BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GLADYS H. LEACH, Appellant, v. DEPARTMENT OF LABOR AND INDUSTRIES, Respondent.	Case Nos. SUSP-98-0037 SUSP-98-0050 DISM-98-0070 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** These appeals came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and NATHAN S. FORD Jr., Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on September 16, 17 and 29, 1999.

1.2 **Appearances.** Appellant Gladys H. Leach was present and was represented by Ivan D. Johnson, Attorney at Law. Respondent Department of Labor and Industries was represented by Mickey Newberry, Assistant Attorney General.

1.3 **Nature of Appeals.** These are appeals from three separate disciplinary sanctions: two suspensions and a dismissal. Appellant was suspended for a period of five days for neglect of duty, inefficiency, insubordination, gross misconduct and willful violation for 17 incidents of misconduct in which she allegedly failed to carry out her supervisor's directives, failed to assist customers as required by the department, and failed to follow Claims Administration policies regarding work performance. Appellant was suspended a second time for a period of 15 days for neglect of duty,

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

inefficiency, insubordination, gross misconduct, and willful violation of published agency policies for five incidents of misconduct in which she allegedly failed to carry out her supervisor's directives, failed to assist customers as required by the department, and caused a hostile work environment with behavior that was inappropriate, hostile, disrespectful and disruptive. Appellant was dismissed for neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of published agency policies for three incidents of misconduct in which she allegedly intimidated witnesses, breached her duty to maintain confidential claim related information, and was absent from work without requesting or receiving approval for her absence.

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); Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); 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 Gladys H. Leach was a Workers' Compensation Adjudicator 2 and permanent employee for Respondent Department of Labor and Industries (L&I). 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 the appeal of her five-day suspension, Case No. SUSP-98-0037, on September 24, 1998; the appeal of her 15-day suspension, Case No. SUPS-98-0050 on November 18, 1998, and the appeal of her dismissal, Case No. DISM-98-0070, on December 29, 1998.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.2 At the outset of the hearing, the parties entered into a stipulated protective order which, in part, protects the identity of L&I clients and requires that all exhibits and references in the transcript of this matter which identify L&I clients will remain sealed and not be released except through a court order.

2.3 Appellant began her employment with the state of Washington in 1992. Appellant began her employment with the Department of Labor and Industries in March 1997 as a Workers' Compensation Adjudicator 2. Appellant's working title was claims manager. Appellant participated in a six month training program working in Unit U which included both classroom and on-the-job training. In November 1997, Appellant transferred into Unit J under the supervision of Carl Singleton.

2.4 As a Workers' Compensation Adjudicator 2, Appellant managed a caseload of workers' compensation claims. Appellant was responsible for evaluating and authorizing requests for medical treatment and vocational services, responding to telephone and written inquiries from claimants, attorneys, employers and physicians, and processing and authorizing time-loss payments. Respondent's Claims Administration Policy required claims managers to return urgent or "hotline" calls within 24 hours and all other phone calls within 48 hours. Appellant was aware of and understood this policy.

2.5 The parties do not dispute that claims managers have heavy and highly stressful caseloads.

2.6 Shortly after her arrival in Unit J, Appellant expressed to her supervisor concerns regarding the high number of claim-related phone calls she was receiving and her inability to keep up with them. Appellant received two days of one-on-one training from Carol Edinger, Operations Manager, to assist her in the performance of her duties. In addition, Appellant observed an

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

experienced claims manager in an attempt to show Appellant how to appropriately manage the high workload.

2.7 Appellant received a letter of reprimand dated December 10, 1997 for her failure to appropriately manage phone calls. Appellant received a letter of reprimand dated March 26, 1998 for refusing to take action on a claim as directed by her supervisor. On August 14, 1998, Appellant received a letter of reprimand for failing to report to work and failing to report the absence. The letter of reprimand further directed Appellant to report all absences, to have all annual leave requested in writing and approved in advance, and to adhere to her work schedule of Monday through Friday, 8 a.m. to 4:30 p.m. The letter prohibited Appellant from adjusting her work schedule in order to make up any absences and informed her that absences due to late arrivals were not acceptable.

