BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GARRY ROSSON, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. DEMO-01-0035 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 RENÉ EWING, Member. The hearing was held at the West Seattle Training Center, 4045 Delridge Way, Seattle, Washington on October 29 and 30 and November 19, 2002, and at the office of the Personnel Appeals Board in Olympia, Washington on November 25, 2002.

1.2 **Appearances.** Appellant Garry Rosson was present and was represented by Christopher J. Coker, Attorney at Law, of Parr & Younglove, P.L.L.C. Anne O. Shaw and Mark Anderson, Assistant Attorneys General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of demotion for neglect of duty, inefficiency, incompetence, insubordination, gross misconduct and willful violation of published employing agency or department of personnel rules or regulations. Respondent alleges

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

that Appellant's performance as a social worker was unsatisfactory regarding his handling of 12 cases; that he engaged in an altercation at juvenile court; that he failed to respond in a timely manner to a referral involving a seven-year old who was at serious risk of harm; and that he failed to obtain prior supervisory authorization for working outside of his scheduled hours.

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); Plaisance v. Dep't of Social and Health Services, PAB No. D86-75 (Kent, Hrg. Exam.), aff'd by Board (1987); 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 Garry Rosson is an Office Assistant Senior and permanent employee for Respondent Department of Social and Health Services. 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 November 27, 2001.

2.2 By letter dated October 18, 2001, Carol Felton, Acting Regional Administrator for Region 4 Division of Children and Family Services, notified Appellant of his demotion from a Social Worker 3 to a position as an Office Assistant Senior, effective November 5, 2001. Ms. Felton charged Appellant with neglect of duty, inefficiency, incompetence, insubordination, gross misconduct and willful violation of published employing agency or department of personnel rules or regulations. Ms. Felton specifically alleged that Appellant demonstrated unsatisfactory performance as a Social

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Worker 3 in the handling of 12 cases as documented in a Special Evaluation for the period of October 1, 2000 through April 1, 2001; that he engaged in an altercation at juvenile court on January 5, 2001; that he failed to respond in a timely manner to a referral involving Lemla D. which left the seven-year old child at serious risk of harm; and that he failed to obtain prior supervisory authorization to work outside of scheduled hours on April 1, 2001.

2.4 Appellant began his employment with the Department of Social and Health Services in 1972. Appellant's primary responsibility as a Social Worker 3 was to ensure the safety and health of children by conducting complete and thorough investigations of alleged child abuse and neglect. Appellant's performance evaluations through 1998 indicate that he was a knowledgeable and experienced social worker with excellent investigative skills. As a Social Worker 3, Appellant was expected to work independently with little supervision.

2.5 Appellant's employment history with DSHS indicates he was suspended in 1995 for 1) unprofessional conduct and intimidating behavior toward a coworker and 2) using the agency's computer system to access personal information about a coworker. On May 25, 2001, Appellant received a counseling memo for giving money to children after interviewing them concerning an emergent referral.

2.6 In September 2000, Appellant began to work in the newly formed "CPS Emergent Unit" which resulted from a reorganization within the office. The unit specializes in and handles only emergent referrals.

2.7 The primary mission of the Department of Children and Family Services (DCFS) is to protect children and provide casework services to all clients. The DCFS Case Service Policy

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Manual outlines how social workers are to conduct their duties. The DCFS Practices and Procedures Guide Policy, section 2310, addresses response times, and under subsection D, states:

> Emergent response begins no later than 24 hours from the referral date and time and requires a high standard of investigation. Emergent response is required for children who are at risk of imminent harm (significant possibility or likelihood that the child may be seriously physically or emotionally injured in the near future).

Section 2310, subsection F states:

> Non-emergent response time begins within 10 calendar days from the referral date and time. The standard of investigation may be high or low.

2.8 In addition, the policy defines six levels of risk tags which are used to define the seriousness of the allegations. Cases tagged as moderate to high risk require "the high standard of investigation." Cases being investigated under "the high standard of investigation" require the social worker to conduct a face-to-face interview with the child victim within 10 working days from the date of referral to gather information for risk assessment and case planning. The standard operating procedure for the Emergent Unit at the time relevant to this appeal required the social worker to initiate <u>face-to-face</u> contact with the child victim, the parents or guardian and to begin investigation of an <u>emergent</u> referral within 24 hours after receiving the referral (emphasis added).

