BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MARLA THOMAS-COOPER, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. DISM-00-0020 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 Yakima Valley School in Selah, Washington, on August 23, 2000.

1.2 **Appearances.** Appellant Marla Thomas-Cooper was present and was represented by Christopher Coker, Attorney at Law, of Parr & Younglove, P.L.L.C. Patricia A. Thompson, 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, gross misconduct and willful violation of published employing agency rules and regulations. Respondent dismissed Appellant for alleged negligent treatment of a client and failure to report a client injury.

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); Rainwater v. School for the Deaf,

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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 Marla Thomas-Cooper was an Attendant Counselor 1 and permanent employee for Respondent Department of Social and Health Services with the Division of Developmental Disabilities. 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 March 20, 2000.

2.2 By letter dated February 15, 2000, Gary New, Superintendent of Yakima Valley School, informed Appellant of her dismissal effective March 2, 2000. Mr. New charged Appellant with neglect of duty, gross misconduct and willful violation of published employing agency or department of personnel rules or regulations. Mr. New specifically alleged that Appellant negligently treated a client when she moved the client despite knowing that the client had a broken arm, failed to report how the client's injury occurred, and allowed the Incident Report to be falsified.

2.3 Appellant began her employment at Yakima Valley School in 1992. Yakima Valley School is home to residents with developmental disabilities. As an Attendant Counselor (AC), Appellant was responsible for assisting residents with their daily living activities.

2.4 On December 17, 1999, Appellant was working in Cottage 401. Cherrie Mitchell, AC 1, was working in the adjoining Cottage (402). Ms. Mitchell was assigned to work with client JM who resided in Cottage 402. Client JM was nonverbal and required complete care. JM's Health Service Order (HSO) required that a Hoyer lift be used whenever she was diapered or transported. A Hoyer lift, also referred to as

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a sling, is a mechanical device used to transfer or lift patients. Respondent requires staff to follow a client's HSO.

2.5 At approximately 1 p.m., Ms. Mitchell called Cottage 401. When Appellant answered the phone, Ms. Mitchell requested that Cindy Brady, their supervisor, come to assist her with client JM. Ms. Mitchell told Appellant that she thought she'd hurt JM and believed the client's arm was broken. Ms. Brady was unavailable, however, Appellant went to assist Ms. Mitchell.

2.6 When Appellant arrived at Cottage 402, she felt the client's arm and concluded that it was broken. JM appeared to be in a great deal of pain. Appellant lifted JM's broken arm and placed it across JM's stomach in an attempt to stabilize the arm.

2.7 Shortly after Appellant's arrival, Ms. Brady entered the client's room. Ms. Brady asked Ms. Mitchell if she had used the Hoyer lift to move the client. Ms. Mitchell replied no. Ms. Brady directed Ms. Mitchell to retrieve the sling to put under the client. Appellant did not see the sling in the client's room. Ms. Brady proceeded to call nursing staff to the room and Ms. Mitchell left JM's room to retrieve the Hoyer lift.

2.8 After Ms. Mitchell returned with the Hoyer lift, Appellant began to assist Ms. Mitchell place the sling under the client. However, the client was crying and began to writhe in pain. Appellant did not believe that they could tuck the sling under the client without moving her and causing her further pain and discomfort. Appellant stopped and stated that they could not continue. Appellant admits that it "entered" her mind that Ms. Brady was going to try and "hide something" when she asked Ms. Mitchell to retrieve the sling.

2.9 When nursing staff arrived, Appellant returned to Cottage 401. At approximately 1:40 p.m., Appellant left work on prescheduled leave. Appellant did not complete an Incident Witness Statement

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reporting her belief that Ms. Brady and Ms. Mitchell were involved in a cover up to hide the fact that Ms. Mitchell had not used the Hoyer lift to transport JM.

2.10 Subsequent to the incident, Ms. Brady called Appellant and asked if anyone from the institution had contacted her regarding the incident. Ms. Brady told Appellant that she was worried about it and what Appellant would say. Appellant told Ms. Brady that if asked, she would "tell the truth." Appellant told Ms. Brady that she should do the same.

2.11 On December 21 or 22, 1999, Mr. New met with Ms. Mitchell and her union representative. During the meeting, Ms. Mitchell stated that the story she initially reported regarding JM's injury was incorrect. Ms. Mitchell admitted that she had been attempting to move JM by herself and that in rolling her over, JM's arm was fractured. Ms. Mitchell also stated that Ms. Brady and Appellant were present after the injury occurred and they had tried to make it look like the Hoyer had caused the fracture.

2.12 Management subsequently initiated an investigation into the incident involving JM. Their investigation concluded that Ms. Mitchell had broken JM's arm when she failed to use the Hoyer lift to move her and that she had not been truthful when she completed her first incident report.

2.13 On December 22, 1999, at the request of Registered Nurse 3 Lynn French, Appellant completed an Incident Witness Statement regarding the December 17 incident involving JM. In addition, Ms. French interviewed Appellant.

2.14 On December 27, 1999, Lois Shaddox, Registered Nurse 4, initiated a Personnel Conduct Report (PCR) against Appellant regarding the December 17, 1999 incident. In her written response to the PCR, Appellant wrote in part:

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> . . . I felt [JM's] arm and you could tell it was broken. Cindy [Brady] came in a minute or so later. She asked Cherrie [Mitchell] if she had used the Hoyer. Cherrie said no. Cindy said - well you had better get the Hoyer. Cindy went to call the nurse. I started to help Cherrie put the sling part way under [JM]. Realizing that JM was in pain and also a wrong move on my part to help with the sling. I told Cherrie no -- we can't do this and stopped. . . .