2.8 Appellant's trial service performance evaluation for the time period from March 1997 to August 1997 indicates that Appellant met "normal requirements" in all performance dimensions.

Case No. SUSP-98-0037

2.9 By letter dated September 17, 1998, Douglas Connell, Assistant Director for Insurance Services, informed Appellant of her five-day suspension effective at the beginning of her work shift on September 21, 1998 through the end of her work shift on September 25, 1998. Mr. Connell charged Appellant with neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of published agency policies for Appellant's alleged failure to carry out her supervisor's directives, failure to assist customers, and failure to follow Claims Administration policies regarding work performance. The letter described 17 instances of misconduct.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Charge #1

2.10 On February 19, 1998, Claims Consultant Hollace Balch asked Appellant to enter an order on a claim assigned to Appellant's caseload (claimant P.R.). While Ms. Balch was not Appellant's direct supervisor, it was Appellant's responsibility to enter the order. The credible evidence establishes that Appellant failed to take the necessary action on the claim. On March 23, 1998, Carl Singleton, Appellant's supervisor, directed Appellant to review the claim and make a decision regarding time-loss payments on the claim by the following day. Appellant testified that she did review and take action on the claim, however, the credible evidence establishes that Appellant failed to comply with Mr. Singleton's directive and another claims manager processed the time-loss payment.

Charge #2

2.11 On March 10, 1998, Mr. Singleton verbally reminded Appellant of her responsibility to return hotline calls within 24 hours. Mr. Singleton had previously addressed with Appellant the issue of returning calls within the required timeframe. Mr. Singleton credibly testified that Appellant responded, "That's a dead issue. No one returns calls and you can't make me."

Charge #3

2.12 On March 20, 1998, Mr. Singleton received a phone call from a claimant on Appellant's workload. Claimant C.C. informed Mr. Singleton that she had left previous messages for Appellant who failed to respond. Mr. Singleton directed Appellant to review the claim, resolve the complaint, and confirm with him that she had done so. On March 23, 1998, Mr. Singleton noted that Appellant had not taken action on his directive, and he again directed Appellant to resolve the issue. The credible evidence establishes that Appellant did not take the requested action. On March 23, 1998, Mr. Singleton directed another claims manager to take the action.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Charge #4

2.13 On March 24, 1998, the Provider Hotline received a call from a physician's office regarding one of Appellant's claims. The call was referred to Appellant for a response to a request for authorization for medical treatment. Appellant did not respond to the call. As a result of Appellant's inaction, the department received a complaint from the claimant regarding the lack of response from the department which prevented him from receiving needed treatment. On April 7, 1998, Mr. Singleton gave Appellant a copy of the complaint and a written directive to resolve the issue and respond to the claimant on that same day. Appellant did not call the claimant and she failed to comply with Mr. Singleton's directive. The claim was subsequently given to another claims manager who authorized the treatment. Appellant testified that she had previously taken the necessary action on February 27, 1998 and denied that she was given a copy of the complaint or that she received Mr. Singleton's written directive. The credible evidence and testimony establishes that Appellant failed to work on the claim, failed to return the claimant's calls and failed to comply with her supervisor's directive.

Charge #5

2.14 On April 14, 1998, Mr. Singleton e-mailed Appellant about a claim on Appellant's caseload (claimant S.I.). Mr. Singleton had received four voice mail messages from staff at a doctor's office who had left messages for Appellant requesting medical authorization for claimant S.I., but received no response from Appellant. In his e-mail to Appellant, Mr. Singleton directed Appellant to 1) call the doctor's office by the close of business that same day with a response to the request for medical treatment, and 2) let him know what action she had taken. Appellant did not take the requested action on April 14. Appellant testified that she did not receive this directive from Mr. Singleton, however, the credible evidence establishes that Mr. Singleton e-mailed the directive to Appellant on the morning of April 14. Mr. Singleton transferred out of Unit J in May 1998 and Kathryn Hudson

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

became Appellant's acting supervisor. Appellant subsequently took action on the claim on May 18 at the request of Ms. Hudson.