2.9 Social workers are also responsible for documenting all contacts made on referrals, including the date, names, and nature of the contact/discussion, as well as documenting services provided, efforts made to determine outcome of services, and other pertinent information. This documentation is made in a client's Service Episode Record (SER) which is maintained in the agency's computer system. Social workers have 30 days from the contact date to make the entry, however, the agency encourages that entries be made as soon as possible after contact. Social

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

workers have 90 days to complete the investigation of a referral and to forward the file to his/her supervisor with a recommendation that the case be closed. The social worker supervisor is responsible for a final review of the case and he/she can either authorize closure of the case or return the case to the social worker for additional case work.

2.10 RCW 13.34.060(b) states, in pertinent part:

> ... No child may be held longer than seventy-two hours, excluding Saturdays, Sundays and holidays, after such child is taken into custody unless a court order has been entered for continued shelter care. The child and his or her parent, guardian, or custodian shall be informed that they have the right to a shelter care hearing. The court shall hold a shelter care hearing within seventy -two hours after the child is taken into custody, excluding Saturdays, Sundays and holidays ...

2.11 A child can be removed from protective custody by the parents in cases where a dependency petition has not been filed by the department within 72 hours, thereby, placing the child at potential risk of abuse. Failure to adhere to the "72 hour" rule also violates the custodial parent's rights to have a hearing. Therefore, strict adherence by the department and its employees to the 72-hour rule is critical.

2.12 The Department of Children and Family Services also practices "shared decision making" and adopted a policy which requires social workers to consult with their peers, supervisors, area managers, foster parents, community professionals and others to make key decisions about a child's case. The goal of shared decision making is to provide social workers with assistance in making tough decisions on cases and to encourage open communication among professional staff. Shared decision making can encompass a wide variety of issues, including placement services, decisions on cases of medical neglect, disputed changes in placement, returning a child home, closing a case, etc. The agency's adopted practice is outlined in the DCFS Case Services Policy Manual.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.13 Appellant was aware of and had received training on the DSHS and DCFS policies, practices, case management, and he had extensive hands-on experience conducting child abuse investigations. He was also aware of the Emergent Unit's practice of initiating an investigation within 24 hours of the social worker having received the referral and of the requirement under RCW 13.34.060(b) that a shelter care hearing (referred to as a dependency petition to the court) be held within 72 hours of the child being placed in protective custody.

2.14 In November 2000, Maureen Walum became Appellant's supervisor. Ms. Walum is responsible for assigning cases to her staff after receiving the files from the Intake Unit.

Lemla D. case

2.15 On Sunday, February 11, 2001, the CPS Intake Unit received a referral on Lemla D., a seven year old child. Lemla had been removed from her mother's home by her paternal uncle who had concerns that Lemla was physically and medically neglected by her mother. The uncle took Lemla to the hospital for treatment. He subsequently made contact with the Intake Unit to report the abuse of his niece. The Intake Unit designated the Lemla D. case as "emergent, high standard, with risk tag of 4."

2.16 On Monday morning, February 12, Ms. Walum reviewed the Lemla D. case. Ms. Walum had information that Lemla had been taken out of her home by the Seattle Police Department due to allegations of medical neglect and placed her in protective custody with her paternal uncle. It is unclear how Ms. Walum became aware of this information, however, this fact was not contained in the narrative body of the intake referral.

2.17 Ms. Walum was aware that on February 12, Appellant had called in sick. However, he had indicated that he would be to work around noon that day. Ms. Walum assigned the Lemla D. case

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

to Appellant on February 12 with the expectation that Appellant would begin the investigation after he returned to work. However, Appellant did not report to work until after noon on February 13 when he found the Lemla D case file in his office.

