BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DANIEL BELLES, Appellant, v. WASHINGTON STATE PATROL, Respondent.	Case No. SUSP-01-0032 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 RENÉ EWING, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on August 1 and 9, 2002.

1.2 **Appearances.** Appellant Daniel Belles was present and was represented by Michael Hanbey, Attorney at Law. Elizabeth Delay Brown, Assistant Attorney General, represented Respondent Washington State Patrol.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a 15-day suspension for neglect of duty, gross misconduct and willful violation of agency rules and regulations due to unsatisfactory work performance.

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); 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 Daniel Belles is a Washington Management Service employee and permanent employee for Respondent Washington State Patrol. 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 August 21, 2001.

2.2 Appellant began his employment with the Washington State Patrol (WSP) in April 1998 as a Financial Systems Development Section Manager, a WMS position assigned to the Budget and Fiscal Services department. Appellant reported to Budget Officer Kenneth Mitchel. Appellant's previous employment was with the Washington State Gambling Commission, where he worked a total of 16 years in a number of different positions. Appellant had extensive accounting and financial education and experience.

2.3 Appellant's duties included managing the Financial Systems Development Section (FSDS) to ensure the Cost-Account System, the Travel Voucher system and other financial systems, as well as activity reports and the trooper deployment model used by the WSP. Appellant supervised Viviane Stead, a Budget Program Specialist 5 and Eileen Nashleanas and Richard Simon, Budget Program Specialist 3s.

2.4 Appellant was also responsible for maintaining and distributing client server reports to other WSP sections/divisions. Prior to Appellant's appointment as the FSDS manager, the division had

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

experienced both technical problems and problems with the accuracy of the client server reports. One of Appellant's responsibilities was to research and implement a solution to address the inaccuracy of the client server reports.

2.5 Another key responsibility of the FSDS department is conducting fee studies, which are conducted by Appellant and his staff. Numerous other divisions within WSP rely on fee studies for budgeting and fee setting purposes, therefore, their timely and accurate completion is critical to these divisions. A fee study can take from four to six months to complete.

2.6 By memorandum dated August 13, 2001, Captain Brian A. Ursino notified Appellant of his 15-day suspension effective August 15, 2001 through the end of his work shift on August 29, 2001. Captain Ursino charged Appellant with neglect of duty, gross misconduct and willful violation of agency policy, specifically alleging that Appellant performed his duties in an unsatisfactory manner between January 1999 and March 13, 2001. Respondent specifically alleged that Appellant:

1. Placed the completion of the PAM validation project in jeopardy of not being completed by the due date of June 2001;
2. as the manager responsible for maintenance and distribution of the Client Server Reports (CSR), had continual problems with the timeliness and accuracy of the CSR's;
3. allowed unreasonable delays in the completion of Fee Studies while under his supervision;
4. fostered an environment of mistrust with FSDS staff by failing to provide adequate professional guidance and failing to recognize subordinates for their efforts;
5. had an inappropriate confrontation with a subordinate, Ms. Stead, in the presence of a coworker, Ms. Sonja Hutchinson, in February 2001;
6. sent an unprofessional email to Ms. Sonja Hutchinson on March 12, 2001.

2.7 In 1998 the Joint Legislative Audit Review Committee (JLARC) conducted an audit that included a review of WSP's Police Allocation Model (PAM). The PAM model is used by the WSP

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

to determine road patrol and traffic staffing needs, has an agency-wide impact and is one of the primary responsibilities of the Financial Services Development Section. JLARC recommended that WSP review the data used in the PAM; validate the staffing projections of the PAM; and upgrade the data used in the model and the feature of the model to ensure consistency with actual WSP operations.

2.8 In response to JLARC's recommendation, WSP initiated the PAM Validation Project. Captain Stephen Jewell, Director of Budget and Fiscal Services, and Mr. Mitchell appointed personnel to work on the PAM validation project team, which included Mr. Mitchell, Appellant, Ms. Stead, Ms. Nashleanas, and Angie Peterson, a Budget Management Analyst. Appellant was the project lead, responsible for developing the project plan, scheduling project meetings and conferring with the PAM project steering committee. The initial due date for the final completion of the project was June 30, 2000, however, the due date was subsequently extended to June 20, 2001 due to the complexity of the project.

2.9 The WSP entered into a contract with the Northwestern University Traffic Institute, which was to aid in data collection and provide technical assistance on the PAM validation project.

