BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JACQUELINE MONTEZ, Appellant, v. EMPLOYMENT SECURITY DEPARTMENT, Respondent.	Case No. RULE-04-0013 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, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held in the Personnel Appeals Board Hearing Room in Olympia, Washington, on October 7, 2005.

1.2 **Appearances.** Appellant did not appear nor did any representative appear on her behalf. Carol Rembaugh, Human Resources Consulting Services Manager, represented Respondent Employment Security Department.

1.3 **Nature of Appeal.** This is a rule violation appeal in which Appellant contends that the department violated WACs 356-30-330, 356-30-160 and 356-30-270(2), 356-30-260(8).

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Olympia, Washington 98504
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II. FINDINGS OF FACT

2.1 Appellant Jacqueline Montez and Respondent Employment Security Department are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC.

2.2 On May 5, 2004, Appellant filed a rule violation appeal alleging Respondent violated WACs 356-30-330, 356-30-160 and 356-30-270(2), 356-30-260(8).

2.3 On July 15, 2005, Appellant was provided a Notice of Scheduling that the hearing on her appeal was scheduled for October 7, 2005.

2.4 On September 29, 2005, the Executive Secretary issued a letter, which again set forth the time and date of the appeal hearing of October 7, 2005.

2.5 On October , 2005, the Board convened to hear the matter of Jacqueline Montez v. Employment Security Department. Carol Rembaugh appeared on behalf of Respondent. Appellant failed to appear.

2.6 At the outset of the hearing, Respondent moved to dismiss the appeal. Respondent argued that in a rule violation appeal the Appellant has the burden of proof and that because Appellant failed to appear, her appeal should be denied.

2.7 WAC 358-30-170 provides:

> At any hearing on appeal from a layoff or reduction in force, dismissal, suspension, demotion, reduction in pay, dismissal for abandonment or disability separation the appointing authority shall have the burden of supporting the charges upon which the action was initiated. At any other hearing, <u>the party filing the action shall have the burden of proof</u>. (Emphasis added).

III. CONCLUSIONS OF LAW

3.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

3.2 In a hearing on appeal of an alleged rule violation, Appellant has the burden of proof. WAC 358-30-170.

3.3 Although Appellant was provided notice of the hearing, she failed to appear. Therefore, she failed to meet her burden of proof, and the appeal should be denied.

IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Jacqueline Montez is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

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