2.18 Several days after receiving the Lemla D. case, Appellant spoke to Christopher Jones, a social worker who previously handled Lemla's case. During the conversation, Appellant asked numerous questions about what to expect from Lemla's family. Mr. Jones had received a call from Lemla's uncle on February 11, 2001 and referred him to the CPS Intake Unit because he was no longer assigned to the case.

2.19 On February 21, 2001, Lemla D's paternal uncle and grandmother brought the child to the DCFS office, because of custody concerns and their fear that Lemla's mother would take the child back. February 21 was the first date on which Appellant had contact with Lemla D. Appellant also learned that the child's paternal uncle and grandmother did not have legal custody of the child.

2.20 Appellant subsequently spoke with Ms. Walum, stating that he was going to file a dependency petition on the Lemla D. case because the child was in protective custody. Ms. Walum became immediately alarmed, because a dependency hearing had not been conducted with the court within 72 hours as required by law and the child remained in protective custody. Appellant filed a dependency petition with the juvenile court on February 22, 2001.

2.21 The issue here is whether Appellant failed to respond in a timely manner to the Lemla D. referral by failing to initiate the high standard of investigation within 24 hours, by not conducting face-to-face interviews with the victim, her mother, and her caretaker, and by allowing Lemla D. to remain in protective custody beyond the 72 hours permitted by law without filing a dependency petition.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.22 Appellant testified that he was unaware that the child was placed in protective custody because the referral in the file did not state that the Seattle Police Department was involved or had placed Lemla D. in protective custody. He also testified that he began his investigation immediately upon receiving the referral on February 13, 2001 and that agency policy #2331, section (D)(2)(a) provided him with 10 working days in which to conduct a face-to-face interview with Lemla D., which he did on February 21, when the child's uncle and grandmother brought her to the office. Appellant testified that February 21 was the first time he learned that Lemla D. was in protective custody during a conversation with the child's uncle.

2.23 After hearing Appellant's testimony and reviewing the intake referral report for Lemla D, and the Children's Administration Practices and Procedures Guide, specifically sections #2310 and 2331, we find that a preponderance of the evidence supports that Appellant failed to act on the Lemla D. referral in a timely manner as required by policy. Furthermore, we do not find Appellant's testimony credible that he began an immediate investigation into the case.

2.24 The text of the Lemla D. referral does not contain any indication that the Seattle Police Department was involved or that the child was placed in protective custody by an officer. However, the narrative contains the following information:

> The uncle [J.] called about 9:00 p.m. to say that he had Lemla ... his niece with him at the home of his mother [Lemla's grandmother]. ... He had just returned from Harborview hospital with [Lemla]. He had gone to her home today to check on her ... When he got to the home the mother ... would not let him come in and tried to block the entrance. He was finally able to go upstairs with [Lemla] to her room. She had s swollen ear lobe because an earring had gotten imbedded in it ... he took her to the ER to have her looked at. ...
>
> The mother called the [referent] to say that she did not want them to bring [Lemla] back to the house tonight. They can keep her until tomorrow. Referent is concerned about the safety of the child if returned to the mother.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.25 Based on the above information, which was available to Appellant, he should have had a reasonable belief that the child's custody was in question and that the child was in the home of a non-custodial parent. Appellant had almost 30 years of experience in social work with DSHS. Furthermore, the referral was clearly labeled an "emergent" case, thereby requiring a 24 hour response by Appellant. These conditions alone should have raised a red flag to Appellant that the department needed to ascertain the custody of the child and taken the necessary steps to comply with the 72 hour rule. The evidence supports, however, that Appellant did not have contact with Lemla D. until February 21, when the child's uncle brought her to the CPS office. This contact occurred well beyond the 24 hours from when he received the referral.

2.26 Furthermore, had Appellant conducted an immediate, timely and thorough investigation, such as interviewing Lemla D.'s uncle within 24 hours of having received the referral as required, he more likely than not would have discovered then, rather than later, that the Seattle Police had allowed her to remain outside of her mother's home and that a dependency petition was necessary. Although the referral report for Lemla D. contains some brief handwritten notations by Appellant containing dates and names, these notations do not indicate what contact Appellant may have made or with whom. Moreover, it is clear that Appellant failed to secure custody for the child within the 72 hour rule.