2.15 Appellant did not have knowledge of the contents of the Witness Incident Report completed by Ms. Mitchell.

2.16 Respondent has adopted policies and procedures that prohibit abuse and neglect. Policy No. I.A.01 defines resident abuse/neglect as "the non-accidental physical injury or condition . . . or negligent treatment of a resident under circumstances which indicate that the resident's health, welfare and safety is harmed." Respondent's policy defines physical abuse as "inflicting . . . any pain or discomfort." The policy defines neglect as "failure to provide treatment or service . . . necessary to . . . improve a resident's health or safety . . .." Respondent's reporting procedures require that staff immediately report observed or suspected abuse, neglect or negligent treatment. Suspected abuse should be reported to the employee's supervisor, to a registered nurse 4 or to the officer of the day. Appellant was aware of Respondent's policies and procedures and she reviewed them on a yearly basis, most recently in 1999.

2.17 Gary New, Superintendent of Yakima Valley School, was Appellant's appointing authority. To determine whether Appellant committed misconduct, Mr. New reviewed the PCR investigation and Appellant's written statement. In addition, Mr. New met with Appellant. Based on all the information available and on Appellant's statements, Mr. New concluded that Appellant had reasonable evidence to suspect that the fracture to JM's arm did not occur the way Ms. Mitchell initially reported to her and that she was present during an attempt to blame JM's injury on the Hoyer. Mr. New ultimately concluded that Appellant's failure to report what she heard and observed on the day of the incident constituted misconduct.

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2.18 Mr. New testified that one of the primary missions of Yakima Valley School is to protect vulnerable clients who cannot express their needs or actions taken against them. In this case, Mr. New was highly concerned with Appellant's failure to consider the safety and wellbeing of JM. After the meeting with Appellant, Mr. New felt confident that Appellant had received training on the policies which outline the procedures for reporting neglect and abuse. Mr. New believed that Appellant made a willful decision not to report her suspicion that the story given by Ms. Mitchell was not being accurately portrayed. Mr. New concluded that termination was appropriate because Appellant had the training and experience necessary to report abuse and neglect and her failure to do so in this case undermined his trust in her future ability to put the wellbeing of other clients first.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that although Appellant was not present when JM's arm was broken, she reasonably understood that Ms. Brady's direction to retrieve the sling was an implication that they had to make the injury look like it was caused by the sling. Respondent argues that Appellant moved JM's broken arm and helped place the sling partway under JM which resulted in negligent treatment of JM. Respondent argues that Appellant failed to comply with agency policy when she failed to report her suspicion that Ms. Brady and Ms. Mitchell were involved in a "cover up." Respondent argues that Appellant knew of the falsified report based on the call from her coworker inquiring into what she was going to say if interviewed by management. Respondent asserts that this call was to check whether she was going to support their contention of the Hoyer and was an obvious clue that something was amiss. Respondent argues that Appellant neglected her duty and violated policy and that her actions rose to the level of gross misconduct because it interfered with the agency's mission to protect clients in its care. Respondent argues that Appellant violated the trust her employer placed in her, failed to accept her responsibility and duty, and that termination is the appropriate sanction.

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3.2 Appellant asserts that she has been honest and forthright. Appellant argues that her immediate supervisor directed her to place the sling under the client and she proceeded to do so until it occurred to her that Ms. Brady and Ms. Mitchell might be trying to cover up something. Appellant asserts that she stopped Ms. Mitchell from causing any further harm to the client. Appellant contends that she had no awareness that the incident report submitted by Ms. Mitchell contained false statements and denies that any conversation took place to submit false reports. Furthermore, Appellant argues that Respondent presented no evidence to show that she knew the statements were being falsified. Appellant argues that she saw no need to file a report because 1) numerous people came to the scene, 2) her supervisor was present during the incident, and 3) she was under the impression that if she did not witness an injury she did not have to file a report. Appellant argues that no evidence exists that she moved the client, that she knew of the false report or that she participated in covering up what really happened. Appellant argues that she has an exemplary nine-year work history, that she did not negligently treat JM, and based on the circumstances at the time, she did not have to file a report, and therefore, her 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).

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4.4 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).

4.5 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).

4.6 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).

4.7 Respondent's policy on reporting abuse and neglect is clear: all abuse is prohibited and if you suspect that abuse or neglect has occurred, you report it. Appellant had an obligation and duty to report what she learned once she became involved in the incident involving JM. Although Appellant did not know exactly how JM's arm was broken, she was aware that Ms. Brady's directive that the Hoyer be retrieved was to give the appearance that JM's arm was broken by the sling. Furthermore, Ms. Brady's position as Appellant's supervisor and the arrival of other nursing staff did not absolve Appellant from her duty to file a report and her explanations for not coming forward are not compelling or believable.

4.8 Appellant's failure to report her first-hand knowledge regarding the incident and her failure to file an incident report constitute a neglect of her duty and a violation of policy. Appellant also neglected her duty to ensure the safety and health of JM when she repositioned JM's arm and when she attempted to slide the sling

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under the client despite her knowledge of JM's broken arm and apparent discomfort. There is no evidence that Appellant had knowledge of the contents of the incident report filed by Ms. Mitchell. Respondent has met its burden of proving the causes of neglect of duty and willful violation of the agency's policy on resident abuse. Appellant fully understood the agency's mission, policies, procedures and expectations for employee behavior. Respondent has proven that Appellant's misconduct interfered with the school's ability to ensure the health and safety of the clients in its care and rises to the level of gross misconduct. The appointing authority's decision to terminate Appellant's employment is appropriate under the circumstances and facts of this case, and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Marla Thomas-Cooper is denied.

DATED this _____ day of _____, 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

_____
Leana D. Lamb, Member

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