BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DAWN VINSON, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. SUSP-98-0030 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 NATHAN S. FORD Jr., Member. The hearing was held at the University of Washington, South Campus Center, Seattle, Washington, on October 15, 1999. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** At the outset of the hearing, Lauri Nelson, Attorney at Law, Parr & Younglove, P.L.L.C., withdrew as Appellant's attorney of record. Appellant did not appear. Respondent University of Washington was represented by Diana Moller, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of suspension for neglect of duty and failure to follow department policies for failing to call in absences and for reporting to work with the smell of alcohol on her breath.

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1.4 **Citations Discussed.** WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Aquino v. University of Washington, PAB No. D93-163 (1995).

II. FINDINGS OF FACT

2.1 Appellant Dawn Vinson was a Patient Services Representative and permanent employee for Respondent University of Washington at Harborview Medical Center. 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 July 22, 1998.

2.2 At the outset of the hearing, Appellant's attorney of record informed the Board that Appellant was unable to be present at the hearing, that Appellant was requesting a continuance of the hearing, and that Appellant had discharged her as her attorney. Respondent objected to the hearing being continued, argued that Appellant had failed to comply with requests for discovery, and indicated that it was ready to proceed. The Board issued an oral ruling denying the request for continuance. Appellant's attorney withdrew as Appellant's representative. Appellant did not appear and no other representative appeared on her behalf.

2.3 By letter dated June 24, 1998, Tomi S. Hadfield, Chief Operating Officer at Harborview Medical Center, informed Appellant of her three-day suspension. Ms. Hadfield charged Appellant with failure to follow department policies, an unexcused absence, neglect of duty and reporting to work with alcohol on her breath.

2.4 Appellant began her employment at Harborview Medical Center on December 1, 1995. Appellant became a Patient Services Representative on January 23, 1997. Appellant worked at the

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Urgent Care Clinic and her responsibilities included answering incoming calls, checking in patients, making appointments and processing patient charges.

2.5 Appellant received written counseling dated October 22, 1997 for her excessive use of sick leave. Appellant received a letter of reprimand dated November 20, 1997 for her failure to improve her work attendance. The letter also informed Appellant that she was expected to work her scheduled shifts, report to work on time and to be ready to perform the duties of her position.

2.6 On May 17, 1998, Appellant was scheduled to work from 8 a.m. to 8:30 p.m. Appellant did not report to work at 8 a.m. and she did not call into work. At approximately 9 a.m., a nursing staff member called Appellant's home and was informed that Appellant had overslept but that she would report to work shortly. Appellant reported to work at 11:40 a.m. Upon her arrival, Jim Wegener, Registered Nurse II, made a comment to Appellant about her late arrival. During their conversation, Mr. Wegener noted the smell of alcohol on Appellant's breath.

2.7 At approximately 2:45 p.m., Appellant asked Charles Tuholski, Medical Assistant, whether he could cover for her at work because she was feeling sick. Mr. Tuholski smelled the odor of alcohol on Appellant's breath during their conversation. Appellant took her lunch break at approximately 3 p.m. At approximately 3:15 p.m., Appellant called Mr. Wegener and informed him that she was at the emergency room at Swedish Medical Center due to nausea and diarrhea. Appellant did not return to work that day.

2.8 Appellant called in sick to work on May 18 and 19, 1998. Appellant was scheduled to work on May 20, 1998, however, Appellant did not report to work nor did she call in her absence.

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2.9 Respondent's Attendance/Sick Leave Policy requires an employee to notify his/her supervisor and the assigned unit charge nurse of unplanned absences prior to the beginning of the work shift. Appellant was aware of this policy.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant had a pattern of failing to report her absences and that she was aware of the proper procedure for reporting her absences. Respondent argues that Appellant neglected her duty when she failed to call in her absences on May 17 and 20. Respondent further argues that it was unacceptable for Appellant to report to work with the smell of alcohol on her breath. Respondent further argues that Appellant was the first contact patients had with Urgent Care staff and that the smell of alcohol on her breath was cause for concern. Respondent asserts that Appellant was given written directives to comply with the department's policy on attendance but that Appellant failed to show improvement and continued to display a poor pattern of attendance. Respondent argues that a three-day suspension was appropriate.

3.2 Appellant did not provide a defense to the charges nor did she dispute the appropriateness of the disciplinary sanction before the Board.

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

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sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-240(1); 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 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).

4.5 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).

4.6 Appellant was aware of her duty to properly report her absences from work and to adhere to the department's policy on reporting absences. On May 17, 1998 and on May 20, 1998,Appellant failed to report her absences which constituted a violation of policy. Appellant also should have known that it was not appropriate to report to work with the smell of alcohol on her breath. Appellant failed to act in a manner consistent with her duty and she violated policy when she failed to call in her absences. Respondent has met its burden of supporting the charges and proving that a three-day suspension is appropriate under the facts and circumstances. Therefore, the disciplinary sanction of a three-day suspension should be affirmed.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Dawn Vinson is denied.

DATED this _____ day of _____, 1999.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

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Nathan S. Ford Jr., Member

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