BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

EDWARD CAVIN, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. RED-01-0004 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at Vancouver Fire Station #83 in Vancouver, Washington, on January 18, 2002.

1.2 **Appearances.** Appellant Edward Cavin was present and was represented by Christopher Coker, Attorney at Law, of Parr & Younglove, P.L.L.C. Paige Dietrich, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a reduction in pay for neglect of duty, insubordination and willful violation of agency policy. Respondent alleges that Appellant violated a supervisory directive when he delivered a document to the Attorney General's Office without the requisite approval and signature of his supervisor.

Personnel Appeals Board
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Olympia, Washington 98504

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Aquino v. University of Washington, PAB No. D93-163 (1995); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant was a Social Worker 3 and permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 10, 2001.

2.2 By letter dated December 28, 2000, Charles Dee Wilson, Regional Administrator for the Division of Children and Family Services (DCFS), advised Appellant of his reduction in salary, from range 48, step H, to range 48, step A, effective January 16, 2001 through February 15, 2001. Mr. Wilson alleged that Appellant neglected his duty, was insubordinate and willfully violated agency policy when he delivered an Individual Service and Safety Plan (ISSP) to the Attorney General's Office that was not approved or signed by his supervisor.

2.3 Appellant began his employment with the Vancouver DCFS office in July 1997. As a Social Worker 3, Appellant was responsible for performing advanced level specialized case management to children in out-of-home care. Appellant's duties included providing ongoing services, conducting interviews, preparing reports and court documents, working with the Attorney General's Office, and testifying in court on behalf of children and the department.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.4 An Individual Service and Safety Plan (ISSP) outlines the case plan for a child in out-of-home care. The ISSP contains important information about the child and is provided to the child's caregivers, parents, and to the courts. A Social Worker must develop an ISSP for each child on his/her caseload and submit the ISSP to his/her supervisor for review and signature. Whenever corrections are necessary, the ISSP is returned to the Social Worker who is responsible for making the changes and returning the form to the supervisor for another review. On rare occasions, ISSPs are distributed without the signature of a supervisor. ISSPs are normally delivered to the AAG for review approximately 10 days prior to a court hearing. Appellant was aware of his responsibility to prepare and maintain case records, forms and reports as required by the agency and outlined in the Children's Administration Practices and Procedures Guide, Chapter 4000.

2.5 On January 24, 2000 and February 15, 2000, Marian Gilmore, Appellant's supervisor, issued Appellant written directives that he submit all ISSPs, including draft/working copies, to her for review and signature before routing them to the Attorney General's Office and distributing copies to other individuals. Ms. Gilmore's memos were prompted by complaints she received that Appellant was distributing copies of ISSPs without her signature.

2.6 By memo dated April 11, 2000, Ms. Gilmore again emphasized Appellant's responsibility to submit all ISSPs to her for review and signature before distributing them.

2.7 Appellant's performance evaluations reflect that he met normal performance requirements. However, in Appellant's May 2000 evaluation, Ms. Gilmore addressed issues regarding complaints she received from clients that Appellant's behavior was rude, disrespectful, antagonizing and intimidating. As part of Appellant's future performance expectations, Ms. Gilmore directed Appellant to interact with clients in a courteous, respectful and non-threatening manner and to submit all ISSPs and correspondence to her for review.

Personnel Appeals Board
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Olympia, Washington 98504

2.8 On Friday, June 23, 2000, Appellant submitted a working copy of the ISSP for Client C to Ms. Gilmore for her review and signature.

2.9 While in court on another case, Appellant spoke with the Assistant Attorney General assigned to Client C's case. The AAG asked Appellant for a copy of Client C's ISSP for an upcoming hearing scheduled on the case in early July. Appellant agreed to deliver the ISSP in time for the AAG to review and prepare for court.

2.10 On June 26, Ms. Gilmore and Appellant met to discuss changes to Client C's ISSP. Appellant agreed to make the necessary changes and return the ISSP to Ms. Gilmore for final approval. Later that day, at approximately 3 p.m., Ms. Gilmore received an email message from a staff member at the Attorney General's Office advising her that Appellant delivered Client C's ISSP to their office. Attached to the ISSP was a note written by Appellant, which read, "This is an unsigned ISSP which has been updated. I will be on vacation 6/28-30 -want to ensure that you have the newest changes which are outlined in red." The attorney assigned to Client C's case was concerned because Ms. Gilmore's signature was not on the ISSP. Appellant had not advised Ms. Gilmore that he had distributed an unauthorized and unsigned ISSP.