Unsatisfactory performance on 12 case files

2.27 After becoming aware of Appellant's failure to appropriately handle the Lemla D. case, Ms. Walum conducted an audit of Appellant's caseload and she wrote a special evaluation based on the audit findings. Through her audit, Ms. Walum discovered that Appellant's caseload consisted of cases that were well beyond the department's 90-day period to complete them and she had concerns

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

that Appellant was not performing adequate investigations. Ms. Walum subsequently reassigned 20 of Appellant's cases to other social workers.

2.28 We have reviewed the testimony from Appellant, the testimony of Ms. Walum, and the testimony of social workers Latifa King, Christopher Jones, Mary Martinez, Alan Naiman and Kimberly Atchley. We have also reviewed the children's case files and find that a preponderance of the evidence supports that Appellant failed to interview and/or document interviews with victims, family members and other collateral contact regarding information about alleged abuse, and that he failed to initiate or participate in the shared decision-making process required by policy in the following cases:

> 1. Daprei H. Appellant unnecessarily removed child from a Crisis Residential care placement without conducting any investigation prior to doing so. Appellant failed to meet with mother and child together or see if mother would voluntarily accept family reconciliation services. Appellant failed to engage in shared decision making or to involve his supervisor to determine the child's placement.
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> 2. Alvin P. Allegations of physical abuse. Appellant failed to investigate allegations when he failed to contact either the child or the child's legal guardian.
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> 3. April B. and Jesse B. Numerous allegations of abuse filed by children's school against children's developmentally delayed father. Appellant conducted a brief investigation and made a decision that this was a case of an ongoing conflict between the school and the father. Appellant did not engage in shared decision making or consult with his supervisor but instead decided to close the case.
>
> 4. Jhovana D. Allegations of medical neglect by child's physician against the mother of 7-year old child who weighed close to 200 pounds. Appellant felt that the mother was "demanding" and did not follow through on her part, and he decided to close case without consulting with his supervisor and without engaging in shared decision making.
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> 5. Sarita J. Mother abandoned child with the father, whom the child had never met. Father made contact with Bellingham CPS. Appellant did not interview mother or father and planned to close the case with no further action and was not aware another CPS office was involved.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

6. Colin I. Child was victim of physical abuse by mother's boyfriend. Appellant approved placement of child with father, who also had allegedly abused him and Appellant planned to close case with no further investigation.

7. Mary P. and Markey P. Allegations of physical abuse. Children refused to speak with Appellant, and he made no attempt to interview the parents or other witnesses regarding the allegations. Case remained open for close to a year.

8. Mayra A. Allegations of physical abuse. After child refused to be interviewed by Appellant, he failed to contact the child's parents or the alleged perpetrators. Appellant did not consult with supervisor and planned to close the case without any further attempts to investigate.

9. Florence U. Allegations of physical abuse. After child refused to be interviewed by Appellant, he failed to contact the child's parents or the alleged perpetrators. Appellant did not consult with supervisor and planned to close the case without any further attempts to investigate.

10. Alexis H. Allegations of sexual abuse. Appellant failed to conduct a face-to-face interview with the child, the alleged perpetrator or the parents as required by policy. Case assigned to Appellant for almost six months.

11. Hanna E. Allegations of sexual abuse. Appellant failed to conduct a face-to-face interview with the children, the alleged perpetrator or the parents as required by policy.

12. Claire V. and Riley V. Allegations of sexual abuse. Appellant failed to conduct a face-to-face interview with the children or parents as required by policy.

Altercation at court

2.29 On January 5, 2001, Appellant attended a case hearing at the Juvenile Court. Appellant was not the assigned social worker but attended the hearing to support a fellow social worker. Appellant engaged in a disagreement with Court Liaison Beth Rappaport and spoke to her in an aggressive manner and was "nearly yelling" at her. Ms. Rappaport felt "intimidated," "attacked" and "physically threatened" by Appellant's angry demeanor, and she remained speechless until a supervisor interceded and asked Appellant to step into another office. Appellant subsequently apologized to Ms. Rappaport.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Failure to obtain prior supervisory authorization to work non-scheduled hours.

