30-060(1).

3.2 The Board has jurisdiction to hear appeals of "[a]ny employee who is reduced, dismissed, suspended, or demoted, after completing his or her probationary period of service as provided by the rules of the board, or any employee adversely affected by a violation of the state civil service law, chapter 41.06 RCW, or the rules adopted under it. . . ." RCW 41.06.170(2).

3.3 The question here is whether an action exists over which the Board can exercise jurisdiction. In this case, the reduction in salary imposed against Appellant has been rescinded and Appellant has now been reimbursed for the lost pay. Therefore, the disciplinary action no longer exists and the appeal should be dismissed.

Having reviewed the files and records in this matter and being fully advised in the premises, the Board enters the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is granted, and the appeal of Bruce Munn is dismissed.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member