

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
OFFICE OF APPEALS
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

THIRD LEVEL APPEAL DECISION

Date: FEB 23 2017

In re: [REDACTED]
California Health Care Facility - Stockton
7707 Austin Road
Stockton, CA 95213

TLR Case No.: 1606191 Local Log No.: CHCF-16-03674

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner J. Dominguez, Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that on or around September 2016, his 1st amendment right was violated due to disallowing his publication from an approved vendor. The appellant asserts he has been receiving publications from this vendor for 15 years and this is the first time his publication has been rejected. The appellant alleges that the publication does not contain nudity, incite violence, gambling, instructions on how to make weapons, sabotage computers/electronics, maps nor can it be perceived threatening to the institutional security. The appellant contends that pursuant to the 1st amendment and California Penal Code Section 2601(c) prisoners have the right to receive publications. The appellant asserts that publications cannot be censored merely because Prison Officials believe it contains exaggerated complaints or inflammatory remarks. The appellant alleges that disagreements with the sender or receiver's morals, values, attitudes, veracity or choice of works cannot be the cause for correctional staff to disallow mail. The appellant claims he is being harassed and targeted. The appellant asserts the publication in question is not on the disapproved list.

The appellant is "requesting a full investigation into his allegations and for the Division of Adult Institutions to be addressed as pursuant to procedure California Code of Regulations, Title 15, Section (CCR) 3035." Additionally, the appellant is requesting to receive the publication that was confiscated from him and to be given the reason why it was disallowed. Finally, the appellant is requesting a face to face interview at every level of this appeal.

II SECOND LEVEL'S DECISION: The reviewer found that The Under Lock and Key, July/August 2016, Number 51 issue violated CCR 3006(c)(5) and was disallowed pursuant to a memorandum dated October 6, 2016, [actual date October 5, 2016] from the Office of Policy Standardization (OPS). The OPS determined the cover page of the issue in question contained material that inspired inmates to disrupt the order of the facility by participating in a prisoner work stoppage; therefore, the issue was not to be delivered to inmates. The appellant's request to be interviewed at the Second Level of Review (SLR) was granted; however, all other requests were denied. Therefore, the appellant's appeal was partially granted at the SLR.

III THIRD LEVEL DECISION: Appeal is denied.

A. FINDINGS: Upon review of the submitted documentation, the Third Level of Review (TLR) has determined the appellant's issues have been appropriately reviewed and evaluated by the institution. The TLR noted that the CDC Form 1819, Notification of Disapproval-Mail/Packages/Publications, signed on September 2, 2016, indicates the appellant's Under Lock and Key publication was disallowed pursuant (CCR) 3006(d). The TLR finds the publication was reviewed and appropriately disapproved by Correctional Captain A. Green pursuant to CCR 3136(a) and CDCR Operations Manual, Section (DOM) 54010.16. Moreover, the examiner reviewed a Memorandum dated October 5, 2016, authored by Natalie Fransham, Chief, Office of Policy Standardization, which indicated that the cover page of the publication in question was in violation of CCR 3006(c)(5), thus it should not be delivered to inmate(s). Therefore, the examiner concluded that the appellant's publication was appropriately disapproved pursuant to DOM 54010.14 and CCR 3135. The examiner's review of the CDC Form 1819, revealed the contraband is being held pending the outcome of the appeal. Furthermore, the appellant shall be afforded

the opportunity to determine the contraband's disposition pursuant to CCR 3191(c). Therefore, based upon the evidence submitted by the appellant the TLR determined the involved staff acted in accordance with departmental policy. The examiner concurs with the SLR and concludes that relief at the TLR is not warranted.

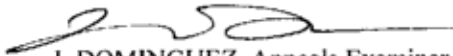
B. BASIS FOR THE DECISION:

CCR: 3000, 3004, 3006, 3022, 3131, 3134, 3134.1, 3135, 3136, 3137, 3143

Chief, Office of Policy Standardization, Memorandum dated October 5, 2016, RESPONSE TO INSITUTIONAL REQUEST FOR APPROVAL OF TEMORARILY WITHELD PUBLICATION


C. ORDER: No changes or modifications are required by the Institution.

This decision exhausts the administrative remedy available to the appellant within CDCR.



J. DOMINGUEZ, Appeals Examiner
Office of Appeals

cc: Warden, CHCF
Appeals Coordinator, CHCF



for M. VOONG, Chief
Office of Appeals