BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

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| EDITH LAWRENCE,<br><br>Appellant,<br><br>v.<br><br>DEPARTMENT OF SOCIAL AND HEALTH SERVICES,<br><br>Respondent. | Case No. DISM-03-0117<br><br>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 Personnel Appeals Board in Olympia, Washington, on June 21 and 22, 2005.

1.2 **Appearances.** George Hunter, Attorney at Law, represented Appellant Edith Lawrence. Paige Dietrich, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of termination for unsatisfactory work performance.

## II. FINDINGS OF FACT

2.1 Appellant Edith Lawrence was a permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and



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the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on November 20, 2003.

2.2 By letter dated November 17, 2003, Peggy L. Brown, Director for the Management Services Division of the Children's Administration, notified Appellant that she was dismissed effective December 1, 2003. Ms. Brown based Appellant's termination on WAC 356-34-040 and charged Appellant with incompetence based on her failure to adequately perform her assigned duties and responsibilities as a Research Analyst 3.

2.3 Appellant was employed by the Department of Social and Health Services as a Research Analyst 3 for approximately 16 years and worked in a variety of divisions, including Fircrest School and the Medical Assistance Administration. On September 4, 2002, Appellant began working with the Children's Administration, Management Services Division, as the result of a reduction in force. Appellant was placed in a Research Analyst 3 position (position #NJ95) in the Federal Funding Unit. The primary purpose for position #NJ95 was to plan, direct and manage the Random Moment Time Sample (RMTS) system. The RMTS was the main administrative cost allocation system for the majority of the Children's Administration federal and state funding and was essential to claiming federal funds for the Children's Administration's programs. The specific duties of the position included:

- Leading and directing a Research Analyst 1 in daily work, including gathering and analyzing data, preparing periodic, special statistical or narrative reports.
- Acting as back-up to the RA 1
- Generating by fax, after 5 p.m., Tuesday through Thursday, 90 to 100 sample forms to the appropriate offices for next day completion by social workers randomly selected from the RMTS program.
- On a daily basis, editing 65 percent of returned samples for completeness and accuracy.
- Integrating data from other (SSPA, CAMIS, ACES).
- Responding immediately to state auditor random requests for original copies of samples and responding to state auditor inquiries.



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- Conducting and managing annual group home time studies and cost reports to support claiming of federal funds for behavior rehabilitation services and for maintenance of children in contracted facility-based care.
- Managing time studies for Children's Administration's contracted providers of Medicaid Targeted Case Management related to the provision of child welfare services.

2.4 Position #NJ95 was mission critical, and federal cost allocation standards held the Children's Administration to a less than 5 percent error rate. Molly Elliott supervised the Federal Funding Unit and became Appellant's direct supervisor. Linda Henderson was the incumbent in the RA 3 position when Appellant exercised her bumping option position to #NJ95. The department retained Ms. Henderson to provide Appellant with on-the-job training and to ensure the requirements of the position were met until Appellant was sufficiently trained to function on her own. The initial training plan began by having Appellant learn the duties of the RA 1 position because the duties of the RA 1 were the foundation of the RA 3 position.

2.5 Ms. Elliott provided Appellant with initial training, which included an overview of the functions of the RMTS system and its impact on federal funding, and she set out the general expectations of the RA 3 position. Ms. Elliott showed Appellant how to use the fax machine to send out samples to the various RMTS leads in field offices. In October, Appellant worked with Ms. Henderson to observe how samples were printed, collated and faxed. Ms. Elliott also met with Appellant in October to review the RMTS manual, and provide her with direction on how to fax samples and input data. However, in Ms. Elliot's opinion, Appellant appeared to learn minimally and she noted that Appellant made excessive errors in her entry of data and codes. As a result, Ms. Elliott developed a comprehensive two-week training plan to assist Appellant print, collate, fax and input samples.



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2.6 On October 25, 2002, Ms. Elliott met with Appellant to discuss Appellant's excessive error rate and provide her with additional training to help correct those errors and improve her performance.

2.7 From November 2002, to June, 2003, Appellant received approximately 200 hours of training to enable her to adequately perform the duties of the RA 3 position. This training included the department contracting with Bernice Moorhead, a job coach, who met with Appellant from January to June 2003. Ms. Moorhead assisted Appellant in the area of inputting samples into the RTMS system, demonstrating to her how to research answers to questions regarding samples and explaining how to print, collate, and fax samples. In addition, Therese Ferreria, a Federal Funding Program Manager and in-house expert on various DSHS software programs, also provided Appellant with two step-by-step reference guides specific to the computer programs Appellant was required to utilize to perform her duties. Ms. Ferreria designed the step-by-step guides as simple and comprehensive tools to teach Appellant how to navigate through DSHS computer systems (ACES and CAMIS) to facilitate the research of information. Ms. Ferreria also met with Appellant on January 14, 15 and 16, 2003, and provided her with one-on-one training on the training guides, including how to perform basic navigation on each system.