2.11 Ms. Gilmore subsequently initiated a Conduct Investigation Report (CIR) alleging that Appellant failed to comply with her directives and agency policy that he route all ISSPs to her before sending them to the Attorney General's Office. Following an investigation, Appellant was found to have committed misconduct for distributing the ISSP without Ms. Gilmore's signature and the CIR was forwarded to Charles D. Wilson, Regional Administrator for the Division of Children and Family Services. As Appellant's appointing authority, Mr. Wilson reviewed the finding of misconduct and concluded that Appellant violated agency policy and two supervisory directives

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

when he gave the Attorney General's Office a copy of an ISSP that was not signed by his supervisor.

2.12 In determining the level of discipline, Mr. Wilson reviewed Appellant's personnel file, which included a previous reduction in salary dated October 2, 2000 for neglect of duty and willful violation of agency policy for his failure to report an allegation of child abuse within 48 hours and a letter of reprimand dated November 14, 2000 for violating the department's policy regarding the use of the DSHS electronic messaging system and the Internet.

2.13 While Mr. Wilson believed that the misconduct involved here, in isolation, would not have warranted formal discipline, he felt that Appellant's defiance and refusal to abide by his supervisor's previous directives was deliberate and could not be tolerated. Mr. Wilson believed that the agency had made a good faith effort to help Appellant understand the importance of following agency policy regarding the ISSPs. Therefore, Mr. Wilson concluded that a reduction in salary was necessary to ensure that Appellant's misconduct would not be repeated.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant had a duty to submit all ISSPs to his supervisor for approval and that he had received two written directives to that effect. Respondent asserts that Appellant understood the agency's policy regarding ISSPs as well as his supervisor's directives. Respondent asserts that Appellant, nonetheless, delivered an ISSP to the AAG without first obtaining his supervisor's authorization or signature. Respondent asserts that Appellant neglected his duty, was insubordinate and willfully committed a policy violation. Respondent contends that the agency imposed a program of progressive discipline, and based on a previous reduction in pay and a prior letter of reprimand, the reduction imposed here was the appropriate sanction.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

3.2 Appellant admits that he submitted an unsigned working copy of the ISSP both to his immediate supervisor and to the Assistant Attorney General. However, he asserts that he ran into continuing problems with Ms. Gilmore, who would not return his ISSPs and correspondence in a timely manner. Appellant asserts that he attempted to locate Ms. Gilmore to obtain her signature after the AAG asked him for a copy of Client C's ISSP, but was unsuccessful in finding her. Appellant contends that as a result, he made a copy of the ISSP and submitted it to the AAG. Therefore, Appellant asserts that he fulfilled the duties of his job when he delivered the ISSP to the AAG in a timely manner. Appellant argues that other staff members have distributed working copies of ISSPs without a supervisor's signature. Appellant denies that he violated agency policy because the policy does not address working copies of ISSPs, and he further asserts that if any violation of the policy occurred, it was a violation of necessity. Appellant asserts that the discipline imposed was unwarranted and grossly severe.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995).

4.5 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

4.6 Respondent met its burden of proof that Appellant neglected his duty, was insubordinate and willfully violated agency policy when he submitted an ISSP to the Attorney General's Office without first obtaining Ms. Gilmore's approval and signature. Appellant provided no convincing factors to mitigate his actions. Although Appellant had concerns that documents he submitted to Ms. Gilmore for review were not returned to him in a timely manner, there is no evidence that the ISSP in this case remained in Ms. Gilmore's possession for an unreasonable length of time. In fact, Appellant submitted the ISSP to Ms. Gilmore on Friday, June 23; Ms. Gilmore reviewed and returned the corrected form to Appellant the following Monday, June 26. The time period was not unreasonable. Although Appellant received a request for a copy of the ISSP from the Assistant Attorney General, this request did not override Appellant's duty and responsibility to adhere to agency policy and supervisory directives.

Personnel Appeals Board
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Olympia, Washington 98504

4.7 Although it is not appropriate to initiate discipline based on prior formal and informal disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No. D93-163 (1995).

4.8 Based on the department's repeated attempts to impress on Appellant the importance of having all ISSPs reviewed and signed by his supervisor prior to distribution and Appellant's disregard of lawful directives, we conclude that the disciplinary action imposed was appropriate. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Edward Cavin is denied.

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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