BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GEORGE MADDOX, Appellant, v. DEPARTMENT OF FISH AND WILDLIFE, Respondent.	Case No. DEMO-00-0012 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on September 13, 2001. GERALD L. MORGEN, Vice Chair, reviewed the record, including the exhibits and recorded proceedings and participated in the decision in this matter. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant George Maddox was present and was represented by Christopher Coker, Attorney at Law, of Parr & Younglove, P.L.L.C. Amy Estes, Assistant Attorney General, represented Respondent Department of Fish & Wildlife.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a demotion for the causes of neglect of duty, incompetence, insubordination, malfeasance, gross misconduct and willful violation of policies and procedures for failing to renew and operating a vessel without his Coast Guard license and for being deceitful when questioned about his license.

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); 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); Parramore v Dep't of Social & Health Services, PAB No. D94-135 (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); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant George Maddox is a Customer Services Specialist 2 and permanent employee for Respondent Fish and Wildlife. 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 July 26, 2000.

2.2 By letter dated July 10, 2000, Bruce Bjork, Chief of the F&W Enforcement Division, informed Appellant of his demotion from a F&W Officer 3 to the position of Customer Services Specialist 2, effective at the close of business July 25, 2000. Chief Bjork charged Appellant with neglect of duty, incompetence, insubordination, malfeasance, gross misconduct and willful violation of published department policies and procedures. Chief Bjork specifically alleged that Appellant accepted a promotion to a F&W Officer 3 even though he did not meet the minimum requirement, indicated on his employment application that his Coast Guard Master's license was current, operated a state-owned vessel without a valid license; and was vague and deceitful when questioned about his license.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.3 Appellant began his employment with F&W in 1977. Effective June 26, 1995, Appellant was demoted from his position as a Fisheries Patrol Officer 3 to a Wildlife Agent 3. On January 19, 1999, Appellant received a letter of reprimand regarding his failure to ensure that his assigned vessel received adequate maintenance.

2.4 On May 27, 1992, the United States Coast Guard (USCG) issued Appellant a Master license which authorized him to operate steam or motor vessels of 100 gross tons. The license expired on May 27, 1997 and Appellant had a one year grace period to renew the license. However, Appellant failed to renew his license during this time period. In June 1999, Appellant became aware that his license had expired.

2.5 On July 8, 1999, Appellant submitted an application to F&W for a promotion to a position as a F&W Officer 3. Appellant did not include information on either his USCG master license number or its expiration date. When contacted by personnel about this information, Appellant indicated that his license would expire five years after its issuance. Appellant did not indicate that his license had already expired. At some undetermined date, personnel staff added Appellant's license number to his application and indicated that the license was valid until March 2002. Although this information was not written on the application by Appellant, it was more likely than not provided to personnel by Appellant.

2.6 On August 9, 1999, Appellant signed an Oath of Office. Appellant swore, in part, to abide by the law enforcement code of ethics and to diligently carry out the duties and responsibilities of a F&W Officer.

2.7 A Fish and Wildlife Officer 3 serves as a senior level officer and is responsible for enforcing state and federal fish and wildlife laws. At this level, officers are assigned to operate and maintain

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

a vessel of at least 27 feet in length and are responsible for a crew of three to six officers. F&W Officers are also responsible for providing testimony in court on behalf of the department. Maintaining a United States Coast Guard vessel master license is one of the minimum requirements to qualify for a Fish and Wildlife Officer 3 position. Appellant was aware of the minimum requirements of the position.

2.8 Appellant was offered and accepted a promotion to a F&W Officer 3 position. The appointment became effective September 1, 1999. Following this appointment, Appellant operated a state vessel on numerous occasions.

2.9 In December 1999, Appellant began the process to reinstate his master license. On December 20, 1999, F&W Sergeant Mike Cenci became aware that Appellant's master license had expired. On December 21, 1999, Appellant admitted to Sergeant Cenci that his license had expired. Sergeant Cenci initiated a personnel conduct report, conducted an investigation and forwarded the results to Bruce Bjork, Chief of the Enforcement Division.

2.10 After reviewing the investigative report, Chief Bjork met with Appellant to discuss the allegations. During the meeting, Appellant admitted that he failed to renew his license and failed to provide truthful information about the expiration date. Prior to making a determination regarding the level of discipline, Chief Bjork reviewed Appellant's personnel file, which included prior performance evaluations, a letter of reprimand and the letter of demotion.

2.11 Because Appellant was in an enforcement position, Chief Bjork believed that Appellant's actions undermined his credibility, placed the agency at risk of legal liability, and compromised his ability to positively represent the department to the community and other law enforcement agencies. Chief Bjork also believed that Appellant's lack of judgment and truthfulness damaged his

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

reputation and he was concerned that Appellant's testimony in court could be challenged. Although Chief Bjork believed that Appellant's actions warranted termination, he felt that Appellant's 24 years of employment with the agency mitigated dismissal. Chief Bjork ultimately concluded that a demotion to a non-enforcement position was the appropriate sanction.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent contends that Appellant engaged in misconduct when he knowingly piloted a vessel without a master's license as required by the law. Respondent asserts that Appellant represented, by omission, that he had a valid license. Respondent argues that Appellant was purposely untruthful, vague and deceitful when asked about his license. Respondent contends that the nature of Appellant's misconduct is severe and that he neglected his duty to be truthful to his employer. Respondent argues that Appellant was incompetent because he held a F&W Officer 3 position without a master license. Respondent argues that Appellant's actions rose to the level of gross misconduct and that a demotion was reasonable under the circumstances.

3.2 Appellant admits his wrongdoing, however, he asserts that he made a mistake because he found himself in a bad situation and did not know what to do. Appellant asserts that he made an administrative mistake, but that he now has his master's license. Appellant contends that he has been a 24-year employee with the department, was a capable boat operator, treated the public fairly and is just 18 months away from retirement. Appellant contends that Sergeant Cenci was not an impartial investigator. Appellant asserts that the demotion imposed was career ending, and while he concurred that some discipline was warranted, he contends that a demotion from a F&W Officer 3 to a Customer Service Specialist position was too severe.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

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).

4.2 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).

4.3 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).

4.4 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).

4.5 Malfeasance is the commission of an unlawful act, the act of doing what one ought not to do, or the performance of an act that ought not to be done, that affects, interrupts, or interferes with the performance of official duty. Parramore v Dep't of Social & Health Services, PAB No. D94-135 (1995).

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.6 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).

4.7 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).

4.8 Respondent has met its burden of proving by a preponderance of the credible evidence that Appellant engaged in misconduct when he provided untruthful information on his employment application representing that his master license was current; when he failed to disclose to his employer that his license was expired; and when he operated a state-owned vessel without a license. Appellant's actions were deceitful and seriously undermined the department's trust in him as an enforcement officer. Furthermore, Appellant's actions placed the agency at risk of liability. Respondent has met its burden of proving that Appellant's misconduct constitutes neglect of duty and rises to the level of gross misconduct. Respondent has failed to prove the charges of incompetence, insubordination, malfeasance and willful violation of published employment policies and procedures.

4.9 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).

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.10 Appellant was a 24-year employee of the Department of Fish and Wildlife and he previously held status as a F&W Officer 3. He clearly understood the minimum requirements of the position and he understood the process for renewing his master license. The appointing authority here provided compelling testimony of his concerns that Appellant's credibility had been damaged and could be scrutinized if ever called to testify on behalf of the department. We see no reason to disturb the discipline imposed. Under the facts and circumstances of this case, we conclude that Respondent has proven that the sanction of demotion is appropriate, and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of George Maddox 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