BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

PAMELA GREEN, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	)	Case No. DISM-99-0004 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 LEANA D. LAMB, Member. The hearing was held on May 30, 2000, in the Training Room of the Research and Training Building at Harborview Medical Center in Seattle, Washington. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant did not appear and no representative appeared on her behalf. Respondent University of Washington was represented by Diana E. Moller, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for excessive absenteeism, and/or excessive tardiness and/or neglect of duty and/or verbal abuse and/or willful violation of published department policies. Respondent alleged that Appellant engaged in a continued pattern of being absent and tardy to work, failed to comply with department policy for calling in her absences, and threatened co-workers.

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1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); Johnson v. Lower Columbia College, PAB No. D93-077 (1994); Burgess v. University of Washington, PAB No. D93-151 (1994); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

II. FINDINGS OF FACT

2.1 Appellant Pamela Green was a Patient Registration Representative and a permanent employee for Respondent University of Washington. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 15, 1999.

2.2 By letter dated December 3, 1998, Respondent dismissed Appellant, effective December 18, 1998, for excessive absenteeism, and/or excessive tardiness and/or neglect of duty and/or verbal abuse and/or willful violation of published department policies.

2.3 The circumstances of Appellant's misconduct were summarized in a memorandum from Chris Martin, Administrative Director for Emergency Services, dated December 2, 1998. In the memorandum, Ms. Martin recommended that Appellant be dismissed from her position.

2.4 Appellant had been employed by the University of Washington since August 1990. Appellant had a history of receiving numerous verbal counselings and clear expectations regarding her attendance and calling in her absences, and of receiving informal disciplinary actions for her continued tardiness and excessive absenteeism. Furthermore, in June 1998, Appellant was given a three-day suspension for excessive tardiness and in September 1998, she was given a ten-day suspension for excessive absenteeism and tardiness.

2.5 Apart from that days she was suspended in September 1998, Appellant was absent or tardy on 82 percent of the available work days in September. In October 1998, Appellant was absent or tardy on 46 percent of the available work days. In November 1998, Appellant was absent or tardy on 72 percent of the available work days.

2.6 Appellant was aware of the department's policy requiring employees to call in their absences prior to the beginning of their work shift. Yet, she had a history of frequently failing to call in her absences before her shift. Appellant often called in an hour or more after her shift was scheduled to begin. When she did call in to report that she would be arriving at work late, she often did not report to work at all. Appellant's unpredictability increased the workload of her co-workers.

2.7 Appellant also had a history of being counseled and reprimanded for loud, verbally abusive treatment of co-workers and others. For example, at the predetermination meeting prior to Appellant's ten-day suspension, she threatened Human Resources Representative Tina Reese, stating "I'll get you later." In addition, Appellant was disrespectful, impudent, verbally abusive and threatening to Ms. Martin and in reference to Ms. Martin, stated that she was one minute away from "kicking that bitch's ass." Appellant exhibited her verbally abusive behavior in front of staff, patients and patients' families.

2.8 Prior to her dismissal, Appellant was given the opportunity to attend a predetermination meeting. However, Appellant did not attend the meeting. Subsequently, by letter dated December 3, 1998, Tomi S. Hadfield, Chief Operating Officer, notified Appellant of her dismissal.

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III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant's egregious attendance problem was further compounded by her failure to follow attendance and call-in policies, by her unpredictable attendance even when she did call in, and by her verbally abusive and threatening behavior. Respondent asserts that Appellant neglected her duty regarding her attendance, and by doing so, she burdened her co-workers which negatively impacted the Department's ability to function and resulted in a negative impact on patient care. In addition, Respondent argues that Appellant verbally abused and threatened her supervisor and a human resources representative. Respondent contends that in spite of the extensive use of progressive discipline, Appellant failed to show any improvement and her unacceptable conduct continued. Therefore, Respondent asserts that dismissal was appropriate.

3.2 Appellant did not provide a defense to the charges nor did she dispute the appropriateness of the disciplinary sanction before the Board.

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).

4.3 Abuse of fellow employees is established when it is shown that the employee wrongfully or unreasonably treats another by word or deed. Johnson v. Lower Columbia College, PAB No. D93-077 (1994).

4.4 Respondent has met its burden of proving that Appellant verbally abused her supervisor and a human resources representative.

4.5 Excessive tardiness or excessive absenteeism that causes a burden or undue hardship of fellow employees or a reduction in productivity is just cause for discipline in compliance with WAC 251-11-030. Burgess v. University of Washington, PAB No. D93-151 (1994).

4.6 Respondent has met its burden of proving that Appellant was excessively absent and tardy and that her unpredictable absences caused an undue burden on her co-workers which resulted in an adverse impact on patients.

4.7 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).

4.8 Respondent has met its burden of proving that Appellant neglected her duty when she failed to report to work, failed to report to work on time, failed to treat others in a professional and non-threatening manner, and failed to abide by department policy for calling in absences.

4.9 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. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

4.10 Respondent has met its burden of proving that Appellant was aware of, yet failed to comply with, the department's policy for reporting absences.

4.11 Respondent has met its burden of proving that Appellant engaged in an egregious, continuous pattern of inappropriate behavior that constituted excessive absenteeism, excessive tardiness, neglect of duty, verbal abuse, and violation of department policy. Therefore, the disciplinary sanction of dismissal is appropriate, and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Pamela Green is denied.

DATED this _____ day of _____, 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Leana D. Lamb, Member

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