BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DOREEN WHITE, Appellant, v. WASHINGTON STATE PATROL, Respondent.	Case No. DISM-05-0012 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, BUSSE NUTLEY, Vice Chair; and GERALD L. MORGEN, Member. The hearing was held at the Office of the Attorney General, West 1116 Riverside Avenue, Spokane, Washington, on February 14 and March 20, 2006.

1.2 **Appearances.** Appellant Doreen White was present and was represented by Stanley Kempner, 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 dismissal for neglect of duty, gross misconduct and willful violation of policies. Respondent alleges that Appellant released confidential information outside of the department and was untruthful during the investigation.

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II. FINDINGS OF FACT

2.1 Appellant Doreen White was a 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 March 9, 2005.

2.2 Appellant began her employment with the Washington State Patrol (WSP) as a Communications Officer 1 in September 1989 in the Spokane office. Appellant worked a 6 a.m. to 2 p.m. shift. Appellant had a good performance record and no previous disciplines of any type.

2.3 As a Communications Officer 1, Appellant's duties included receiving, transmitting, and relaying public safety and law enforcement activities to, from and between WSP mobile units and stations and other state, county, and federal agencies via radio, tape recorded multi-line telephone, computer, and intercom systems. Because communications officers receive personal information, such as criminal history checks and registration and drivers history check, the WSP adopted a confidentiality policy that prohibits employees from sharing that information outside of work needs. Appellant was aware of her duty and responsibility to maintain confidentiality as required by the department's policy.

2.4 Appellant received authorization from the WSP to work for Evergreen Pharmaceuticals (Evergreen) during her off-duty hours, where she worked as a pharmacy technician performing data entry. Appellant's shift at Evergreen was from 2:30 p.m. to 9 p.m. Appellant began working for Evergreen in approximately 2001.

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2.5 Around 2 a.m. on April 6, 2004, Floyd Donoian, a driver for Evergreen, was parked on the shoulder of I-90. The WSP was looking for a driver that had reportedly been driving the wrong way on the freeway, and WSP Trooper Carmen Herrington approached Mr. Donoian to inquire whether he was that driver. Mr. Donoian denied he was the driver, and he was not charged with any traffic violation. WSP Communications Officer Sue Bula took the call from the trooper regarding the contact with Mr. Donoian.

2.6 Appellant was off-duty when the stop occurred; however, after she reported for her 6 a.m. shift at the WSP, Ms. Bula told her about the incident because she was aware that Mr. Donoian and Appellant were both employees of Evergreen. Although Appellant did not work closely with Mr. Donoian, Appellant knew he was a delivery driver for Evergreen.

2.7 Tim Kane is the Delivery Distribution Technician for Evergreen. On April 6, Mr. Kane had a brief conversation with Appellant who had reported for work at Evergreen and was taking a break. Mr. Kane asked if anything was wrong. Mr. Kane credibly testified that Appellant indicated she was concerned because there had been a report early that morning of a car going the wrong way on I-90, and she was concerned it might have been one of the drivers at Evergreen. Appellant and Mr. Kane both testified that Appellant did not disclose the name of the employee. Mr. Kane was a Dispatch Technician at the time and based on the information Appellant provided, including that the stop occurred in the middle of the night, he narrowed the list of possibility to two drivers. Mr. Donoian was one of the drivers assigned to make deliveries for Evergreen during that time of the evening.

2.8 Mr. Kane went on vacation and upon his return to work at Evergreen on April 12, he approached his supervisor, Jan Tucker, who was in her office with Administrative Assistant Renee

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Zeranski. Mr. Kane reported concern for one of the night time delivery drivers, and he passed on the same information Appellant gave him. Although asked, Mr. Kane did not provide a driver's name.

2.9 Ms. Tucker was the General Manager for Evergreen, and Ms. Zeranski supervised the delivery drivers. After receiving the information from Mr. Kane, both Ms. Tucker and Ms. Zeranski reasoned that there were two drivers who could have been involved in the stop, and they were able to rule out one of them based on the geographical location and time of the stop. As a result, both believed that the driver in question was Mr. Donoian. Ms. Zeranski called Mr. Donoian, who admitted he had contact with the WSP the previous week. Ms. Tucker then directed Ms. Zeranski to contact Appellant because she knew Appellant worked for the WSP and could direct her on how to obtain additional information about the incident.

2.10 Ms. Zeranski called Appellant's home and left a message with Appellant's husband indicating she needed to talk to a WSP trooper about Mr. Donoian's stop. Appellant's husband subsequently called Appellant at the WSP and gave her the message from Ms. Zeranski.

