BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

STEPHANIE CHASTAIN, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. DISM-00-0005 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, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and LEANA D. LAMB, Member. The hearing was held on January 9 and 10, 2001 in the South Campus Center on the campus of the University of Washington in Seattle, Washington, and on and March 23, 2001, in the Personnel Appeals Board office in Olympia, Washington.

1.2 **Appearances.** Appellant Stephanie Chastain was present and was represented by L. Michael Golden, Attorney at Law of Monte E. Hester, Inc, P.S. Respondent Department of Social and Health Services was represented by Janetta E. Sheehan, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of dismissal for neglect of duty, gross misconduct and willful violation of published regulations and policies. Respondent alleged that Appellant falsified two official state records.

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); Rainwater v. School

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504
(360) 586-1481

for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

II. FINDINGS OF FACT

2.1 Appellant Stephanie Chastain was a Social Worker 3 and permanent employee of Respondent Department of Social and Health Services (DSHS). 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 on January 21, 2000.

2.2 Appellant had been employed by DSHS since March 1996. At the time of her dismissal, she was a DSHS day care licensor in Region 4 Division of Licensed Resources (DLR).

2.3 On December 17, 1998, Appellant visited the home of a daycare provider for the purpose of conducting a relicensing/reopening inspection. Appellant went to the home alone and no other DSHS staff met her there. When Appellant arrived at the home at approximately 9 a.m., the provider was not home. The provider arrived at approximately 9:20 a.m.

2.4 The length of Appellant's visit is in dispute. Appellant testified that the visit lasted for approximately 1 to 2 hours. The daycare provider, Carol Parker, testified that Appellant was at her home for no more than 30 minutes. Ms. Parker is no longer a day care provider and has no reason to fabricate her testimony, therefore, we find Ms. Parker's testimony to be more credible. Therefore, we find that Appellant's meeting with Ms. Parker began at approximately 9:20 a.m. and concluded at approximately 9:50 a.m.

2.5 The DLR Christmas party was scheduled for lunchtime on December 17. Sometime during the morning, Appellant contacted her co-worker, Teresa Fox. Appellant and Ms. Fox agreed to meet at a local restaurant/bar for drinks prior to the party. Appellant arrived at the restaurant at approximately 11:30 a.m.

2.6 The following day, Appellant wrote a Service Episode Report (SER) (Exh. R-1, Att, 5) of her visit to Ms. Parker's home and included, in part, the following statements:

- We went to this provider's home to do a relicensing/reopening of her care,
- I went out,
- After consultation with Teresa Fox, we suggested, and
- I recommend.

Appellant used the term "I" through the SER. Because Appellant used "we" and "I" in the SER, management assumed that Ms. Fox had accompanied her to the visit.

2.7 Appellant completed a travel expense voucher on December 31, 1998. Appellant indicated that on December 17, she had driven a total of 22 miles and that she returned from the Parker visit at 12 noon.

2.8 On July 2, 1999, during the unrelated investigation into an allegation of misconduct by Teresa Fox, she revealed that she and Appellant had met for drinks prior to the December 17, 1998, Christmas party. On July 14, 1999, a Personnel Conduct Report (PCR) was issued against Appellant based on Ms. Fox's revelation.

2.9 Also during this time period, an investigation was being conducted regarding the closure of the Marshall daycare. The Marshall daycare closure became a high profile case that received media attention. Appellant was intimately involved in the closure of the Marshall daycare. Because of concerns raised by the daycare operator and parents of children at the daycare, the agency investigated Appellant's conduct during the closure. Appellant was found to have committed no misconduct.

2.10 The July 14, 1999, PCR was investigated and misconduct was found based on the language in the SER, Appellant's admission that she met Ms. Fox on December 17, Appellant's travel voucher, and statements from the bartender about Ms. Fox and Appellant being in the bar on December 17.

2.11 SERs are intended to be legal documents and can be used in court hearings. Social workers are instructed to avoid personalizing SERs and to use terms such as "this licensor" rather than "I." The term "we" is commonly used in SERs when reference is being made to the department rather than to an individual employee. Appellant has received SER training and was instructed in how to complete the reports.

