BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

LINDA SANFORD, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. DISM-01-0077 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for a hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and RENÉ EWING, Member. The hearing was held at Rainer School in Buckley, Washington, on September 24, 2002.

1.2 **Appearances.** Appellant Linda Sanford was present and represented herself *pro se*. Laura L. Wulf, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** Appellant was dismissed for abandonment of her position. Respondent alleged that Appellant failed to report for work and failed to notify Rainer School of her absences.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); WAC 356-34-060.

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II. FINDINGS OF FACT

2.1 Appellant Linda Sanford was an Attendant Counselor (AC) 1 and a permanent employee of Respondent Department of Social and Health Services (DSHS) at Rainer School. 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 September 27, 2001.

2.2 On June 4, 1997, Appellant signed a new employee checklist indicating that she had received a copy of Respondent's leave request procedures. Appellant was aware of her responsibility to report her absences prior to the beginning of her shift.

2.3 By letter dated August 28, 2001, Superintendent Larry Merxbauer notified Appellant of her dismissal, effective August 29, 2001, pursuant to WAC 356-34-060. Mr. Merxbauer stated that Appellant was presumed to have abandoned her position and alleged that since August 4, 2001, Appellant had been on unauthorized absence, failed to report for work as scheduled, and failed to notify Rainier School of her absence.

2.4 Appellant was scheduled to work at Rainer School on July 1, 2001, however she called in and reported she would be absent. Appellant was placed on leave without pay. On July 7, 2001, Appellant's house burned and she reported her absence due to the fire. Appellant continued to call in her absences periodically during the month of July 2001. Appellant's last call was on August 4, 2001. Appellant was on leave without pay from July 1, 2001 until August 4, 2001.

2.5 After August 4, 2001, Appellant made no further calls to Rainer School to report her absence. Appellant's supervisor, Linda Fallen, was concerned about Appellant's failure to report for

work and she tried to contact Appellant by telephone. However, Appellant did not return her calls. In addition, Ms. Fallen sent Appellant a letter regarding her absence. However, there is no evidence that Appellant received Ms. Fallen's letter.

2.6 Appellant completed leave slips for August 1, 2001 through September 18, 2001. In addition, Appellant had a doctor's notes indicating that she could return to work on September 18, 2001. However, Appellant did not provide the slips or the Doctor's notes to Rainer School. Rather, she gave the slips to her union shop steward and assumed that the shop steward forwarded the information to Rainer School.

2.7 Superintendent Merxbauer was aware that Appellant was not reporting to work and that she had not called Rainer School for several weeks. He assumed that Appellant had abandoned her position and because he received no information to the contrary, he proceeded with his decision to dismiss her. By letter dated August 28, 2001, Mr. Merxbauer informed Appellant of his decision.

2.8 Appellant reported to Rainer School on September 20, 2001. However, because she was no longer an employee, she was sent to the duty office and then sent home.

2.9 The Rainier School Employee Handbook addresses reporting absences and states:

> When an employee is going to be absent on a regularly scheduled work day, the absence must be reported to Rainier School at least one hour prior to the beginning of the scheduled work shift. The type of leave requested must also be stated. This reporting procedure must be complied with <u>each</u> day unless other arrangements have been approved by the employee's supervisor. Failure to report your absence or report to work as scheduled will normally be recorded as "no call/no show" and you will be charged with unauthorized absence.
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> WAC 356-18-200 states in part that unauthorized absence shall be treated as absence without pay and may be grounds for disciplinary action.

2.10 In addition, the Rainer School Employee Handbook addresses the use of leave request forms. The handbook states, in relevant part:

> A Leave Request Form must be completed any time that you are not at work during your regularly scheduled work hours, i.e., tardiness, leaving early, absence for the entire day, etc. Whenever practicable, these requests must be completed by the employee and approved by the supervisor prior to the requested time off. All leave must be accompanied by a leave slip. It is your responsibility to complete this form in a timely fashion.
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III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that the institution had ample reason to presume that Appellant had abandoned her position. Respondent contends that after August 4, 2001, Appellant did not call in absences and she stopped coming to work. Respondent asserts that Appellant was absent for more than three days without calling in to report her absence, that she abandoned her position and that her dismissal should be affirmed.

3.2 Appellant contends that the institution was aware of the fire at her home but that her supervisor lacked compassion or understanding for the situation Appellant was placed in. Appellant argues that she did not receive the telephone messages from her supervisor and asserts that because she was under a doctor's care, she did not believe that she was required to report her absences. Appellant asserts that she gave all her leave requests and doctor's slips to her shop steward and that she believed the information had been provided to Rainer School. Appellant argues that she did not abandon her position.

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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 Undoubtedly, Appellant dealt with some difficult circumstances following the fire in her home. It is unfortunate that she felt that her supervisor was not supportive of her situation. However, Appellant had the responsibility to remain in contact with Rainer School regarding her absences. It is also unfortunate that Appellant relied upon a third person to carry out her responsibilities. The preponderance of the credible testimony and evidence clearly establishes that after August 4, 2001, Rainer School did not receive any information from Appellant or her representative regarding Appellant's absences.

4.4 WAC 356-34-060 reads:

> An employee who is absent from a position for three consecutive working days without notice to the appointing authority may be presumed to have abandoned the position. Notice of dismissal upon the grounds of abandonment of position shall be sent by certified mail to the last known address of the employee within seven calendar days after the three consecutive days of absence. The dismissal may be made effective one day after mailing of the notice.

4.5 Subsequent to August 4, 2001, Appellant stopped notifying her employer regarding her absences and therefore, was absent from work without authorization. Pursuant to WAC 356-34-060, Appellant abandoned her position and dismissal is appropriate. Respondent has met its burden of proof. Therefore, the appeal should be denied

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Linda Sanford is denied.

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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René Ewing, Member