2.8 From January 14, 2003, to July 7, 2003, Ms. Elliott provided Appellant with weekly written feedback memos of her work performance. Each memo addressed the errors Appellant made in entering samples and provided instructions on how to correct those errors.

2.9 Ms. Elliott conducted a special performance evaluation of Appellant's work for the period of April 3, 2003, to June 25, 2003. Ms. Elliott noted that Appellant was unable to perform the essential functions of her position, including her inability to learn the duties of the RA 1, and her failure to reduce the unacceptable error rate when inputting sample data. Ms. Elliott also noted that



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due to Appellant's inability to master the duties at the RA 1 level, the full duties of the RA 3 level could not be fully assigned to her.

2.10 As a result of Appellant's unsatisfactory work performance, Ms. Elliott placed Appellant on a 30-day work plan, during which time Appellant was given the opportunity to significantly improve her performance in the following areas: exercising independent judgment and problem solving; reducing her error rate to no more than 8 percent in faxing, printing and inputting samples into the RMTS; making no more than five errors in G code research and corrections; and accurately increasing data entry. The 30-day work plan was effective August 18 through September 13, 2003.

2.11 After reviewing Appellant's performance during the 30-day work plan period, Ms. Elliott observed no improvement. Rather, Ms. Elliott noted that Appellant continued to make the same errors and her error rate for the 30-day time period was approximately 21 percent. Ms. Elliott observed that Appellant was unable to correctly sort samples for faxing, that she continued to duplicate samples, failed to enter correct codes, failed to conduct necessary research of samples, and continued to make excessive inputting errors.

2.12 As a result of Appellant's deficient work performance, Peggy L. Brown, Director for the Management Services Division and the appointing authority, decided to take formal disciplinary action against Appellant. Ms. Brown concluded that Appellant was unable to effectively perform her assigned tasks, did not demonstrate independent judgment and sound problem solving skills, was unable to produce high quality, accurate work, and was unable to reduce her error rate to an acceptable level. Consequently, Ms. Brown concluded that Appellant's dismissal was warranted based on her incompetence as reflected in the numerous inaccuracies contained in the work she was producing. Ms. Brown further concluded that the errors in Appellant's work assignments damaged the unit's ability to stay in compliance and meet federal requirements and RMTS system



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requirements. Although Appellant claimed that data was manipulated to make it appear that she was making excessive errors, Ms Brown did not find anything to substantiate Appellant's claim.

## III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that the Research Analyst 3 position was critical for agency funding and required attention to detail. Respondent argues that despite extreme measures to train Appellant, she demonstrated she was unable to learn the duties, she continued to make repetitive errors and no amount of coaching helped. Respondent contends that Appellant was placed on a 30-day work plan and directed to show significant improvement, but that her error rate continued to be unacceptable at 20 percent. Respondent argues that because Appellant's performance was completely inadequate, she was not competent and could not be retained in the position. Respondent argues that the appointing authority's decision to dismiss Appellant for her completely inadequate work performance should be affirmed.

3.2 Appellant contends that her difficulty in performing the duties of the Research Analyst 3 position stemmed from a lack of adequate and sufficient training. Appellant contends that retaining Ms. Henderson in the position as a "double fill" created tension and set her up for failure from the beginning. Appellant asserts that her work experience has been in medical research, and therefore, she had no experience in the field of random moment time samples. Appellant asserts she was unfairly scrutinized and singled out, and she asserts she was a competent employee who made an effort to learn the duties of the RA 3 position. Appellant further claims that data was manipulated to make it appear she made data entry errors.

## IV. CONCLUSIONS OF LAW

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



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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 Incompetence presumes a lack of ability, capacity, means, or qualification to perform a given duty. Plaisance v. Dep't of Social and Health Services, PAB No. D86-75 (Kent, Hrg. Exam.), aff'd by Board (1987).

4.4 Respondent has established that Appellant lacked attention to detail, failed to use critical reasoning skills and failed to conduct her duties with the high level of accuracy necessary to ensure the integrity of data entered into the RMTS system. Although Appellant asserts she received insufficient training to perform the duties of her RA 3 position, the evidence supports the department made extensive efforts to train Appellant, providing her with the tools necessary to perform her work and allowing her sufficient time to learn her duties. In addition, Appellant received one-on-one training and specific, detailed feedback of the errors contained in her work product and how to fix those errors. The record is clear that Appellant was unable to adequately perform her tasks or improve her work performance, despite repeated instruction and guidance to assist her in accurately accomplishing her job duties and ample opportunity to improve her work. Therefore, Respondent has met its burden of proving that Appellant's failure to properly and accurately perform her RA 3 duties negatively affected Children's Administration's ability to sufficiently operate the RMTS system and constitutes incompetence.



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4.5 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. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

4.6 Under the facts and circumstances, we conclude that the sanction of dismissal should be affirmed, and the appeal of Edith Lawrence should be denied.

## V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Edith Lawrence is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Busse Nutley, Vice Chair

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Gerald L. Morgen, Member



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