BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

| | | |
|---|---|---|
| DANE BROWN,<br><br>Appellant,<br><br>v.<br><br>DEPARTMENT OF SOCIAL AND HEALTH SERVICES,<br><br>Respondent. | ) | Case No. SUSP-99-0028<br><br>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, and GERALD L. MORGEN, Vice Chair. The hearing was held on February 6, 2001, in the second floor conference room at the Department of Social and Health Services office in Everett, Washington. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Dane Brown was present and was represented by Rick Polintan, Business Agent for District 1199 NW, SEIU. Respondent Department of Social and Health Services was represented by Wendy Lux Lienesch, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of a one-day suspension for neglect of duty, insubordination, gross misconduct and willful violation of published rules or regulations. Respondent alleges that while performing his Registered Nurse (RN) 3 duties at Indian Ridge Youth Camp, Appellant left the medical office door open and the medication cart unlocked and unattended for approximately 25 minutes, and approximately 2 months later, Appellant arrived

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

at the camp and began performing his RN 3 duties after he had been placed on home assignment and instructed not to return to the camp without permission.

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 and 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).

## II. FINDINGS OF FACT

2.1 Appellant Dane Brown is a Registered Nurse (RN) 3 and permanent employee of Respondent Department of Social and Health Services (DSHS). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal on September 20, 1999.

2.2 At the time of the incidents giving rise to this appeal, Appellant was employed at the Indian Ridge Youth Camp. By letter dated August 4, 1999, Jim Kollmann, Superintendent of the camp, notified Appellant that effective August 5, 1999, he was suspended for one day. Mr. Kollmann alleged that Appellant neglected his duty, was insubordinate, committed gross misconduct and willfully violated published employing agency or department of personnel rules or regulations.

2.3 Respondent has a published policy that sets forth the standard of conduct for staff at Indian Ridge Youth Camp. The policy requires staff to be role models for residents, promote positive leadership to residents and staff, and to continually communicate with other staff regarding their location and situation. In addition, Respondent has a policy that assigns the Registered Nurse 3 responsibility for the control and management of medications and a policy requiring medications to

be kept locked and accessible to authorized staff members only. Appellant was instrumental in writing the policies regarding the handling of medications.

2.4 Appellant was aware of his responsibility for the control and management of medications for resident use. The medications were stored in the medical office in a medication cart. The medication cart contained a variety of controlled substances, prescription and over-the-counter medications.

2.5 On May 21, 1998, Appellant began work at 6:00 a.m. At approximately 6:20 a.m., Dee Sodorff, Juvenile Rehabilitation Security Officer (JRSO), and Cheryl Schuman, JRSO, observed the top half of the door to the medical office open and the medication cart unlocked. Appellant was not in the area and they did not know where he had gone. Appellant was away from the area for approximately 25 minutes. During this time, the medical office door and the medication cart remained unlocked, open and unattended, which meant that the medications were accessible to the residents. After 25 minutes, Ms. Sordorff closed the medical office door and the medication cart. No residents accessed the medications while the cart was unattended.

2.6 At approximately 6:15 a.m. on May 21, Ken Agren, Juvenile Rehabilitation Residential Counselor, saw Appellant in the administration office using the computer. The administration office was located in a separate building from the medical office.

2.7 On June 3, 1998, a Personnel Conduct Report (PCR) was issued against Appellant. Dr. James Owens investigated the PCR. In addition to interviewing the staff involved, Dr. Owens interviewed Appellant by telephone on June 15, 1998, and on July 8, 1998. Dr. Owens completed the PCR investigative report on July 9, 1998 and forwarded the report to Superintendent Kollmann.

2.8 Subsequent to June 3, 1998, Appellant was off work on sick leave. Appellant had felt ill since April 1998. On approximately June 4, 1998, Appellant's physician informed the institution

that Appellant was under a physician's care for viral meningitis. Because he was no longer contagious, on July 7, 1998, Appellant's physician released him to return to work. However, in Appellant's opinion, he was still too ill to return.