2.12 Barbara Stone, the Director of the Division of Licensed Resources, was Appellant's appointing authority. She conducted a pre-termination meeting with Appellant. As a result of all the available information, Ms. Stone determined that Appellant had falsified the SER and the travel voucher. Ms. Stone concluded that the SER was written to suggest that Ms. Fox had accompanied Appellant to the Parker home when she had not and that the travel voucher was falsified to show that Appellant was in work status until 12 noon when she was not.

2.13 Before determining the level of discipline to impose, Ms. Stone considered the information Appellant provided and reviewed Appellant's personnel history and work record. Ms. Stone concluded that Appellant's misconduct was egregious and violated the basic trust expected of social workers. Ms. Stone felt that Appellant's misconduct was a willful violation of the agency's ethics policy and that Appellant could no longer be trusted to make the life and death decisions about children and decisions about people's everyday lives and livelihoods that are required of social workers. Ms. Stone concluded that Appellant neglected her duty to uphold the ethical standard for social workers and that she jeopardized the agency's ability to maintain public trust and credibility. Ms. Stone determined that Appellant's dismissal was the only sanction appropriate under these circumstances.

2.14 By letter dated December 8, 1999, Ms. Stone notified Appellant of her termination for falsifying two official state documents. Appellant's dismissal was effective December 23, 1999.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant intentionally falsified the SER and her travel voucher to cover for herself and Ms. Fox. Respondent asserts that when Appellant was at the bar, she could not have been in work status, yet on her travel voucher, she reported that she was. Respondent also asserts that Appellant deliberately wrote the SER to infer that Ms. Fox had accompanied her to the Parker home. Respondent asserts that Appellant intentionally falsified a legal document that could be used in court, that such documents must be reliable and that Appellant compromised the reliability of the SER and violated the trust the agency placed in her. Respondent argues that dismissal was the appropriate sanction because Appellant's acts were deliberate, egregious and cannot be tolerated.

3.2 Appellant argues that this appeal is not simply about the SER or her travel voucher. Appellant contends that she was dismissed in retaliation for the Marshall case. Appellant contends that Respondent needed a scapegoat for the Marshall case, that it chose Appellant and that it bowed to political pressure by dismissing Appellant. Appellant further contends that Ms. Fox is an alcoholic, that she harbors animosity towards Appellant because Appellant reported her misconduct three times, and that Ms. Fox is not credible and did not testify truthfully. Appellant asserts that she used the term "we" in the SER to denote the department and that she did not falsify the SER. Appellant further asserts that the times on her travel voucher were approximate times and were not intended to be an exact accounting of her work time. Appellant contends that her dismissal was unwarranted.

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 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 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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

4.6 Respondent has met its burden of proving that Appellant neglected her duty, committed gross misconduct and willfully violated agency policies.

4.7 Respondent has proven by a preponderance of the credible evidence that Appellant falsified the SER. We have carefully read the SER and conclude that Appellant's use of the word "we" clear implies that more than one DSHS employee was at the Parker home. Furthermore, the language in the SER suggests that Ms. Fox was at the home. Appellant's falsification of a legal document constitutes a neglect of her duty, rises to the level of gross misconduct and violates the agency's ethics policy and the trust that the agency places in its employees.

4.8 Respondent has proven by a preponderance of the credible evidence that Appellant deliberately misstated the time she was in work status on December 17. Appellant left the Parker home at 9:50 a.m., she drove a short distance, and yet she reported that she was in work status until 12 noon. Furthermore,

she met Ms. Fox at the bar at 11:30 a.m. Appellant did not request per diem for the time. However, after considering all the facts and circumstances present, we conclude that the only reason Appellant included the time on her travel voucher was to falsely document her whereabouts. This charge alone would not warrant dismissal, however, it does constitute misconduct and substantiate the first charge.

4.9 Under the totality of the proven facts and circumstances, dismissal is not too severe in this case. Given the willful, calculated and deliberate nature of Appellant's misconduct the sanction of dismissal should be affirmed and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Stephanie Chastain is denied.

DATED this _____ day of _____, 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

_____
Leana D. Lamb, Member

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2828 Capitol Boulevard
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