2.30 On March 29 and 30, 2001, Appellant called in sick to work. On Sunday, April 1, Appellant went to the office and worked a total of five and one half hours. Appellant had received previous information about working hours beyond his allowable 40 hours. In a memo dated May 17, 2000, Appellant's former supervisor barred Appellant from working any overtime without prior approval from her or another supervisor. In addition, Ms. Walum issued a notice to all staff reminding them that any time worked other than their scheduled work hours was to be approved by her and that working any extra time without supervisory approval was prohibited.

2.31 When Appellant went into the office and worked on Sunday April 1, he wanted the time to count as flex time rather than overtime. However, Appellant did not contact Ms. Walum prior to working on Sunday, therefore, he did not have supervisory authorization to work those additional hours on the weekend.

2.32 Carol Felton, Acting Regional Administrator, was Appellant's appointing authority when the discipline was imposed. After reviewing the audit results of Appellant's caseload, Ms. Felton was alarmed with the high number of cases where Appellant failed to perform face-to-face interviews, failed to contact referents, made decisions in isolation, and recommended case closure with little effort to investigate. In determining the level of discipline, Ms. Felton took into consideration Appellant's length of service, his employment record, and the nature of the allegations. Ms. Felton felt that Appellant neglected his primary duty to keep children safe from harm by not performing adequate investigations, failing to make records of his contacts and by failing to engage in shared decision making. She also concluded that Appellant failed to follow the agency's policies and procedures regarding the handling of cases.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.33 Ms. Felton determined that Appellant was insubordinate when he worked overtime hours without supervisory authorization, despite being aware of the agency's policies and procedures on overtime. Ms. Felton further concluded that Appellant behaved unprofessionally at Juvenile Court and that he needed to be put on notice that such behavior could not be tolerated. Ms. Felton did not feel that Appellant presented any mitigating facts for his failure to perform his social work duties. Ms. Felton felt that dismissal would have been the appropriate sanction, however, after weighing Appellant's years of service, she concluded that demotion to a non-social work position was appropriate. Ms. Felton's paramount concern was for the children under the agency's care. Ms. Felton did not believe that Appellant could work at a lower-level social worker position because those positions would give Appellant the opportunity to make decisions about the lives of children, a responsibility Ms. Felton felt she could no longer entrust to him.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that it has shown by a preponderance of the evidence that Appellant engaged in misconduct when he failed to respond in a timely manner to the Lemla D. case by not initiating a high standard of investigation within 24 hours and by failing to have face-to-face contact with the child, her parents or her caretakers. Respondent asserts that Appellant's lack of action left the child at serious risk of further harm, deprived the mother of her statutory due process right to be heard under RCW 13.34.060, and left her caretakers without legal authority to maintain physical custody of the child had the mother demanded her child back.

Respondent argues that Appellant's caseload consisted of 12 files where Appellant demonstrated unsatisfactory performance by repeatedly failing to initiate or complete the steps outlined in agency policies and procedures, failing to use shared decision making with others, and recommending closure of cases without a complete investigation. Respondent argues that Appellant's inactions resulted in his routinely minimizing risk to children.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Respondent argues that Appellant engaged in unprofessional behavior when he engaged in an altercation with court staff. Respondent also asserts that Appellant worked 5.5 hours of overtime without obtaining prior approval from his supervisor despite numerous reminders that he was not to work anything other than his approved work schedule.

Respondent argues that Appellant's behavior left vulnerable children at risk and adversely impacted the agency's mission to provide for the care and safety of vulnerable children. Respondent asserts that Appellant's misconduct would have warranted termination, but asserts that the appointing authority took Appellant's long term employment with the department into consideration when imposing the sanction of demotion.

3.2 Appellant argues that Respondent did not prove the charges against him by a preponderance of the evidence and argues that the level of discipline imposed was too severe. Regarding the Lemla D case, Appellant asserts that he did not receive the file within 24 hours of the referral. He asserts, however, that he immediately began the investigation when he received the file. Appellant further agues that he filed the dependency petition immediately after he learned that the child was in protective custody.