Charge #6

2.15 On March 26, 1998, a claim from Unit A in the Seattle area was transferred to Unit J - Pierce County. On March 27, the claim was assigned to Appellant. The injured worker H.R. subsequently called the claims manager in Unit A inquiring about the claim. The Unit A claims manager contacted Appellant and asked her to "refresh" (update) the claim so that Appellant's name would appear as the claims manager on any documents issued related to the claim. Appellant reviewed the claim and noted a Seattle address for the claimant. Appellant did not believe the claim was appropriately in her claims area and left the claim in the Unit A claims manager's work position. After receiving a call from the Unit A claims manager, Mr. Singleton reviewed the case and determined that the injured worker resided in Tacoma but had a mailing address in the Seattle area. Based on the injured worker's residence, Mr. Singleton concluded that the claim was appropriately assigned to Appellant. On April 28, Mr. Singleton e-mailed Appellant, explaining why the case was correctly assigned to her and directing her to "refresh" the claim. Appellant e-mailed Mr. Singleton in response, stating, "No I won't refresh, now why don't you take that and stick it in my personnel file." Although Appellant testified that the claim was incorrectly assigned to her caseload, the credible evidence and testimony establishes that the claim was appropriately assigned to her and she failed to follow her supervisor's directive to take the necessary steps to work the claim.

/ / / / /

Charge #7

2.16 The credible evidence establishes that on April 27, 1998, Appellant had claim ticklers that she had not worked on dating back to March 30, 1998. Although Appellant disputes this allegation,

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

a review of Appellant's claim ticklers dating back to March 30, 1998 establishes that Appellant had a total of 111 claims she had not worked on, 95 of which were over five working days old.

Charge #8

2.17 On April 29, 1998, Appellant and Mr. Singleton exchanged e-mail messages regarding injured worker P.A., a claimant on Appellant's caseload. Appellant asserted that the vocational counselor working with the injured worker was no longer employed at the vocational rehabilitation firm. Mr. Singleton called the vocational firm himself and discovered that the counselor was still employed with the firm and was still handling the claim. Mr. Singleton also spoke to the injured worker's attorney who informed Mr. Singleton that Appellant had not been responding to his messages. Mr. Singleton took action on the claim himself in order to resolve the issue. When Mr. Singleton informed Appellant of the situation, Appellant's response to Mr. Singleton was, "Well gee, maybe I should put in for a transfer for a 'continuous telephone answerer,' that'll surely put an end to all our problems." Appellant believed that her comment was "humorous."

Charge #9

2.18 As stated above, Mr. Singleton left Unit J in early May 1998, and Kathryn Hudson, Claims Supervisor, became the temporary supervisor for Unit J. On May 4, 1998, Ms. Hudson gave Appellant a written directive to make a call on a claim for injured worker K.P. and make a determination of whether to authorize treatment. Appellant responded to Ms. Hudson that treatment had already been authorized, therefore, Ms. Hudson directed Appellant to call the claimant's physician and confirm the authorization. Appellant did not make the call. Appellant testified that Ms. Hudson never asked her to make the call, however, based on Appellant's pattern of refusing to follow supervisory directives, we find that Appellant was given a directive from Ms. Hudson which she refused to follow.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Charge #10

2.19 As a result of an employer protest, Ms. Hudson reviewed the claim for injured worker M.S. The claim was a part of Appellant's caseload. Ms. Hudson determined that the department had made incorrect payments to the injured worker and on May 4, 1998, Ms. Hudson issued a memo to Appellant explaining the situation and directing her to correct and supersede any orders she had previously affirmed. Ms. Hudson directed Appellant to enter an overpayment order on the claim by the end of the day on Wednesday, May 6, 1998. Appellant did not follow Ms. Hudson's directive but instead sent the injured worker a letter which stated, "Your time-loss benefits were terminated effective 4/28/98. The determination was made by Kathryn Hudson . . . If you have any questions, please contact her." Appellant testified that she did not take action as directed because she believed that according to the department's rules and policies, the injured worker was entitled to the benefits he was receiving. However, Respondent has established that Ms. Hudson, as a supervisor, was the final authority on the determination and she issued Appellant a lawful directive which Appellant refused to follow.