2.11 Appellant returned Ms. Zeranski's call using a WSP phone, which recorded the conversation. A transcript of the conversation reads as follows:

> Zeranski: "Good morning, Evergreen, this is Renee."
>
> White: "Hey."
>
> Zeranski: "Hi, do you when (sic) she's going to call me or if she's working today? Here's the deal, Jan's leaving to go to Yakima, she's calling HR now, apparently we need to talk to this woman."
>
> White: "Um, I could call her at home."
>
> Zeranski: "I'm sorry Doreen."

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White: "No, that's OK, see I wanted to have all my ducks in a row before I came into you, you know and …but …"

Zeranski: (In the background unintelligible) "I have no one else … (unintelligible) shift - pending the, what we find out here."

White: "Ok, um …"

Zeranski: "Oh and Jan is leaving at noon for Yakima."

White: (White apparently reading from the CADLOG[1]) "I'm just looking here, 370 let me see, advises this is the vehicle, although the driver denies. OK, it says Floyd Donoian, OK. I will call her right now."

2.12 Appellant called Trooper Herrington at home and asked if she was willing to speak to someone in her company about her contact with Mr. Donoian. Excerpts from the recorded conversation between Appellant and Trooper Herrington indicate that Appellant asked Trooper Herrington to verify that the trooper believed it was Mr. Donoian who had been going the wrong way on the highway. Trooper Herrington agreed to take the call, and Appellant transferred Ms. Zeranski to the trooper, who then put Ms. Tucker on the phone with the trooper.

2.13 The conversation between Ms. Tucker and Trooper Herrington was not recorded because the call was transferred off the WSP phone system. However, Appellant later called Trooper Herrington, told her, "I owe you big time," and that Mr. Donoian had been on that run for a long time, that he was a nice old man, that she did not want anything to happen to him, and that he did not need to work because he was "a millionaire."

[1] The Computer Aided Dispatch (CAD) log is a computerized document that records information exchanged between communications officers and other individuals, such as troopers.

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2.14 On April 12, Mr. Donoian visited the WSP office and indicated his employer found out about a contact he had with the WSP trooper. Mr. Donoian wanted to know who gave the information to his employer since he had not been cited.

2.15 On April 20, 2004, the WSP began an investigation into the allegation that Appellant inappropriately informed Evergreen that Mr. Donoian had been stopped by a state trooper. Communications Officer 4 LaDonna Browell conducted the administrative investigation and interviewed Appellant. During the interview, Appellant admitted she had a conversation with Mr. Kane, but she denied she ever provided him with Mr. Donoian's name. Appellant admitted that she returned a phone call to Ms. Zeranski, who had questions about the trooper's contact with Mr. Donoian, and she indicated she had transferred her to Trooper Herrington. Appellant denied violating the agency's confidentiality policy.

2.16 Ms. Browell later listened to the recording of the conversation between Appellant and Ms. Zeranski. As a result, she believed that Appellant gave untruthful responses to her questions. Consequently, WSP initiated a second investigation to determine whether Appellant violated the department's policy on Truthfulness (Policy #8.00.300). The second investigation was assigned to Detective Sergeant Kristene O'Shannon.

2.17 During an interview with Detective O'Shannon, Appellant denied that she provided Mr. Kane, Ms. Tucker or Ms. Zeranski with Mr. Donoian's name. When asked about the transcript of the conversation with Ms. Zeranski when Appellant stated Mr. Donoian's name, Appellant indicated she did not recall reading from the CAD log but speculated that she was reading out loud to herself. Appellant also indicated she did not provide Mr. Kane with enough information to figure

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out the Evergreen driver was Mr. Donoian, and she asserted she truthfully answered the questions posed by Ms. Browell.

2.18 Marty Knorr, Director for the Communications Division, was Appellant's appointing authority when the discipline was imposed. Mr. Knorr reviewed the investigative reports, and he met with Appellant. Mr. Knorr testified that Appellant denied mentioning Mr. Donoian's name and indicated she did nothing wrong. Mr. Knorr, however, concluded that no one but Appellant could have provided the information about Mr. Donoian's contact with the WSP to staff at Evergreen. Mr. Knorr determined that Appellant, during the telephone conversation with Ms. Zeranski, divulged the details of the trooper's contact with Mr. Donoian as well as Mr. Donoian's name. Mr. Knorr further concluded that Appellant was untruthful during the interview with Ms. Browell when she denied notifying anyone at Evergreen that Mr. Donoian had been stopped by a trooper and when she failed to mention she had also shared information from the CAD log with Ms. Zeranski on April 12, including Mr. Donoian's name.

2.19 Mr. Knorr concluded Appellant's action had an adverse impact on Mr. Donoian, who was eventually fired from his employment at Evergreen and filed a lawsuit against the WSP. Mr. Knorr concluded that termination was the appropriate sanction because Appellant released confidential information, which was compounded by her untruthful statements. Further, Mr. Knorr found that the information Appellant provided to Evergreen, either directly or indirectly, resulted in Mr. Donoian being terminated from employment.

