BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

HEATHER CORBETT, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. DSEP-01-0005 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, GERALD L. MORGEN, Vice Chair, and BUSSE NUTLEY, Member. The hearing was held at the office of the Personnel Appeals Board, in Olympia, Washington, on June 27, 2003. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** A representative did not appear on behalf of Appellant Heather Corbett. Adrienne Harris, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disability separation.

1.4 **Citations Discussed.** Smith v. Employment Security Dept., PAB No. S92-002 (1992); WAC 356-05-120; WAC 356-35-010.

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II. FINDINGS OF FACT

2.1 Appellant Heather Corbett was a permanent employee for Respondent Department of Corrections. 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 August 1, 2001.

2.2 In 1990, Appellant received injury to her brain during an automobile accident. Appellant underwent two brain surgeries and received intensive physical, occupational, and cognitive therapy.

2.3 In June, 2000, the Department of Corrections received Appellant's name from a Reduction-in-Force register. The agency offered Appellant an Office Assistant position with responsibilities that included answering the telephone, greeting people at the front desk, and directing visitors to appropriate places. The position also required Appellant to provide offenders with monthly report forms and review court documents to determine the correct procedures to follow.

2.4 After receiving the employment offer, Appellant indicated that she needed reasonable accommodation for her disability. Appellant stated that she had difficulty dealing with stress and "may need to walk away or take a break." The agency arranged for Appellant to spend a few hours observing the front desk and the duties she would be required to perform.

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2.5 The essential functions of Appellant's position were identified as:

- Ability to greet, screen, and direct visitors and a high volume of offenders;
- Ability to remain at front office job station for prolonged periods, and/or until appropriate staff relief arrives;
- Ability to work independently at front office job station without presence of staff;
- Ability to conduct defusing techniques toward verbally abusive and demanding offenders;
- Ability to remain calm when confronted by angry or agitated offenders;
- Ability to grasp organizational structure, protocols, and processes for the purpose of assessing offenders' needs to direct them to the appropriate staff;
- Ability to recall and document into a computer, specific and accurate observations of offender interactions;
- Ability to operate a complex computer tracking system using multiple screens for retrieval of information.

2.6 On June 20, 2000, Mary Gallagher, Human Resource Manager, wrote a letter to Dr. Eric Klein, Appellant's physician. Ms. Gallagher informed Dr. Klein that Appellant had been selected for the Office Assistant vacancy and described the position as a stressful one which required the ability to work with offenders, and remain at the receptionist station unless released for a break. Ms. Gallagher included the essential functions for the position and requested that Dr. Klein contact her if he determined that Appellant was unable to perform the duties of the position.

2.7 On July 10, 2000, Dr. Klein informed Ms. Gallagher by letter that Appellant suffered neurological symptoms from her brain injury that limited her attention, concentration, reasoning, planning, and organizational skills. Further, Appellant suffered from panic disorder, panic attacks, seizures, behavior outbursts, and memory lapses. Appellant also needed time to adjust to changes and needed to stand rather than sit for long periods. Dr. Klein determined that her condition was permanent and there were no remedies to correct the problems. Dr. Klein recommended the following accommodations, which the agency agreed to:

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- Allow Appellant to leave the front desk job station at her discretion;
- Provide a computer desk station that allowed Appellant to stand instead of sit;
- Allow Appellant a flexible schedule for breaks;
- Provide limited supervision;
- Provide work instructions clarified to Appellant's understanding;
- Allow Appellant time to adjust to changes in work environment and job duties;
- Allow Appellant to electronically record meetings;
- Provide written and verbal instructions;
- Allow Appellant to post written instructions so they were readily accessible;
- Allow Appellant to organize her work environment.

2.8 On August 17, 2000, Dr. Klein wrote a letter to the agency stating that he and Appellant agreed to make the following modifications to the accommodations:

- Appellant would not use her own discretion to leave the front desk area and would remain until appropriate staff arrived to relieve her. If necessary, Appellant would implement strategies to help her deal with panic attacks when she was unable to leave the front desk area. However, she would leave the front desk when needed if relief staff was available.

- The use of flexible break periods would be dependent upon availability to office operations.

- Adjustments to work environment and duties, if necessary, would not be an issue as long as Appellant was given the opportunity to clarify them. Appellant requested adjustments in writing so that she could post them for easy retrieval.

2.9 Appellant's first day at work was postponed until November 8, 2000 while the agency acquired the special furniture necessary to accommodate her. In addition, the agency provided a "double-fill" employee for 30 days to assist Appellant during her training.