2.10 In April/May 2000, Captain Jewell had concerns with the lack of progress on the project and he directed Mr. Mitchell to work with Appellant in order to move forward with the project. In the summer of 2000, Captain Jewell again discussed his concerns with the lack of progress with Mr. Mitchell and he voiced his concern regarding Appellant's ability to manage the project. As a result, in August 2000, Captain Jewell included Appellant in weekly management meetings. Captain Jewell's goal for including Appellant in the meetings was to provide Appellant with more feedback and allow Appellant a forum in which to provide management project status information. During the routine meetings, Appellant indicated that the project was moving forward.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.11 In July 2000, Mr. Mitchell and Appellant met with Captain Fred Fakkema, Commander of the Commercial Vehicle Division, to discuss his need for client server reports. In November 20002, Appellant's staff provided Mr. Fakkema with client server reports that contained inaccurate information. The client server reports were critical to Mr. Fakkema's division.

2.12 On August 2, 2000, Mr. Mitchell made a written recommendation that Appellant receive a ten-percent progressive salary adjustment (Growth and Progression Pay Adjustment) for Appellant's "leadership in improving management access to meaningful time and activity data . . ." Captain Jewell concurred with the recommendation, writing that Appellant's "dedication to complex financial and data analysis projects has been under-valued. It's time to recognize the high volume he brings to the agency. . . ." On August 24, 2000, the recommendation was disapproved by the WMS award committee.

2.13 In October 2000, Appellant made a presentation to the PAM steering committee. In early November, the PAM validation project team members, including Mr. Mitchell and Appellant, met to review the steering committee's comments in response to the October presentation. They discussed the need to collect three months of data from troopers and provide training to district staff in order to perform an adequate analysis of the PAM model. The data would be collected during a series of "ride alongs" with Washington State Troopers. Ms. Peterson, who attended the meeting, was frustrated because she felt that both Appellant and Mr. Mitchell were aware of the data that needed to be collected but felt that neither of them were moving forward with the project to conduct the ride alongs and gather the data.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.14 On November 8, 2000, Mr. Mitchell nominated Appellant for consideration of a $2,500 lump sum award for his "extraordinary accomplishments during the past year." Captain Jewell again concurred with the recommendation.

2.15 In the fall of 2000, Captain Jewell spoke to Appellant's subordinates, Ms. Nashleanas, Ms. Stead and Ms. Peterson about their concerns that there was little work being accomplished on the PAM validation project. They felt that the work progress was unsatisfactory and complained that they were receiving little guidance to complete tasks. They also stated their concerns that Appellant was not initiating contact with them, that he was not engaging them in a supportive manner of their work; and that he lacked sufficient technical knowledge to assist them. In Ms. Peterson's opinion, the team could have began to gather data on the project as early at August 2000.

2.16 Captain Jewell contacted Appellant to discuss the delay in the PAM project. Appellant responded that the project workload was significant; that a lot of data needed to be retrieved; and that he had other priority tasks that he was working on.

2.17 In December 2000, Appellant conducted a telephonic conference with a consultant from Northwestern University because he was unsure what data needed to be collected for the PAM validation project. Following the conference call, Appellant met with the project team to devise the plan for collecting the necessary data. The PAM work plan was finalized on January 16, 2001. However, by this point, Ms. Peterson felt that the team had little time to collect six months worth of data and to conduct the ride alongs with the troopers and to train them on what information to collect. She also felt there would be little time to analyze the information in time to meet the June 30, 2001 deadline because the information also had to be forwarded to Northwestern University so they could provide the WSP with a new model.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.18 On January 3, 2001, Mr. Mitchell and Captain Jewell met with Appellant to discuss a variety of concerns with Appellant's work performance, including his lack of progress on the PAM validation project and the untimely fee studies. Mr. Mitchell addressed Appellant's failure to keep him informed on work issues, his failure to keep him advised of his inability to complete work assignments by the due dates, and concerns Appellant's staff had about his lack of leadership and guidance. Mr. Mitchell memorialized the counseling meeting in a memo dated January 21, 2001.

2.19 Following the January 3 meeting, Captain Jewell withdrew the recommendation that Appellant receive a lump sum award because he felt that Appellant was not performing at the level required of a manager.

2.20 On March 12, 2001, at approximately 9:30 a.m., Appellant delivered the PAM project binder to Sonja Hutchinson, Secretary Senior, for copying. The contents of the binder were approximately six inches high. Appellant told Ms. Hutchison that he wanted seven copies of the binders for a meeting he had scheduled with Mr. Mitchell and Captain Jewell on March 14. Ms. Hutchison had asked Appellant for the binder two week prior so she could have ample time to sort and forward the contents to the printer. Ms. Hutchison sent Mr. Mitchell an email reporting Appellant's last minute request. Ms. Hutchinson also informed Mr. Mitchell that the contents of the binder were in "very poor quality" and some pages were not readable.

2.21 On March 12, 2001, at 11:41 a.m., Ms. Hutchinson sent Appellant an email reminding him of a meeting. Appellant, who had received two prior email confirmations about the meeting, responded to Ms. Hutchinson that he did not need to be reminded three times. Appellant also wrote, "Isn't that a waste of your precious time? There seems to be great interest in seeing that I attend this meeting. I will attend. I promise. Thx."

