BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

AUDRA PATTERSON, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. DISM-00-0068 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 at the Holiday Inn Express, Chelan Conference Room, Wenatchee, Washington, on April 19, 2001.

1.2 **Appearances.** Appellant Audra Patterson was present and was represented by Anita Hunter, Attorney at Law, of Parr & Younglove, PLLC. Donna Stambaugh, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, insubordination, and gross misconduct. Respondent alleges that Appellant displayed two angry outbursts in the workplace.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

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); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant Audra Patterson was a Financial Services Specialist (FSS) 3 and permanent employee for Respondent Department of Social and Health Services at the Wenatchee Community Services Office. 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 20, 2000.

2.2 By letter dated August 30, 2000, Ben Green, Regional Administrator for Region 1 Community Services Division, informed Appellant of her termination effective September 19, 2000. Mr. Green charged Appellant with neglect of duty, insubordination and gross misconduct. Mr. Green specifically alleged that on June 6 and 7, 2000, Appellant yelled, displayed angry outbursts, and called her supervisor a "fucking liar."

2.3 Appellant began her employment as a state employee in August 1982. Appellant has no history of receiving either formal or informal disciplinary actions and her performance evaluations reflect that she was rated as an above average employee.

2.4 Due to personal health concerns, Appellant was on family medical leave for approximately three months. Appellant was also dealing with her son's epilepsy and seizures and her father had passed away on May 21 after a long illness during which Appellant cared for him. Appellant was scheduled to return to work on June 1, 2000, however, on May 31, she was told that she needed to

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

obtain a release form from her medical provider prior to her return to work. Appellant was unable to immediately obtain the release, therefore, June 6 was selected as her new return to work date. On June 5, Donald Sommers, Appellant's supervisor, called her at home and informed her that her computer would not be set up on June 6 because Clay Erickson, Computer Specialist, was unavailable to set up her computer because of a management meeting he was going to attend on June 5. Mr. Sommers directed Appellant to report to work on June 7. Because Appellant was on leave without pay, she began to feel a sense of frustration over the delays in her return to work and the impact on her finances.

June 6, 2000 incident.

2.5 On June 6, Appellant arrived at work to organize her area for work the following day. As Appellant walked into the building, she saw Mr. Erickson. Appellant commented to Mr. Erickson that she didn't expect to see him there because Mr. Sommers had told her that he was scheduled to be at a meeting. Appellant became angry because she felt that she was losing another day of pay for no legitimate reason and she began to suspect that management was trying to "get rid" of her. Appellant believed that Mr. Sommers had deliberately lied to her and she began to yell and use profanity. Appellant loudly yelled that Mr. Sommers was a "fucking liar."

2.6 Appellant then approached her coworker, Angie Arnold, FSS 3, and she repeated that Mr. Sommers was a "fucking liar" and that because of his lie, she was going to lose another day of pay. Appellant was yelling, visibly angry, and agitated. Ms. Arnold walked with Appellant to Appellant's work area. Appellant continued to yell and repeat that she had been "lied to" and the Mr. Sommers no longer wanted her there. Appellant began clearing her personal items from her work area while she continued to scream and use profanity. Ms. Arnold and coworker Jim Fletcher, who had joined them, unsuccessfully attempted to calm Appellant down. At one point, Appellant climbed on a chair and yelled, "My dad's dead. I hope you're all happy." Ms. Arnold and Mr.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Fletcher then walked with Appellant to her car. As Appellant exited the building, she yelled words to the effect that she could understand "how school shootings" could occurr and why employees "shot up places."

2.7 Neither Mr. Fletcher nor Ms. Arnold felt threatened by Appellant's outburst and neither felt that she condoned violence in the workplace. However, Appellant's outburst was also overheard by other employees and DSHS clients who were being interviewed in the office. A number of employees found the incident disturbing and it interrupted their work day.

June 7 incident

2.8 The following day, Mr. Sommers met with Appellant in his office to discuss the incident from the previous day. During the meeting, Appellant became confrontational and started to call him a liar. Mr. Sommers' attempt to get Appellant to calm down failed and they went to meet with Office Administrator John Liens. Appellant continued to be upset and continued to yell. Mr. Lein's attempts to get Appellant to calm down were also futile. During the meeting, Appellant turned to Mr. Sommers and told him he was a jerk and a liar. After the meeting ended, Mr. Lein gave Appellant permission to approach her coworkers and apologize about her behavior on the previous day.

2.9 Ben Green, currently retired, was the Regional Administrator and Appellant's appointing authority at the time he made the determination to terminate Appellant's employment. Prior to determining the level of discipline, Mr. Green reviewed the two conduct investigation reports regarding the incidents of June 6 and 7, 2000 and numerous witnesses' statements. Mr. Green also met with Appellant and her representative on August 7, 2000, to hear Appellant's version of the events prior to making his final decision on the level of discipline. However, Mr. Green found that Appellant's behavior was extreme and disruptive to the office staff and clients and that she was

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

disrespectful of her superiors. Mr. Green was also highly concerned with the parallel Appellant had drawn about others who had committed violent acts in the workplace.