Charge #11

2.20 On May 5, 1998, Ms. Hudson directed Appellant to take action on the claim for injured worker H.V. The claim was assigned to Appellant and Ms. Hudson wanted her to change the type of payments the injured worker was receiving. Appellant did not take the action requested and another claims agent took the necessary action. On May 6, 1998, Ms. Hudson received a complaint dated May 4, 1998, from attorney Teri Rideout regarding Appellant's failure to take action on this claim. Ms. Rideout expressed her frustration at Appellant's lack of response to numerous messages she left regarding the claim since February 1998. Respondent had previously issued Appellant a letter of reprimand dated March 26, 1998, for her refusal to take action as directed on this same claim. Appellant testified that the claim did not appear on her ticklers after she received the letter

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

of reprimand. However, the credible evidence establishes that the claim was still assigned to Appellant and that Appellant failed to comply with a lawful directive from her supervisor.

Charge #12

2.21 On May 18, 1998, Ms. Hudson received a letter of complaint dated May 15, 1998, from Gail Meyers, Claims Manager for Alpha Development Corporation, regarding Appellant's failure to take action on a claim for injured worker J.S. Ms. Meyers indicated that Appellant had "not shown due diligence in managing this claim." Ms. Meyers also informed Ms. Hudson that she had left messages for Appellant during a two-month period, however, Appellant failed to return her calls or to work on the claim. Although the Appellant testified that she was not aware of any complaints arising from her work on this claim, the credible evidence establishes that as of May 15, 1998, Appellant had not returned any of Ms. Meyers' calls.

Charge #13

2.22 On May 13, 1998, Ms. Hudson gave Appellant a written directive to start payments for claimant H.R. (the same claimant involved in charge #6). Appellant provided a written response that she did not know why the claim was transferred to her but that she was transferring the claim to another claims manager. Ms. Hudson verbally directed Appellant to start the payments. Appellant did not take the action requested. Appellant testified that the claim was not assigned to her, however, the credible evidence establishes that the claim was appropriately assigned to her and that Appellant failed to comply with a lawful directive from her supervisor.

Charge #14

2.23 By letter dated June 4, 1998, H. Richard Johnson, M.D. wrote the director of L&I expressing his concern with the lack of response received from Appellant regarding patients assigned to her caseload. Dr. Johnson wrote that Appellant was rarely available when called and did not respond to messages left on her voicemail, thereby causing delay in care being approved and

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

patients remaining off work and receiving time loss payments for longer than necessary. Appellant testified that she never spoke to Dr. Johnson because she dealt with his staff who always seemed pleased, however, Respondent has established that Appellant failed to respond to phone messages which resulted in a letter of complaint being filed against her.

Charge #15

2.24 On June 8, 1998, Wayne Shatto became the supervisor for Unit J. On July 12, 1998, Mr. Shatto received a telephone call from an attorney representing injured worker M.M. whose case was assigned to Appellant. While reviewing the claim, Mr. Shatto noted that Appellant had reassigned the case to another claims manager. Only supervisors have the authority to assign or reassign cases, however, a claims manager can make a formal request to the unit supervisor to reassign a case. Mr. Shatto reassigned the claim back to Appellant and sent her an e-mail directing her to start payments on the claim. Appellant replied to Mr. Shatto via e-mail. She denied transferring the claim to another claims manager, however, computer records verified that the transfer was initiated by Appellant. Appellant testified that she did transfer the claim to a higher level claims manager for review of a board order, but that the claims manager never communicated back to her. Respondent has established that Appellant failed to take appropriate action as directed to by her supervisor.

Charge #16

2.25 A review of the Claims Phone Referrals Select Screen printout for the calls that Appellant was responsible for returning establishes that Appellant had 41 overdue calls to make for the time period between May 5 through July 6, 1998. Respondent has established that Appellant failed to return calls within the required time period.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Charge #17

2.26 As of July 6, 1998, Appellant had seven hotline calls which she had not responded to within the requisite 24-hour time period. The calls were referred to Appellant between May 11 and July 1. Appellant denies having any un-worked hotline calls, however, a review of the Provider Hotline Referrals Select Screen for calls referred to Appellant shows that she had seven calls referred to her between May 11 through July 1, 1998. The credible evidence establishes that Appellant failed to respond to the calls within the appropriate timeframe.

2.27 Mr. Connell was Appellant's appointing authority when he took the five-day suspension action against Appellant. Prior to taking this disciplinary action, Mr. Connell reviewed the charges and information provided by Appellant concerning the charges. Mr. Connell ultimately concluded that Appellant failed to perform her assigned duties by not returning customer calls and providing necessary assistance to them. Mr. Connell was concerned that Appellant's failure to perform her duties was unduly burdensome to other employees who ultimately had to complete Appellant's tasks. Mr. Connell believed that Appellant's refusals to follow her supervisors' directives was unacceptable. Mr. Connell considered that Appellant's previous letters of reprimand should have heightened her awareness of the need to follow orders from her superiors and to follow through on her job duties. Mr. Connell reviewed Appellant's personnel record and noted that Appellant performed well during her training. Mr. Connell concluded that a five-day suspension was warranted.

Case No. SUSP-98-0050

2.28 By letter dated October 28, 1998, Douglas Connell, Assistant Director for Insurance Services, informed Appellant of her suspension without pay for 15 days effective October 29, 1998 through November 12, 1998. Mr. Connell charged Appellant with neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of published agency policies for Appellant's alleged failure to carry out her supervisor's directives, failure to assist her customers,

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

and for causing a hostile work environment with behavior that was inappropriate, disrespectful and disruptive. The letter described five instances of misconduct.

Charge #1

2.29 By e-mail dated August 17, 1998, Mr. Shatto scheduled a counseling appointment with Appellant to address job performance issues. Mr. Shatto informed Appellant that the meeting was mandatory and that declining to meet with him was not an option. Appellant responded via e-mailing, stating in part, "what are you talking about?" and "Wayne, is something wrong with you. You sound bizarre to me." A series of e-mails between Appellant and Mr. Shatto ensued in which Appellant questioned the need to discuss the issues Mr. Shatto outlined in his e-mails. Mr. Shatto kept reiterating the date and time of the counseling session in a number of subsequent e-mails. Mr. Shatto sent a final e-mail in which he informed Appellant that he would meet with her to discuss her performance. The meeting was subsequently rescheduled to August 25, 1998. Appellant did not appear for the meeting as directed by her supervisor.

Charge #2

2.30 On August 25, 1998, Mr. Shatto observed Appellant on three occasions between the hours of 1 p.m. and 3 p.m. reading a magazine at her desk. At 1:20 p.m., Mr. Shatto directed Appellant to go to work. Appellant responded to Mr. Shatto to "write her up" because it would be "one more thing" to add to her file. Mr. Shatto subsequently gave Appellant a written directive to begin working on her claims immediately. At 4 p.m. Mr. Shatto returned to Appellant's work area and observed that Appellant was still not working. Mr. Shatto asked Appellant why she was refusing to work and Appellant again responded that he could "write her up." Appellant testified that she did read a magazine for a brief period of time because the computer system was not working and she could not access claims. However, Mr. Shatto noted no problems with the computer system and other employees were able to use the computer system. Respondent has established that Appellant

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

failed to perform the duties of her job and failed to comply with her supervisor's directives to resume her duties.

Charge #3

2.31 On August 25, 1998, Mr. Shatto e-mailed Appellant a directive to make a time-loss payment on one of her claims (claimant R.H.), to call the injured worker's wife and to confirm the action she had taken. Appellant does not dispute that she did not make a time-loss payment on a claim assigned to her as directed to by Mr. Shatto. Instead, another claims manager had to take the action. The following day Mr. Shatto approached Appellant to find out why she had not followed his directives from the previous day. Appellant does not dispute that she responded to Mr. Shatto, "Are you on drugs? Are you on crack? Get out of my face. Get off my back." Appellant's voice was raised and angry and was overheard by Peggy Halstead, Joyce Holgren, and Connie Hyde who wrote witness statements describing the incident. Respondent has established that Appellant failed to perform the duties of her position, failed to follow a lawful directive from her supervisor and that her comments to Mr. Shatto were disrespectful, uncalled for and had the effect of disrupting the workplace.