2.20 By memo dated March 3, 2005, Mr. Knorr notified Appellant of her termination effective prior to the beginning of her shift on March 21, 2005. Mr. Knorr charged Appellant with neglect of

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duty, gross misconduct, and willful violation of WSP policies, including regulation #8.00.300, Truthfulness, and regulation #8.00.480, Code of Ethics.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts that Appellant had a duty to maintain confidentiality, which was a major component of her position because of all the sensitive and confidential information communications officers receive. Respondent argues that Appellant neglected her duty to utilize information for work purposes only when she shared confidential information for a private purpose. Respondent asserts that Appellant also lied about her conversations with Evergreen, and she further provided them with misinformation because Mr. Donoian was not stopped by the trooper, rather he was parked alongside the shoulder when the trooper asked him about a wrong way driver. Respondent asserts Appellant was also untruthful when she denied using Mr. Donoian's name during her conversations with Evergreen and was deceitful during her interview with Ms. Browell, because she was evasive. Respondent argues that Appellant's conduct rises to the level of gross misconduct because her actions were flagrant, causing Mr. Donoian to lose his job and file a tort claim against WSP. Respondent argues, therefore, that termination was appropriate for Appellant's serious misconduct.

3.2 Appellant asserts she had concerns about the possibility that Mr. Donoian was stopped for going the wrong way on the highway. Appellant asserts that when Mr. Kane asked her what was wrong, she merely expressed that concern, because she did not know what to do with the information. Appellant denies she mentioned Mr. Donoian's name to Mr. Kane, but she acknowledges she unintentionally stated Mr. Donoian's name to Ms. Zeranski as she read out loud from the CAD log. Appellant denies she released confidential information to Ms. Zeranski, because Ms. Zeranski used Mr. Donoian's name during a part of the taped conversation that was

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unintelligible. Therefore, Appellant denies she revealed any information unknown to Ms. Zeranski. Appellant further asserts that she provided truthful answers to all questions and that the department failed to conduct a thorough investigation.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

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). Flagrant misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

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

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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 This case presents us with two issues: 1) Did Appellant inappropriately disclose information she learned as a result of her employment with WSP to Evergreen Pharmaceuticals, and 2) was she untruthful when questioned by Ms. Browell? Appellant did not explicitly use Mr. Donoian's name during her conversation with Mr. Kane; however, the evidence supports, more likely than not, that she intentionally provided Mr. Kane with enough information for him to infer that the driver was Mr. Donoian. At the time of the incident, Appellant had been an employee at Evergreen for approximately three years, and she knew Mr. Kane worked in dispatch. Consequently, Appellant set in motion a series of events that led to management at Evergreen learning information that they would not have otherwise known but for her employment with WSP. We are unconvinced by Appellant's argument that what she told Mr. Kane was so obscure that neither he nor anybody else at Evergreen would have been able to deduce the name of the driver that she expressed concern about.

4.7 Regarding the issue of truthfulness, the evidence is unclear that Appellant intentionally misled Ms. Browell during the initial administrative investigation when asked if she had revealed Mr. Donoian's name to anyone at Evergreen. We believe it was possible for Appellant to read the CAD log out loud and unintentionally say Mr. Donoian's name. Her carelessness in revealing confidential information, nonetheless, was not mitigated just because Ms. Zeranski already knew that information. Appellant again neglected her duty to keep sensitive information confidential by reading the CAD log out loud.

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4.8 Respondent has met its burden of proving that Appellant neglected her duty and willfully violated WSP policies and regulations when she disclosed sensitive and confidential information. Appellant's failure to maintain Mr. Donoian's privacy also rises to the level of gross misconduct because it interfered with WSP's ability to keep sensitive information confidential. We agree that an employer has the right to expect its employees to be honest and forthright in all dealings. However, a preponderance of the evidence does not support that Appellant's responses to Ms. Browell were deliberately misleading. Under the facts presented here, Respondent has failed to meet its burden of proving the charge of untruthfulness.

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).

4.10 After considering all of the facts and circumstances presented here, we conclude that the appointing authority's decision to terminate an employee who had no history of corrective or formal disciplinary action in 16 years of state service was too punitive. These mitigating factors notwithstanding, the seriousness and circumstances of this incident warrant a severe disciplinary sanction. A lengthy suspension is sufficient to prevent recurrence, to deter others from similar misconduct and to maintain the integrity of the program. We also believe a long-term suspension serves as a stern warning to Appellant that, as a Communications Officer with access to a great deal of sensitive information, she has a high-level duty to maintain confidentiality as required by the WSP's policy. Therefore, the disciplinary sanction should be modified to a one-year suspension.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Doreen White is modified to a one-year suspension.

DATED this _____ day of _____, 2006.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

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