2.10 Shortly thereafter, Appellant found it necessary on numerous occasions to leave her station due to stress. Appellant was unable to perform most of the duties without direct assistance from another staff member when greeting offenders and directing phone calls. Appellant was unable to perform multiple tasks.

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2.11 Appellant insisted that she could perform the essential functions of her position; however, she demonstrated that she was unable to do so. The agency became very concerned about Appellant's safety and the safety of others in the office.

2.12 On November 30, 2000, Appellant was placed on home assignment after an outburst with another employee in which Appellant became upset, yelled, and shook her finger at the employee.

2.13 On January 18, 2001, Ms. Gallagher arranged for Dr. Bill Ekemo, Psychologist, to perform a "fitness-for-return-to-duty" evaluation of Appellant. The agency's goal was to develop a risk management strategy and determine if Appellant was capable of performing the essential functions of her position during stressful situations.

2.14 Dr. Ekemo examined Appellant on January 25, 2001 and February 7, 2001. On March 6, 2001, Dr. Ekemo concluded that Appellant's position required cognitive skills that were beyond her capabilities. Further, Dr. Ekemo determined that there was no way to adequately control Appellant's behavioral outbursts. Since it was impossible for the Department of Corrections to accommodate Appellant's disruptive behavior, Dr. Ekemo determined that there was a safety risk, particularly if the outbursts were directed at offenders. Dr. Ekemo emphasized that Appellant should not have contact with offenders. Further, Dr. Ekemo stated, in part, that:

> It is my impression, based on the present evaluation, that [Appellant] will experience performance difficulties during stressful/emergent situations and possibly overreact to normal job pressures and conflicts that may happen in this particular type of work environment.
>
> Her inadvertent, but nevertheless unusual affect when frustrated, such as laughing or crying, may increase workplace risks to an unacceptable level and constitute a vicarious liability to the agency. Also unintended are non-verbal social cues that appear flirtatious and likely send the wrong message to clientele, which could be a more direct threat to her safety with offender populations.

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> Essentially, it is my professional opinion that the current job requirements are not a suitable job fit for safety and performance needs.

2.15 Ms. Gallagher attempted to find alternative positions for Appellant within the Department of Corrections; however, she was unable to find any suitable positions that did not require contact with offenders. Ms. Gallagher also conducted vacancy searches for suitable positions outside the Department of Corrections but was unable to locate any positions that met Appellant's accommodation needs.

2.16 By letter dated July 13, 2001, Jim Blodgett, Regional Administrator, notified Appellant of her separation from her Office Assistant position effective September 11, 2001.

IV. CONCLUSIONS OF LAW

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

4.2 At a hearing on appeal of a disability separation, the appointing authority has the burden of supporting the action that was initiated. WAC 358-30-170. Respondent has the burden of proving that Appellant was unable to perform the duties of the position as specified in the letter of separation and that reasonable accommodation cannot be provided. Smith v. Employment Security Dept., PAB No. S92-002 (1992).

4.3 The issue here is whether Respondent complied with the provisions of WAC 356-35-010 when it separated Appellant from her position as an Office Assistant due to her disability. WAC 356-05-120 defines a disability as "[a]n employee's physical and/or mental inability to perform adequately the essential duties of the job class." In this case, Appellant was unable to perform the

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essential duties of her position. Therefore, Appellant's condition meets the definition of a disability.

4.4 WAC 356-35-010(1) provides, in part, that an appointing authority "may initiate a disability separation of a permanent employee only when reasonable accommodations cannot be provided. . ." Respondent undertook many steps to accommodate Appellant. Despite these good faith efforts, Appellant was unable to perform the essential duties of her position as an Office Assistant. Furthermore, Respondent had no obligation to reallocate or alter the essential functions of Appellant's position. Therefore, Mr. Blodgett reasonably concluded that accommodation could not be provided to allow Appellant to perform the essential duties of her position.

4.5 Finally, as a part of its accommodation process, Respondent conducted vacancy searches for positions for which Appellant qualified; however, none existed. We conclude, therefore, that Respondent made good faith efforts to accommodate Appellant.

4.6 Respondent has met its burden of proof that Appellant could not perform the essential duties of her position and that reasonable accommodation could not be provided. Therefore, the disability separation of Heather Corbett should be affirmed and her appeal denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Heather Corbett is denied.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Gerald L. Morgen, Vice Chair

_____
Busse Nutley, Member

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