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.22 On March 14, 2001, Captain Jewell and Mr. Mitchell met with Appellant to review the PAM validation project. During the meeting, Appellant denied that he was the project manager.

2.23 Captain Jewell felt that Appellant was being untruthful when he denied being the manager of the project. By memo dated March 14, who removed Appellant from the PAM validation project.

2.24 On March 19, 2001, a Strategic Advancement Forum presentation was held by the Commercial Vehicle Division. During the meeting, Mr. Mitchell learned from Captain Fakkema that the Commercial Vehicle Division had not received client server reports since they had received inaccurate reports in November 2000. Furthermore, the March 2001 client server reports also contained numerous errors.

2.25 Mr. Mitchell questioned Appellant about the client server reports sent to Mr. Fakkema in November 2000. Appellant asserted that the reports were sent out by his subordinates without his review and that his staff was having problems generating accurate client server reports. Appellant stated other work priorities resulted in the delay in delivering the client server reports to Mr. Fakkema until March 2001.

2.26 From 1999 to 2001, the FSDS was assigned numerous fee studies. Appellant's subordinates, Rich Simon and Ms. Stead, who had little or no previous experience conducting fee studies, were each assigned a fee study. Although some delays in the fee studies were due to changes made by the clients, the fee studies assigned to Mr. Simon and Ms. Stead each took over one year to be completed and required extensions. Ms. Nashleanas was also assigned a fee study, which she completed in approximately two months, however, the results remained with Appellant for three to four months after she forwarded them to him for review.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.27 Mr. Mitchell filed a complaint alleging that between January 1999 and March 13, 2001, Appellant performed his duties as the FSDS manager in an unsatisfactory manner, citing a number of incidents. Mr. Mitchell also alleged that Appellant was untruthful when he asserted that he was not the manager of the PAM validation project. The complaint was investigated by the Office of Professional Standards (OPS), who issued a report on May 17, 2001.

2.28 Captain Brian Ursino, Appellant's appointing authority, reviewed the OPS report and addendums to determine whether Appellant engaged in misconduct and if so, to determine the appropriate sanction. After reviewing the information, Captain Ursino requested a supplemental investigation to review additional information. After reviewing the reports, including written statements from Appellant and his attorney, Mr. Ursino met with Appellant on July 31, 2001 to discuss the allegations.

2.29 Following the pre-determination meeting, Mr. Ursino concluded that Appellant performed his duties as the FSDS manager in an unsatisfactory manner. Mr. Ursino, who recognized that Captain Jewell and Mr. Mitchell had ultimate authority for the PAM project, concluded that Appellant had direct responsibility for managing and overseeing the PAM project and he felt that Appellant's denials of being the PAM project manager were attempts to clear himself from any responsibility on the project. Captain Ursino also concluded that Appellant's failure to adequately manage the project was indicative of Appellant's "slow, lackadaisical" manner and jeopardized the department's ability to meet the June 30, 2001 deadline.

2.30 Captain Ursino concluded that Appellant failed to take initiative to ensure that client server reports were timely and accurately delivered to an internal WSP customer, Captain Fakkemas. Captain Ursino determined that Appellant had a duty to review the client server reports sent to

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Captain Fakkemas for accuracy because the data was critical to Mr. Fakkema's division. Captain Ursino also concluded that Appellant failed to provide his subordinates with guidance and training on how to conduct fee studies despite knowing that his staff had little or limited knowledge of fee studies.

2.31 Captain Ursino felt that Appellant created an atmosphere of mistrust among his staff and that the tone of his email to Ms. Hutchinson was unprofessional and a case where Appellant "shot the messenger."

2.32 Mr. Ursino considered evidence that Captain Jewell and Mr. Mitchell were attempting to reward Appellant with a lump sum award, however, he did not feel that this factor mitigated Appellant's misconduct or changed the facts before him. In considering the level of discipline, Captain Ursino concluded that a 15 calendar day suspension was the appropriate sanction.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant was the manager responsible for carrying out the PAM validation project and that Appellant is not credible when he denies that he was the manager of the project. Respondent argues that it was clear to other members of the PAM team that Appellant was the manager. Respondent asserts that Appellant took credit as the PAM manager when it was to his benefit, but denied having a higher level of responsibility once it was clear the project was at risk of not being completed by the June 2001 deadline. Respondent asserts that Appellant did not move the project along and failed to provide his staff with proper guidance.

Respondent acknowledges that there was some technical difficulties with the client server reports but argues, however, that Appellant had responsibility to ensure they were accurate. Respondent

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

asserts that Appellant, instead, placed blame on his subordinates despite his responsibility as a professional WMS manager.

