BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

RICHARD GRIFFIN, Appellant, v. DEPARTMENT OF TRANSPORTATION, Respondent.	)	Case No. RED-02-0002 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for a hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held on November 19, 2002, at the Department of Transportation in Union Gap, Washington. RENÉ EWING, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant was present and was represented by Joaquin Hernandez, Attorney at Law of Parr and Younglove, P.L.L.C. Patricia A. Thompson, Assistant Attorney General, represented Respondent Department of Transportation.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a reduction in salary for neglect of duty, insubordination, gross misconduct and willful violation of a published agency guideline. Respondent alleged that Appellant made derogatory accusations against his lead worker and behaved in an aggressive and threatening manner toward his lead worker and his supervisor.

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); Countryman v.

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Dep't of Social and Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Chung v. University of Washington, PAB No. D94-079 (1995); Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant Richard Griffin is a Maintenance Technician 2 and a permanent employee for Respondent Department of Transportation (DOT) in the South Central Region. 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 9, 2002.

2.2 Appellant has been employed by Respondent since November 1995. Appellant has been counseled for engaging in intimidating and disruptive behavior and he has received a letter of reprimand for using profanity, making disparaging comments and engaging in verbal intimidation. In addition, Appellant's defensive behavior and temper were noted in his performance evaluations. Appellant attended workplace violence training and is aware of the agency's policy regarding managing workplace violence.

2.3 By letter dated December 13, 2001, Acting Assistant Regional Administrator for Traffic and Maintenance, Rick Gifford, notified Appellant of his five-percent, three-month reduction in salary, for neglect of duty, insubordination, gross misconduct and willful violation of a published agency guideline. Mr. Gifford alleged that during a crew meeting on October 9, 2001, Appellant made derogatory accusations regarding his lead, Rick Lawson, and on October 11, 2001, when meeting with Mr. Lawson and his supervisor, Chuck Laidler, to discuss the accusations, Appellant became defensive, raised his voice, left the meeting, refused to discuss the matter contrary to Mr. Laidler's instructions, and walked out of the work area.

2.4 Appellant was assigned to the Rimrock road crew that maintained the roads between Naches and White Pass during the winter. The crew is scheduled to provide 24-hour coverage during the winter months. During the winter, road maintenance assignments are determined, in part, by weather conditions. When the crew is in the shop, they perform shop maintenance duties while they are waiting for road maintenance assignments. During their lunch, breaks, and occasionally during down times, they play games, including a dice game called "Yahtzee."

2.5 On approximately December 15, 2000, Appellant was assigned to plow Highway 12 and if the highway looked good, to plow Tieton Road. Tieton Road is a county road. The DOT practice is to clear the county road as time permits after the state roads are cleared. Appellant determined that Highway 12 was not in need of further plowing so he went to Tieton Road. After he made a first pass on the road, Appellant contacted Mr. Lawson as instructed. Appellant thought that Tieton Road needed another pass, but Mr. Lawson directed him to return to the shop.

2.6 The weather forecast was for freezing rain. Therefore, Mr. Lawson wanted the crew and equipment in the vicinity of the shop where they could be safely dispatched as needed to keep the state roads clear. When Appellant arrived back at the shop, the crew was playing Yahtzee.

2.7 On October 9, 2001, Mr. Laidler convened a crew safety meeting. Mr. Lawson was not present for the safety meeting. During the meeting, Appellant asked if the policy on plowing county roads had changed. Mr. Laidler said that the policy had not changed. Appellant then commented that Mr. Laidler should talk to Mr. Lawson about the policy because he had not allowed Appellant to complete his work on Tieton Road and instead had instructed him to return to the shop and play Yahtzee.

2.8 Mr. Lawson returned to work on October 10, 2001. Mr. Laidler told him about Appellant's accusations. Mr. Lawson said the accusations were not true and said that he told Appellant to return to the shop after making one pass on Tieton Road because he wanted the trucks in the vicinity of the shop. Mr. Lawson asked if he and Mr. Laidler could meet with Appellant to straighten out the misunderstanding.

2.9 Appellant was not at work on October 10, 2001. He returned to work on October 11. Mr. Lawson was seated in Mr. Laidler's office when Mr. Laidler saw Appellant come into the work area. Mr. Laidler called Appellant to come into his office and when Appellant saw Mr. Lawson seated in the office, Appellant said, "what now."

2.10 Appellant sat down in the office and they began to discuss the situation. Appellant became agitated, defensive, raised his voice, and rose to leave the office. As Appellant walked out of the office, he commented that he would do what he was told to do and they could "just pay [him] from the neck down from now on." Mr. Lawson started to speak to Appellant but Appellant interrupted him. Appellant placed his hand on his chest and warned Mr. Lawson, "don't make me mad." