BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

VICKIE BRENNAN, Appellant, v. THE EVERGREEN STATE COLLEGE, Respondent.	Case No. DISM-97-0019 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, HOWARD N. JORGENSON, Chair, and WALTER T. HUBBARD, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on September 15 and 16, 1998.

1.2 **Appearances.** Appellant Vickie Brennan was present and was represented by Michael Hanbey, Attorney at Law, of Ditlevson, Rodgers & Hanbey, P.S. Respondent The Evergreen State College was represented by Michael P. Sellars, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for incompetence and insubordination. Respondent alleges that Appellant made repeated mistakes in her work assignments and failed to follow the directive of her supervisor.

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1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); Plaisance v. Dep't of Social and Health Services, PAB No. D86-75 (Kent, Hrg. Exam.), aff'd by Board (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant Vickie Brennan was a Fiscal Technician III (FT III) and a permanent employee for Respondent The Evergreen State College (TESC). 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 April 2, 1997.

2.2 By letter dated March 12, 1997, Appellant was dismissed from her position as a Fiscal Technician III in the Student Accounts unit of the Controller's Office. The dismissal letter outlined numerous performance deficiencies in Appellant's work and described two incidents of insubordination. (Exh. R-1).

2.3 Appellant first became employed at The Evergreen State College in 1981 as a Cashier in the division of Finance and Administration. Appellant eventually promoted to the position of Fiscal Technician III working in the Technical Support and Reporting unit. Appellant's FT III position in the Technical Support and Reporting unit was reduced in force and Appellant accepted an option of a FT III position in the Student Accounts unit beginning August 15, 1995. When Appellant accepted this option, the incumbent FT III was "bumped" to a FT II position in the same unit. (Testimony of Appellant).

2.4 Appellant's duties in the Student Accounts unit included, in part, completing "student accounts entry documents," "journal entry" forms and preparing/producing numerous reports, including a "change of status daily report," a "prior learning experience program revenue report," a "student

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account monthly run calendar," and a "dis-enrollment/drop list." Appellant prepared credit and billing statements. Appellant also answered the phone responded, to student questions, and assisted students at the unit's customer service counter. (Testimony of Appellant and Colin Orr).

2.5 When Appellant began working the Student Accounts unit, her lead worker was Bill Allison. Subsequent to Mr. Allison's retirement, Colin Orr, Student Financial Services Manager, became Appellant's lead worker. Prior to leaving the college, Mr. Allison shared with Mr. Orr his concerns with Appellant's deficient work performance, which included numerous and repeated errors. (Testimony of Colin Orr).

Charge of Incompetence

2.6 Appellant was responsible for completing a "student accounts entry document" form. The form includes information such as a student identification number, the number of college credits the student is enrolled for, the quarter number and year, a description of the action being taken (e.g. dropping or adding credits to a school load), and the name of the student. Appellant completes the form using supporting documentation. Once completed, the form is routed to Mr. Orr, who is responsible for reviewing for accuracy. If no notable errors are found, Mr. Orr initials the form and approves it for entry into the computer system. If errors are noted, the form is returned to Appellant for corrections. (Testimony of Colin Orr).

2.7 Between October 23, 1996 and February 7, 1997, Mr. Orr found numerous errors in the "student accounts entry documents" completed by Appellant. Noted errors included wrong account numbers, transposed numbers, incorrect number of credit hours, and incorrect tuition charges or credits. Entering an incorrect tuition charge could negatively impact the student if over-charged and negatively impact the college by receiving too much or too little tuition revenue. (Testimony of Colin Orr and Exhs. R1, Atts. A1 through A10).

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2.8 Appellant was also responsible for completing "journal entries" forms. The forms completed by Appellant contained errors which included incorrect account numbers, amount numbers, and code numbers. Incorrect information on the forms could negatively impact the student and/or college if input into the college's database. (Exh. R-1, Atts. B1 through B7).

2.9 On October 24, 1996, Appellant billed a student for a tuition payment approximately three months after she had been directed to do so. The delay in billing caused a delay in the student having the college credits posted to her student record. The billing card Appellant completed failed to include the student's name and identification number. This subsequently created difficulties for the cashier receiving the payment in determining which student account to post the payment. (Exh. R-1, Att. C4 and Testimony of Colin Orr).

2.10 In January 1997, Appellant failed to note a discrepancy in a student's account. As a result, Appellant did not approve the student for registration. The student complained to Mr. Orr, who had to research the incident and clear the student for registration. (Exh. R-1, Att. C1 and Testimony of Colin Orr).

2.11 Also in January 1997, Appellant charged a student for credits he was not taking. The student was overcharged by $162.60, which the college had to refund to him. (Exh. R1, Att. C2 and Testimony of Colin Orr).

2.12 Numerous other exhibits (R-1, Atts. C4 through C6 and D1 through D4) illustrate repeated and unacceptable errors in Appellant's work. Mr. Orr testified that Appellant's mistakes were in areas in which she should have had an understanding of the transaction she was performing and that after 18

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months in the unit, Appellant failed to have the basic knowledge expected of an employee at her work level.

2.13 Because Appellant's errors were numerous and repeated, Mr. Orr spent much more time reviewing and correcting Appellant's work than other employee's work in the unit. Mr. Orr credibly testified that each time he discovered an error in Appellant's work, he noted the corrections, showed them to Appellant, explained why the entry was incorrect, and directed Appellant to correct the error. Appellant was never assigned all the duties expected of the Fiscal Technician III position because of her inability to accurately complete the limited assignments she was initially given when she started working in the unit.

2.14 Appellant's performance evaluation for the period of March 1996 to September 1996 rates her performance as "Unsatisfactory" in the dimensions of Quality of Work, Quantity of Work, Job Knowledge and Working Relationships. Under the section of Quality of Work, the evaluation indicates as follows:

> After thirteen months as a Fiscal Technician III . . . your work has not improved and is unsatisfactory. One of the main functions of your position is to balance the non-student receivable on a monthly basis and to provide me with a copy of the aged receivable report. I have not received a copy of the aged accounts [for] 6/30/96 nor have I received a non-student receivable and the aged accounts report for 8/30/96. A copy of the year end 6/30/96 receivable report is attached . . . As you can see from the attachment several of the accounts are not in balance, invoice 10132 is listed twice, invoice 9523 was paid but remains on the list, on invoice 9254 you used the wrong date, invoice 9530 is coded to the wrong account. Account 0195761-1352 was balanced by using a JE to make an adjustment to the account. Because of inaccuracy in the report, it caused the year end financial reports to be inaccurate. This is a reflection on the whole college.

The section of Quantity of Work indicates as follows:

> . . . You have made inputting the non-student receivable and checking the edits a full time job. Those two activities should account for approximately thirty percent of your work.

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> As a Fiscal Technician III you are expected to perform detailed work, use independent judgment, make fiscal determination, and solve problems that arise within work assignments. I am doing work in my office that I should be able to assign to you as a Fiscal Technician III. I am unable to do so, because you are not accurately completing the work that you are currently assigned. Because you are not doing the work of your predecessor you have caused your fellow workers to increase their work load. After thirteen months on the job I still have to monitor your work as though you were a Fiscal Technician II. At this point and time I shouldn't have to monitor your work at all.

(Exh. R-3)

2.15 Appellant's performance evaluation for the period of August 1995 to January 1996 rates her as "Needs Improvement" in the performance dimensions of Quality of Work, Quantity of Work, Job Knowledge and Working Relationships. Under the section of Quality of Work, the evaluation indicates as follows:

> Your work is inconsistent and needs improvement. You are not working at the Fiscal Technician III level. You have been a Fiscal Technician III since 1990 working here at The Evergreen State College in the Controller's Office. Because of your past experience you should be proficient in handling invoices, reconciling accounts and fully understand the IA accounting system. . . .

(Exh. A-4)

2.16 Appellant's performance evaluation for the period of September 1994 to August 1995 rates her as "Needs Improvement" in the performance dimensions of Quality of Work, Quantity of Work and Working Relationships. Appellant was rated as "Meets Expectations" in the performance dimension of Job Knowledge. This evaluation also outlined specific problem areas in Appellant's work performance in the dimensions of Quality of Work and Quantity of Work. (Exh. A-3).

2.17 Appellant's performance evaluation for the period of March 1993 to September 1994 rates her as "Meets Expectations" in the performance dimensions of Quality of Work, Quantity of Work, Job Knowledge and Working Relationships. (Exh. A-2).

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Charge of insubordination

2.18 On January 8, 1997, Appellant sent an e-mail to Dale Baird, a computer analyst in another unit, requesting information. Mr. Orr was concerned that Appellant, through her e-mails, was asking for a change in a long established process and believed that Appellant was being insubordinate to a directive she had been previously given to follow her chain of command when requesting information. Mr. Baird was not in Appellant's chain of command.

2.19 The dismissal letter dated March 12, 1997, described a second incident of insubordination, but no testimony or evidence regarding this incident was presented at the hearing.

2.20 By letter dated March 4, 1997, Appellant was given a pre-disciplinary letter which advised her that the college was considering dismissing her from her position as a Fiscal Technician III. The letter also outlined the charges with attached supporting documentation, numbered A1 through A10, B1 through B-7, C1 thorough C-6, D1 through D-4, and E1. These attachments were copies of Appellant's work which contained errors and which were the subject of the subsequent disciplinary action.

2.21 On March 7, 1997, Appellant attended a pre-disciplinary meeting to discuss the allegations in the March 4 letter. In attendance, in addition to Appellant, were Appellant's union representative, the appointing authority, Mr. Wade Davis, Controller, and Mr. Orr. During the meeting, Appellant provided Mr. Davis with a written statement addressing the charges. In her written statement, Appellant addresses the documents numbered A1 through A10, B1 through B7, and C1 and C2. In essence, Appellant asserted that she would not have made the entry errors "if given more time." (Exh. R-2).

2.22 Mr. Davis concluded that Appellant's dismissal was warranted based on her incompetence as reflected in the numerous inaccuracies contained in the work she was producing. Mr. Davis concluded

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that the errors in Appellant's work assignments damaged the integrity of the unit and college, especially when errors impacted the college's students. Mr. Davis also concluded that Appellant was insubordinate when she requested information from Mr. Baird without first following the appropriate chain of command. (Testimony of Wade Davis).

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant was unable to perform the assigned duties of her position and that despite one-on-one training from her lead worker, she was unable to improve her work performance. Respondent argues that it submitted as evidence 26 documents completed by Appellant which contained an excess of 63 errors, well below the standard expected of an experienced Fiscal Technician III. Respondent contends that Appellant's denials that her lead worker failed to provide her with feedback regarding her work and failed to explain how to correct her errors is not credible and contradicts her own written statement. Respondent further contends that there was adequate staffing in Appellant's unit, and that the employees that previously and subsequently held Appellant's position were able to accurately perform all of the position's duties, including additional duties of the position which were never assigned to Appellant. Respondent argues that it has met its burden of proof that Appellant's inability to perform the duties of a Fiscal Technical III constituted incompetence. Respondent further argues that Appellant was insubordinate when she e-mailed an employee outside her chain of command. Respondent argues that the sanction of dismissal is appropriate and should be upheld.

3.2 Appellant argues that her work performance in the Student Accounts unit could be characterized as "very good." Appellant contends that her lead worker failed to provide her with feedback regarding her work. Appellant also asserts that she was never provided with appropriate training and that her lead worker never explained to her how to correct her mistakes. Appellant contends that because her reduction in force caused her to bump the incumbent Fiscal Technician III to a Fiscal Technical II

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position in the Student accounts unit, she was not welcome in the unit nor were her coworkers cooperative. As a result, Appellant contends that she was solely responsible for answering the phones and assisting students at the customer service counter. Appellant asserts that she was overworked and had no uninterrupted time to perform her assignments. Appellant further contends that the evidence produced by Respondent represents less than five percent of her duties and that she cannot be sure all the documents in evidence were completed by her or whether they were the same documents she received prior to the predisciplinary meeting. Appellant also contends that she only had two and a half days to prepare for the pre-disciplinary meeting, which was not enough time to adequately respond to all the allegations. Appellant argues that dismissal is too severe a sanction and that she should be fully reinstated or a less severe penalty be imposed.

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 Incompetence presumes a lack of ability, capacity, means, or qualification to perform a given duty. Plaisance v. Dep't of Social and Health Services, PAB No. D86-75 (Kent, Hrg. Exam.), aff'd by Board (1987).

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4.4 Appellant's performance evaluation for the period of September 1994 to August 1995, put Appellant on notice that there were concerns with her work performance. As a result, Appellant should have been aware of the need to improve the quality of her work. Subsequent performance evaluations contained specific and detailed descriptions of the errors contained in her work product. Appellant's failure to properly and accurately complete documents involving student accounts which negatively affected both students and the college constitutes incompetence. The credible evidence established that Appellant was given repeated instruction and feedback to aid her in accurately accomplishing her job duties, yet she was unable to adequately perform her tasks or improve her work performance. Appellant's testimony that she was not given direction or feedback by Mr. Orr is not credible in light of her written statement dated March 7, 1997, in which she asserts that entry errors would not have been made if she had been given more time.

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 Respondent has failed to meet its burden that Appellant's actions on January 8, 1997, constituted insubordination.

4.7 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).

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4.8 Appellant has provided no compelling reasons that mitigate the discipline imposed here. She was given ample opportunity to improve her work performance, yet evidence established that the quality of her work continued to decline. Despite repeated guidance and one-on-one training she continued to produce poor quality work. Furthermore, although many of Appellant's errors were corrected prior to being finalized, this does not mitigate the fact that Appellant was unable to work at the level expected of an employee with her experience and background. Because of Appellant's demonstrated lack of improvement and lack of understanding of basic Fiscal Technician III duties, and because of the potential negative impact to students and the college, 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 Vickie Brennan is denied.

DATED this _____ day of _____, 1998.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Howard N. Jorgenson, Chair

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Walter T. Hubbard, Member

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