BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MICHAEL DOPPS, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. DISM-03-0009 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 GERALD L. MORGEN, Vice Chair. The hearing was held at the Department of Transportation, Maintenance Building, 1707 C. Street, Port Angeles, Washington, on March 2, 2004.

1.2 **Appearances.** Appellant Michael Dopps was not present and no representative appeared on his behalf. Elizabeth Delay Brown, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of immediate suspension followed by dismissal for neglect of duty, insubordination, gross misconduct and willful violation of agency policy. Respondent alleges that Appellant refused the directive of a superior to report to

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

a new assignment, abandoned his position and showed an unpredictable attendance pattern when he failed to report to work and failed to call in his absences.

II. FINDINGS OF FACT

2.1 Appellant Michael Dopps was a Correctional Officer 2 and permanent employee for Respondent Department of Corrections. 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 January 27, 2003.

2.2 Appellant was employed at the Clallam Bay Corrections Center. During the time pertinent to this appeal, Appellant's regularly assigned shift was in Tower 1, an "armed post" which required that Appellant carry a firearm. Appellant has been the subject of prior formal and informal disciplinary sanctions, including the following:

- A salary reduction, effective December 1, 2002, through February 28, 2003, for failing to report to work at his scheduled beginning time and failing to notify the facility of his tardy arrival.
- A salary reduction, effective September 1, 2002, through November 30, 2002, for failing to report to work and failing to call in his absence two hours prior to the beginning of his work shift (Dopps v. Dep't. of Corrections, PAB Case No. RED-02-0044 (2004).
- A letter of reprimand dated January 7, 2002 regarding Appellant's failure to report to work and failure to notify the facility of his absence.
- A letter of reprimand dated May 4, 2000 following his tardy arrival on two separate shifts and his failure to notify the shift sergeant at least two hours prior to the start of his shift.
- A letter of reprimand dated July 12, 1999 for his tardy arrival and failure to notify his shift sergeant at least two hours prior to the start of his shift.
- A letter of reprimand dated October 23, 1998 for failing to report to work and failing to notify his shift supervisor at least two hours prior to the start of his shift.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Allegation #1

2.3 Appellant's weapons qualification had lapsed; therefore, Superintendent Sandra Carter issued Appellant a memo dated September 13, 2002, indicating due to the lapse of his weapons qualification, she instructed that he was not to be assigned to a Tower position or to any other "armed post" until he received his weapons qualifications. Superintendent Carter also issued a memo to all shift lieutenants instructing them against assigning Appellant to any tower position or other armed post until further notice due to the lapse of Appellant's weapons qualification.

2.4 On September 17, 2002, Appellant reported to work prior to his 6 a.m. work shift. Correctional Sergeant Richard Foukes instructed Appellant to report to another unit, because his weapons qualifications had lapsed and he could not work in an armed position. Appellant subsequently approached Correctional Lieutenant Donald Tabor about his reassignment. Lieutenant Tabor confirmed Appellant's reassignment to a non-armed position. Appellant informed Lieutenant Tabor that he was refusing to work any post other than Tower 1, otherwise, he would go home. Lieutenant Tabor informed Appellant that he could not authorize leave for Appellant's absence from work and advised him not to leave. Appellant disregarded Lieutenant Tabor's lawful directive and left the institution. Lt. Tabor subsequently initiated an Employee Conduct Report against Appellant.

Allegation #2

2.5 The Department of Corrections has adopted Policy 830.150, which addresses unscheduled leave and requires employees "who are going to be absent from work, for any reason, to notify their supervisor or individual at the designated reporting location prior to the absence and provide the reason for such absence." On September 13, 1993, Appellant signed the above personnel policy and acknowledged his understanding of the policy requirements.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.6 On September 28, 2002, Appellant did not report to work for his regularly scheduled work shift nor did he notify the facility of his absence. Captain Edward Reetz was the shift lieutenant at the time, and he called and left Appellant a message. However, Appellant never called Captain Reetz back. An ECR was initiated against Appellant on October 2, 2002 alleging Appellant failed to notify the facility in advance of his absence.