/ / / / /

/ / / / /

Charge #4

2.32 Appellant does not dispute that on August 26, 1998, she arrived late to work without notifying Mr. Shatto. Appellant had been warned in the letter of reprimand dated August 14, 1998, that any absences due to late arrivals would be unauthorized leave without pay.

Charge #5

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.33 Appellant does not dispute that on August 27, 1998, she worked a half hour of overtime without requesting or receiving prior approval from Mr. Shatto as directed in the August 14, 1998 letter of reprimand. In addition, the department's policy #3.70 requires employees to obtain prior approval for overtime work. Appellant was aware of this policy.

2.34 When considering taking disciplinary action against Appellant, Mr. Connell again noted that Appellant was refusing to follow written and verbal directives from her supervisor and that she was becoming hostile toward her supervisor in front of other employees. Mr. Connell concluded that Appellant's behavior toward Mr. Shatto was totally unacceptable, and that she was refusing to provide service to customers as she was required to do, and that her failure to perform her duties affected the workload of her coworkers who were forced to cover for her. Mr. Connell observed that Appellant violated the requirements of the August 14, 1998 letter of reprimand and violated agency policy. Mr. Shatto concluded that a 15-day suspension was warranted.

Case No. DISM-98-0070

2.35 By letter dated December 16, 1998, Mr. Connell advised Appellant that she was dismissed effective January 4, 1999. Mr. Connell charged Appellant with neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of published employing agency policies for Appellant's alleged failure to request or receive approval for an absence, for intimidating witnesses, and for breaching her duty to maintain the confidentiality of claim-related information. The letter describes the three incidents which led to Appellant's dismissal.

Charge #1

2.36 On September 14, 1998, Appellant and Peggy Halstead were having a disagreement over a work-related issue regarding a claim that had been previously assigned to Ms. Halstead but was later reassigned to Appellant. During the discussion, Appellant stated to Ms. Halstead, "Why don't

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

you write me up and stick that in my personnel file" and "Why don't you write me up like you did before" and "You know what you did was illegal." Appellant was referring to a statement Ms. Halstead had written which, in part, resulted in Charge #3 in the 15-day letter of suspension (Case No. SUSP-98-0050). Appellant also quoted statements from the letter in a loud and angry tone of voice. Appellant then turned to Joyce Holgren, in the next cubicle, and stated, "And you too Joyce" in reference to the statement Ms. Holgren had written and submitted regarding the incident on August 25, 1998.

2.37 Respondent's Policy #98-3.04 addresses violence in the workplace. The policy provides that behavior which is perceived by others "as threatening, fearful or intimidating is unacceptable behavior that will not be tolerated." The policy further defines workplace violence as "any physical assault, threatening behavior or verbal abuse (verbal threats of violence or using profane language or verbal statements which are furious, intense, extremely distorted which are meant to cause injury or create a hostile environment) occurring in the work setting."

Charge #2

2.38 Appellant admits that on September 17, 1998, she left the office at approximately 9 a.m. and did not return until approximately 1:15 p.m. Appellant did not request or receive authorization for this absence. Appellant testified that she did not notify Mr. Shatto of her absence because he was out on September 17. However, credible testimony establishes that it was a well-understood practice for staff to notify a Claims Manager 3 of an absence whenever the unit supervisor was not available.

Charge #3

2.39 Prior to Appellant's 5-day suspension (Case No. SUSP-98-0037), Respondent provided Appellant with documents in support of the allegations. Respondent did not delete the names of

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

claimants or claim numbers prior to serving Appellant with the documents. In the documentation was a copy of the letter dated May 4, 1998 from Teri Rideout, the attorney who had submitted a complaint against Appellant regarding her handling of the injured worker's claim (see Charge #11). The letter contained the name of the injured worker and his claim number. Appellant's father, Nathaniel Petty, reviewed the documentation and took the copy of Ms. Rideout's letter. Appellant's father then went to Ms. Rideout's office to request a copy of the fax confirmation sheet showing that the letter had been fax'd to the department. Ms. Rideout was concerned that Mr. Petty, who was not an employee of the department, had accessed confidential client information.