2.9 On July 7, 1998, Appellant was placed on administrative leave and assigned to his home. By letter dated July 7, 1998, Appellant was instructed not to return to Indian Ridge Youth Camp until he was directed to do so, or unless he received permission from his supervisor or the superintendent.

2.10 Ben Takamoto, Associate Superintendent, met with Appellant on July 7, 1998 and gave him the letter placing him on home assignment. Mr. Takamoto reviewed with Appellant his responsibilities regarding leave, time sheets and work schedule and directed him not to return to the camp. Although Appellant appeared to be ill during the meeting, Appellant indicated to Mr. Takamoto that he understood the directive.

2.11 On July 20, 1998, at approximately 6:15 a.m., Appellant arrived at Indian Ridge Youth Camp and proceeded to perform his RN 3 job duties. Appellant had not been directed to return to work and had not been given permission to be at the camp. Superintendent Kollmann approached Appellant at approximately 8:00 a.m. As Superintendent Kollmann escorted Appellant from the camp, Appellant indicated that he was aware that he was not to return to the camp without permission, but stated that he had forgotten.

2.12 On July 22, 1998, a second PCR was initiated against Appellant. The second PCR was investigated by Ben Takamoto. His investigative report was completed on August 3, 1998.

2.13 Prior to determining the level of discipline to impose, Superintendent Kollmann reviewed the PCR investigative reports, considered Appellant's responses to the PCRs and reviewed Appellant's personnel record. Appellant had no prior incidents of misconduct. However,

Superintendent Kollmann determined that Appellant's lapse in judgment in both incidents was serious, that he violated agency policy, and that he failed to abide by a lawful directive. Superintendent Kollmann concluded that Appellant's action of leaving the medication cart unsecured created a potential for residents to be seriously injured and was contrary to the expectations and responsibilities of an RN 3. In regard to the second incident, because Appellant had been medically released to return to work on July 7th, Superintendent Kollmann did not find credible his assertion that on July 20 he had forgotten the directive. Although he knew it was a mild sanction, Superintendent Kollmann concluded that a one-day suspension was sufficient to get Appellant's attention and to impress upon him the seriousness of his actions.

## III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant neglected his duty and failed to abide by the policy that he had written himself when he left the door to the medical office open and the medication cart unlocked and accessible to residents. Respondent asserts that the camp was fortunate that nothing more serious resulted from Appellant's neglect. Respondent also argues that Appellant willfully violated a lawful directive to stay away from the camp unless he had permission to return. Respondent contends that Appellant was aware of the directive, that he stayed home as directed for thirteen days and that after staying home, he willfully decided to return to work without permission and in violation of the directive. Respondent asserts that the discipline was warranted and that a one-day suspension was the appropriate sanction.

3.2 Appellant argues that Respondent did not have just cause to suspend him. Appellant contends that the mitigating circumstances of his illness must be considered. Appellant asserts that he did not remember leaving the door to the medical office open or leaving the medication cart unlocked and contends that other staff had access to the area and could have left the area unsecured. Appellant asserts that he did not remember being given the home assignment letter and contends that after he had been interviewed by Dr. Owens during the first PCR investigation, he thought he

could return to work because his illness was no longer communicable. Appellant asserts that in determining the level of discipline, the superintendent did not give appropriate weight to his illness and that the punishment of a one-day suspension does not fit the "crime" in light of his clean record.

## 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 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 and 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 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the

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

4.7 Respondent has proven that more likely than not, Appellant left the door to the medical office open and left the medication cart unlocked. Appellant's actions put the residents and staff at the camp at risk of potential harm, constituted a neglect of duty, was a willful violation of the policies and rose to level of gross misconduct. Respondent has proven that Appellant was aware of the directive and conditions for his return to work following his home assignment. Appellant's assertion that he forgot is not credible. Appellant's action constituted neglect of duty and insubordination.

4.8 Under the proven facts and circumstances of this case, Respondent has shown that a one-day suspension is warranted. The appeal should be denied.

## V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Dane Brown is denied.

DATED this _____ day of _____, 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

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