Appellant argues that as a Social Worker 3 he had broad discretion to make decisions on cases and that it was left to his discretion to exercise judgment as he saw fit. Appellant argues that his supervisor reviewed all cases he forwarded to her for closure and that she had the authority to direct him to do more work on a case if she disagreed with his recommendation.

Appellant admits that his behavior in the court was inappropriate. Appellant argues that others in the agency routinely work overtime on the weekends without the authorization of a supervisor but that he was singled out and punished. Appellant asserts that he wanted to work flex time, not overtime, but that his supervisor completed a "dummy leave slip" without his knowledge.

Appellant asserts that his evaluations show that he met or exceeded normal job requirements and the charges are based on differences in opinion as to how to do his job. Appellant asserts that

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

the agency failed to prove that he was incompetent and should have allowed him to address any performance issues rather than demoting him. Appellant argues that his appeal should be granted.

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 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 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). Flagrant

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

4.6 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. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

Lemla D. case

4.7 In the Lemla D. case, Appellant failed to conduct a face-to-face interview with the child within 24 hours after receiving the case on February 13, and he also failed to talk to the child's mother and with the paternal uncle and grandmother, where Lemla was staying. Consequently, Appellant failed to determine in a timely manner whether it was safe to return Lemla to her mother's home or whether he needed to file a dependency petition with the juvenile court according to the 72 hour rule. Appellant blames the referral report as the reason why he was not aware of the child's custody status. However, the omission of the word "child placed in protective custody by the police" within the text of that report does not mitigate or relieve Appellant of his obligation to conduct a basic investigation on the case or his failure to conduct a face-to-face interview with the child within 24 hours of when he received the case.

4.8 Respondent has met its burden of proving by a preponderance of the credible evidence that Appellant neglected his duty, was inefficient and willfully violated agency policy when he failed to conduct an investigation of alleged child abuse and when he failed to make contact with the child or the child's mother as required. Furthermore, Appellant failed to establish legal custody of Lemla within 72 hours of her placement with her uncle and grandmother. Appellant's failure to perform a timely and thorough investigation reflects a willful disregard for the department's interests, placed

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Lemla D. at risk of being returned to a potentially abusive environment and rises to the level of gross misconduct.

Unsatisfactory performance on 12 case files

4.9 Respondent has proven by a preponderance of the credible evidence that Appellant neglected his duty, was inefficient and willfully violated agency policy and procedures when he failed to initiate and conduct timely investigations and make face-to-face contact on cases assigned to him and when he failed to utilize shared decision making to determine whether to conduct further investigation into a case. Appellant also neglected to close cases within the requisite 90-day time period. Furthermore, Appellant's failure to conduct face-to-face home visits with the children and their foster parents interfered with the agency's ability to ensure the safety and health of children under its care and rises to the level of gross misconduct.

4.10 Respondent has also proven that Appellant's behavior toward Ms. Rappaport in Juvenile Court was a neglect of his duty to conduct himself in a professional manner.

4.11 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).

4.12 Respondent has proven by a preponderance of the evidence that Appellant was insubordinate when he failed to follow a supervisory directive that he obtain authorization prior to working outside of his scheduled hours

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.13 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).

4.14 Respondent has failed to prove by a preponderance of the credible evidence that Appellant's performance deficiencies were the result of a lack of ability, capacity, means or qualification to perform social worker duties.

4.15 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).

4.16 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).

4.17 Appellant was in a highly professional position, he had extensive experience in performing the duties of a social worker and as such must be held to a higher standard of conduct and accountability. Furthermore, Appellant was aware of Respondent's policies and procedures regarding the management of emergent referrals, and he had a responsibility to conduct thorough investigations of each referral. However, Appellant managed his caseload in an inefficient and

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

ineffective manner, and he failed to provide a high level of quality services to the children on his case load. Under the facts and circumstances of this case, we conclude that Appellant's performance was deficient enough to warrant demotion to a position where he holds no decision making authority over a caseload of at-risk children. Therefore, we conclude that demotion is the appropriate sanction and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Garry Rosson is denied.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

_____
René Ewing, Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504