2.10 Mr. Green also weighed Appellant's 18 years of service, her good employee work record, her apology to staff, and her statements that she did not condone and would not repeat the behavior. However, Mr. Green did not believe that Appellant took the incidents seriously nor did he believe that she was taking responsibility for her actions. Mr. Green believed that during the meeting, Appellant attempted to justify her actions by comparing them to the actions of other employees and by stating that she was a "yeller, that's the way I am." Mr. Green was not convinced that her outburst was a one-time or isolated incident that would not occur again. Mr. Green believed that allowing Appellant to remain in the workplace could further exacerbate her anger. Mr. Green ultimately concluded that Appellant was a risk to the safety of staff and he could not allow her to remain in the workplace and risk a repeat of her behavior. Mr. Green decided that terminating Appellant's employment provided the best opportunity to provide a safe workplace for others.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant engaged in two serious incidents of misconduct during which she became hysterical, yelled and screamed and called her supervisor a "fucking liar" and a "jerk." Respondent argues Appellant's unfortunate circumstances in her personal life do not excuse her negative behavior or the serious nature of her actions. Respondent argues Appellant's misconduct had a negative impact on the agency because it frightened coworkers and clients. Respondent asserts that Appellant was always granted leave and that the department made efforts to work with her during her absences and there was no conspiracy to remove her from the workplace. Respondent further argues that Appellant's comments about school shootings were disturbing. Respondent argues that Appellant failed to treat coworkers with dignity and asserts that Appellant's

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

behavior was reprehensible, intolerable and inexcusable in any workplace. Respondent argues that based on the circumstances, termination was the appropriate sanction.

3.2 Appellant admits that she "lost it," however, she argues that her case should not be viewed in a sterile environment. Appellant contends that she was going through tremendous and prolonged stressors in her personal life which eventually led to her own serious health problems. Appellant asserts that as a result, she was absent from work for a substantial period of time. Appellant asserts that Mr. Sommers engaged in a pattern of harassment when he became her supervisor and told her she was never to be absent for any reason. Appellant argues that she was eventually singled out and harassed by Mr. Sommers and her coworkers due to her extended absences. Appellant argues that her actions resulted from the cumulative effects of her personal tragedies and the harassment she received from Mr. Sommers. Appellant asserts that she never behaved that way in the past and that she subsequently apologized to more than 30 employees. Appellant contends that her comment to Mr. Fletcher and Ms. Arnold was her expression that she understood how sometimes people can go to extremes when they are put under tremendous stress. Appellant argues, however, that she does not condone violence nor did her coworkers believe she condoned violence. Appellant asserts that she was a long-term employee and a good worker and she argues that although some discipline was warranted, termination was too severe.

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

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

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 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).

4.5 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).

4.6 There is no dispute that Appellant engaged in inappropriate conduct and subjected her coworkers to an inappropriate display of anger on June 6. Appellant had a duty to be respectful toward her coworkers and to conduct herself in a professional manner. Appellant's actions were disruptive and exceeded the bounds of what is acceptable behavior in the workplace. Appellant's behavior was further exacerbated by her outburst of anger and her display of disdain toward her supervisor on June 7. Appellant recognized that her behavior on the previous day was wrong and inappropriate, but nonetheless, she returned the following day and continued to vent her anger rather than expressing her concerns in a reasonable, rational manner. Although there was evidence that other coworkers in the office were frustrated that Appellant's extended absences created additional work for them, there was no evidence to support Appellant's contention that Mr. Sommers was harassing her or that he denied her time off from work.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.7 Respondent has shown by a preponderance of the credible evidence that Appellant's actions on June 6 and 7, 2000, constituted neglect of duty and rose to the level of gross misconduct. Appellant's outburst on June 6 was disruptive to the workplace, disturbed a number of employees and distracted them from their duties. Furthermore, Appellant was insubordinate when she refused to heed her superiors' directives to compose herself and continued her verbal outbursts during the June 7 meeting. Appellant's actions on June 7 showed an unwillingness on her part to behave herself in a professional manner and to rationally discuss the events of the previous day.

4.8 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. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

4.9 The appointing authority here testified that he did not believe any disciplinary action other than dismissal would have enabled him to ensure that the agency provide a safe and secure work environment for its employees. The appointing authority was not convinced that Appellant could be returned to the workplace without the risk of repeating her behavior. This Board's role is not to second guess whether the appointing authority imposed the correct sanction, but to determine, based on the facts, evidence and testimony presented to us, whether the charges were proven, and if so, whether the sanction imposed was appropriate under the circumstances. The Board is not limited by the same constraints placed upon the appointing authority by the merit system rules in determining whether dismissal or a lesser form of discipline is an appropriate sanction.

4.10 The Board takes seriously incidents of violence in the workplace. However, under the circumstances presented here, we conclude that Appellant's dismissal is too severe a level of

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

discipline. Appellant's behavior was clearly unprofessional and inappropriate and is not condoned by the Board. However, we must consider two incidents of inappropriate behavior by an employee who has no history of corrective or formal disciplinary action in 18 years of state service and who was rated as an above average employee for all of those years. These mitigating factors notwithstanding, the seriousness and circumstances of this incident warrants a severe disciplinary sanction. We find that a lengthy suspension is sufficient to prevent recurrence, to deter others from similar misconduct and to maintain the integrity of the program. Therefore, the disciplinary sanction should be modified to a suspension, effective September 19, 2000, to the date of this order.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Audra Patterson is granted in part. The dismissal effective September 19, 2000, is modified to a suspension effective September 19, 2000, to the date of this order.

DATED this _____ day of _____, 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

_____
Leana D. Lamb, Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504