Respondent argues that the testimony from Chief Jewell and Mr. Mitchell supports that they were trying to encourage Appellant by submitting the Grow and Progression Pay Adjustment, but that Chief Jewell later withdrew the second request because of Appellant's failure to meet the expectations of his position.

Respondent argues that Appellant received a memorandum of counseling, a serious indicator that he needed to perform at a level expected of a WMS manager. Respondent argues that Captain Ursino felt that a 15 day suspension was the appropriate sanction and would serve to remind Appellant that he had a responsibility to stay on top of projects and be responsible for staff. Respondent further argues that the penalty was warranted because Appellant failed to take responsibility for his actions and continued to place the blame on others.

3.2 Appellant asserts that he did not learn until January 2001 that there were any problems with his work performance. Appellant asserts that he believed everything with his work performance was fine, and that his conclusion was supported by Mr. Mitchell and Captain Jewell's recommendations that he receive a salary increase and a lump sum award payment. Appellant asserts that he did not receive a salary increase due to procedural issues, but that Captain Jewell and Mr. Mitchell continued to support and undertake an effort for the lump sum award.

Appellant argues that he reasonably believed he was not the PAM project manager because he could not make decisions on the project without first obtaining approval from Mr. Mitchell or Captain Jewell. Appellant contends that the PAM validation project was delayed because he had to wait until December 2000, when he received final instructions from the university regarding the

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

data sets. Appellant contends there is no definition of a "project manager" and he believed that Mr. Mitchell was the PAM project manager because he was listed on the PAM project contract as the principal point of contact.

Appellant asserts that Mr. Mitchell, who was responsible for completion of various assignments, used him as a scapegoat to take "the heat" and used him so that Captain Jewell could have someone to hold responsible.

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 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).

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

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 Appellant had a high level of responsibility as the Financial Systems Development Section manager. Appellant had lead responsibility over the PAM validation project and he had a duty to ensure that the project progressed toward meeting the deadline of June 30, 2001. Appellant also had a responsibility to ensure that timely and accurate client server reports were issued by his department and to ensure that his staff understood how to perform the fee studies and to ensure they were submitted in a timely manner.

4.7 Respondent has met its burden of proving that Appellant neglected his duty when he failed to take appropriate steps to move the PAM validation project forward by setting appropriate deadlines and taking action to undertake the August 2000 recommendations from Northwestern University. Furthermore, Appellant's call to Northwestern University in December 2000 was unreasonably late considering the length of time he had been working on the project. Appellant's lack of action and initiative created unnecessary delays in gathering data, created pressure for his subordinates to gather the data during a shorter period of time, and placed the FSDS at risk of not completing the PAM validation project by the due date.

4.8 Respondent has met its burden of proving that Appellant failed to ensure that his department was generating accurate and timely client server reports. There is no dispute the FSDS was experiencing technological problems with its client server reports prior to Appellant's employment. However, Appellant was aware of this fact and he should have taken appropriate steps to ensure that reports generated and delivered to other sections/departments were accurate and timely.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Respondent has also met its burden of proving that the delays in the fee studies were unreasonable and that Appellant's failure to provide his staff with feedback and guidance toward completing their projects and meeting deadlines is a neglect of his duty as a supervisor.

4.9 Respondent provided credible evidence that Appellant failed to provide adequate professional guidance to his subordinates. However, Respondent has provided no evidence to support that Appellant "fostered an environment of mistrust with FSDS staff ... and failed to recognize his subordinates for their efforts." Respondent has also failed to present testimony to support that Appellant engaged in an inappropriate confrontation with a subordinate.

4.10 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).

4.11 Captain Jewell recognized by mid 2000 that Appellant was struggling with adequately and timely performing his duties as the FSDS manager and he directed Mr. Mitchell to address these performance issues with Appellant. Nonetheless, both Captain Jewell and Mr. Mitchell, through their recommendations that Appellant be considered for financial awards based on his work accomplishments, failed to put Appellant on notice that there were serious problems with his performance. In fact, neither Captain Jewell nor Mr. Mitchell constructively or clearly identified the problems with Appellant's performance and supervisory abilities with him until January 2001. At this point, work deadlines had been missed and the PAM project was making little progress. Furthermore, Appellant's working relationship with his subordinates had been damaged.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Consequently, Appellant had little time to address these issues or make significant changes in his work performance and leadership abilities as required by Mr. Mitchell's January 21, 2001 memorandum. Nonetheless, Appellant was aware of the performance expectations of his position and his failure to properly manage his division and staff warrants a strong warning. Therefore, the appeal should be modified to a 10-day suspension.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Daniel Belles is granted in part and the 15-day suspension is modified to a 10-day suspension.

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

_____
René Ewing, Member

Personnel Appeals Board
2828 Capitol Boulevard
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