2.40 The department's policies 2.08, 3.30, 3.36 and 1.35 address how confidential claimant information is handled. The department's policies, in general, prohibit department employees from inspecting or copying confidential material and releasing such material to others without the claimant's permission. In this case, the department released documentation to Appellant without redacting names and claim numbers and without warning Appellant that claimant information could not be shared with anyone outside the department.

2.41 When determining the appropriate level of discipline, Mr. Connell noted that Appellant had received two previous letters of reprimand, two suspensions and repeated counseling from her supervisor. However, Mr. Connell determined that Appellant's behavior continued to deteriorate and she showed no signs of improvement. Mr. Connell was concerned for other employees who were subjected to Appellant's hostility and felt fear and concern with Appellant's behavior. Mr. Connell believed that he had done all he could to stress to Appellant the importance of correcting her behavior but he determined that Appellant's performance continued to deteriorate, that she continued to be disrespectful toward her supervisor and that she had lashed out to coworkers that had come forward with witness statements. Mr. Connell determined that termination was warranted in light of Appellant's lack of improvement.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that it has presented extensive evidence that support the claims made against Appellant. Respondent argues that Appellant received both formal and on-the-job training for a period of six months before she was assigned to Unit J, however, she failed to adequately perform the duties of her position. Respondent argues that when Appellant's supervisors stepped in and directed her to review files and make decisions accordingly she became insubordinate and made inappropriate responses to her supervisors. Respondent argues that a five-day suspension in pay was an appropriate sanction for Appellant's failure to perform her assigned duties, failure to follow her supervisors' directives and failure to follow the agency's published policies. Respondent further argues that Appellant's neglect of duty and inefficiency negatively impacted Appellant's coworkers who had to perform her duties and negatively impacted the injured workers on her caseload. Respondent argues that Appellant's misconduct rises to the level of gross misconduct because it negatively affected the agency's ability to ensure that all claims were appropriately processed and that injured workers received any benefits for which they were entitled in a timely manner.

Respondent argues that Appellant was suspended for 15 days because her insubordinate behavior continued to escalate and she was refusing to meet with her supervisor about work-related issues. Respondent argues that Appellant continued to inadequately perform the duties of her position and that her inappropriate behavior continued to escalate. Respondent argues that Appellant's behavior negatively affected her coworkers and that her performance deficiencies negatively impacted the clients on her caseload.

Respondent argues that immediately after receiving her second suspension letter, Appellant confronted and taunted her coworkers and quoted from their witness statements. Respondent argues

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

that Appellant was intimidating witnesses and caused her coworkers to feel afraid. In addition, Respondent argues that Appellant continued to be insubordinate by failing to follow her supervisor's directives. Respondent argues that Appellant's conduct was detrimental to the workplace and that termination was warranted.

3.2 Appellant argues that she was very well-trained and had a limited amount of experience when she transferred into Unit J but that the excessive number of calls she received made it impossible to do her job competently. Appellant argues that she was facing an amount of work that she could not cope with, that she wanted the work minimized, and that when she sought help the only assistance she received was direction to observe an experienced claims manager. Appellant asserts that she was never accepted by the employees in Unit J and that she was treated like an outsider. Appellant asserts that her supervisors treated her disparately and that she was never given a fair chance to succeed in Unit J. Appellant argues that when she complained about the large number of phone calls she was getting she received no help. Appellant contends that she strictly adhered to the department's rules but that she was ordered to perform tasks she did not have the authority to perform and in disregard of the rules. Appellant contends that she received a letter of reprimand only a month after having joined Unit J and that her problems continued to escalate, resulting in a second letter of reprimand. Appellant argues that the first letter of suspension contains primarily insignificant charges. Appellant further asserts that her coworkers had no reason to fear her, that she merely chided them for telling on her and that she posed a threat to no one. Appellant asserts that she was a capable and dedicated employee and that her appeals should be granted.