2.7 On October 6, 2002, Appellant did not report to work for his regularly scheduled work shift nor did he notify the facility of his absence. Lieutenant C. Riddle called Appellant's home and spoke to Appellant who indicated he was ill but would report to work on the following day. An ECR was initiated on October 8, 2002, alleging Appellant failed to report to work and failed to notify the facility of his absence prior to the start of his shift.

2.8 On October 8, 2002, Appellant again failed to report to work or call in his absence. Captain Reetz called Appellant's home; however, he was unable to reach him, and he left a message. The institution initiated an ECR against Appellant that same day, alleging he failed to report to work and failed to notify the facility of his absence.

2.9 Since October 8, 2002, Appellant has not reported to work nor has he contacted the institution regarding his absence.

2.10 Captain Reetz provided credible testimony regarding the ramifications of a "no call, no show" on the institution, including the negative impact on employees who are required to work double shifts if a volunteer cannot be located and the cost to the facility in overtime pay.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.11 Sandra Carter, Superintendent of Clallam Bay Corrections Center, received the results of the investigations into the ECR's. Superintendent Carter scheduled a meeting with Appellant on November 25, 2002, to discuss the allegations. Appellant's union representative appeared. Appellant, however, did not. Superintendent Carter ultimately concluded that Appellant engaged in misconduct regarding all four ECR's and that further disciplinary action was warranted. Superintendent Carter reviewed Appellant's employment file and considered the impact of Appellant's actions on the facility and other staff. Superintendent Carter concluded that Appellant's misconduct could not be tolerated, and she determined that dismissal was the appropriate sanction due to the repeated nature of Appellant's misconduct.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant abandoned his regular post September 17, 2002, and did not call in or appear for his regularly scheduled shifts September 28, October 6 and 8, 2002. Respondent asserts that Appellant understood the institution's policies regarding leave, but he repeatedly failed to abide by them. Respondent argues that Appellant neglected his duty, abandoned his post and was insubordinate when he refused a directive to report to his new assignment and remain at work on September 17. Respondent further asserts that Appellant neglected his duty and violated policy when he failed to call in or report to work September 28, October 6 and 8. Respondent asserts that Appellant's misconduct rises to the level of gross misconduct and dismissal was the only appropriate sanction due to Appellant's extensive history of not calling or not showing.

3.2 Appellant did not appear and no representative appeared on his behalf.

IV. CONCLUSIONS OF LAW

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

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

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 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).

4.5 Appellant had a duty to follow the lawful directive of his superior and to report to his new post until he could become firearms qualified. Appellant also had a duty to report to work, or if unable to do so, report his unscheduled absences. Respondent has proven that Appellant has not reported to work or called in his absences and has been absent since October 8, 2002. Respondent has met its burden of proof that Appellant failed to act in a manner consistent with his duties and his misconduct constituted a neglect of his duty and insubordination.

4.6 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).

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.7 Respondent has met its burden of proof that Appellant's behavior constituted willful violation of published employing agency or department of personnel rules or regulations. Appellant was aware of the agency's rules and policies regarding leave requests, and his failure to properly report his absences violated DOC Policy Number 830.100.

4.8 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).

4.9 Appellant's misconduct interfered with the facility's ability to rely on Appellant to report to work on a regular basis, negatively impacted other employees who had to cover Appellant's shift and required the institution to incur overtime costs. Therefore, Appellant's misconduct rises to the level of gross misconduct.

4.10 Although it is not appropriate to initiate discipline based on prior formal and informal disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No. D93-163 (1995).

4.11 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

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

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).

4.12 Under the facts and circumstances, including Appellant's unreliable attendance, Respondent has proven immediate suspension followed by dismissal was appropriate based on progressive discipline and the nature of the misconduct. Therefore, the appeal of Michael Dopps should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Michael Dopps is denied.

DATED this _____ day of _____, 2004.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504