BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

PATRICIA ANDERSON, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. DISM-99-0067 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 LEANA D. LAMB, Member. The hearing was held at Western State Hospital, Administrative Conference Room, Steilacoom, Washington, on September 14, 2000. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant did not appear and no representative appeared on her behalf. Respondent Department of Social and Health Services was represented by Valerie Petrie, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for abandonment of position. Respondent alleged that Appellant failed to appear for work and failed to contact her supervisor to report her absences.

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1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); WAC 356-34-060.

II. FINDINGS OF FACT

2.1 Appellant Patricia Anderson was a Registered Nurse 2 and permanent employee for Respondent Department of Social and Health Services at Western State Hospital. 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 December 17, 1999.

2.2 By letter dated November 16, 1999, Jerry Lovrien, Chief Executive Officer of Western State Hospital, informed Appellant of her dismissal effective November 17, 1999. Mr. Lovrien dismissed Appellant pursuant to WAC 356-34-060, presumed of abandonment of position, for her failure to report to work as scheduled and her failure to contact her employer regarding her absences. The letter was served on Appellant by certified mail.

2.3 Beginning November 1, 1999, Appellant failed to report for work. Appellant did not inform her employer that she would not be reporting for work.

2.4 On November 2, 3, 4, 8 and 10, Jackie Gaines initiated telephone calls to Appellant's home to discuss Appellant's failure to report to work. However, Ms. Gaines was unable to contact or leave a message for Appellant.

2.5 On November 4, 1999, Zahra Angell, Nursing Director, mailed Appellant a certified letter which directed Appellant to return to her work assignment by November 10, 1999. Ms. Zahra further informed Appellant that failure to report to work would result in termination of her employment. Appellant did

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not report for work on November 10, she did not respond to Ms. Angell's letter nor did she contact anyone at the institution.

2.6 On November 12, 1999, Ms. Gaines initiated a Personnel Conduct Report against Appellant regarding Appellant's absences beginning November 1, 1999.

2.7 Jerry Lovrien was the Acting Chief Executive Officer of Western State Hospital when he imposed the disciplinary sanction. Mr. Lovrien testified that Appellant's termination was warranted after she failed to report to work and report her absences, and despite several unsuccessful attempts by management to contact Appellant.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that a preponderance of the evidence establishes that Appellant abandoned her position when she quit reporting for work, made no contact with her supervisor and failed to respond to the certified letter from her employer. Respondent argues that Appellant has been on authorized absence since November 1, 1999 and that dismissal is the appropriate sanction.

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

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

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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 WAC 356-34-060 reads:

> An employee who is absent from a position for three consecutive working days without notice to the appointing authority may be presumed to have abandoned the position. Notice of dismissal upon the grounds of abandonment of position shall be sent by certified mail to the last known address of the employee within seven calendar days after the three consecutive days of absence. The dismissal may be made effective one day after mailing of the notice.

4.4 Appellant has been absence from work since November 1, 1999, and has failed to notify her employer regarding her absence. Respondent has met its burden of proof that Appellant abandoned her position and that the sanction of dismissal is appropriate. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Patricia Anderson is denied.

DATED this _____ day of _____, 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Leana D. Lamb, Member

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