IV. CONCLUSIONS OF LAW

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

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

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 Inefficiency is the utilization of time and resources in an unproductive manner, the ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of effective operations as measured by a comparison of production with use of resources, using some objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

4.5 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).

4.6 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).

4.7 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

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

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).

4.8 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).

4.9 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness and circumstances of the offenses. The penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. An action does not necessarily fail if one cause is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

SUSP-98-0037

4.10 Appellant was aware of the performance expectations of her position and she had received appropriate training to enable her to accomplish the duties of her job. Furthermore, Appellant was clearly aware of her duty to follow the directives of her supervisors and to adhere to the agency's policies. Appellant's failure to return calls in a timely manner and her failure to follow her supervisors' directives constitute a neglect of her duty, resulted in an inefficient use of her work time and violated the agency's Claims Administration policy. Appellant's refusal to comply with her supervisors' directives constitutes insubordination. In addition, Appellant's misconduct had a negative impact on the agency's ability to ensure that claims were handled appropriately and according to policy and constitutes gross misconduct.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.11 While each of these incidents on their own may not warrant any formal disciplinary action, when viewed in their totality, a five-day suspension is more than warranted. Respondent has met its burden of supporting the charges and proving that a five-day suspension is appropriate under the facts and circumstances and the appeal should be denied.

SUSP-98-0050

4.12 There is little dispute here that Appellant committed the misconduct alleged in the disciplinary letter and nothing in the record mitigates Appellant's behavior. Again, Appellant was aware of the responsibilities of her job, of her duty to follow her supervisor's directives, of her requirement to adhere to her work schedule and of her responsibility to follow agency policy and obtain prior approval before working overtime. Additionally, Appellant had a duty to treat her supervisor with respect and dignity. Her comments to Mr. Shatto were unacceptable and should not be tolerated.

4.13 Respondent has proven that Appellant neglected her duty, was inefficient in the use of her work time, was insubordinate, and violated agency policy. Appellant's misconduct interfered with the agency's ability to ensure that claims were handled within agency guidelines and rose to the level of gross misconduct. Respondent has met its burden of supporting the charges and proving that a 15-day suspension is appropriate under the facts and circumstances and the appeal should be denied.

DISM-98-0070

4.14 Respondent has provided extensive evidence of Appellant's failure and refusal to perform the duties of her position and of her refusal to comply with the directives of superiors. We are sympathetic to Appellant's frustration with the heavy caseload she was assigned. Nonetheless, Appellant had a responsibility to address her concerns in a constructive manner. Appellant's failure

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

to fulfill the duties and responsibilities of her position as a claims manager constitutes a neglect of her duty and willful violation of Respondent's rules and regulations regarding claims management. Appellant also had a duty to treat her coworkers with dignity and respect which she failed to do when she lashed out to them for writing witness statements against her. Furthermore, Appellant's failure to work on claims negatively affected the agency's ability to ensure that injured workers were receiving the appropriate benefits and damaged the credibility of the agency. The impact of Appellant's actions on the claimants was detrimental and not acceptable. Appellant's misconduct rises to the level of gross misconduct.

4.15 While Appellant's statements to Ms. Halstead and Ms. Holgren were uncalled for, unprofessional, and disrespectful, in regard to Policy #98-3.04, Respondent has failed to prove that Appellant's comments created a hostile environment. In regard to the release of confidential claimant information, Respondent had a higher level of responsibility for ensuring the confidentiality of claimant information. However, Respondent failed to take precautionary measures to ensure the integrity of the information. Respondent has failed to establish that under the facts presented here, Appellant willfully violated its policies. Although Respondent did not prove that Appellant violated the agency's policies confidential information and workplace violence policies, Respondent has met its burden of supporting the remaining charges and proving that a termination is appropriate under the facts and circumstances. Therefore, the disciplinary sanction of dismissal should be affirmed.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeals of Gladys Leach, SUSP-98-0037, SUSP-98-0050 and DISM-98-0070 are denied.

DATED this _____ day of _____, 1999.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____

Walter T. Hubbard, Chair

_____

Gerald L. Morgen, Vice Chair

_____

Nathan S. Ford Jr., Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504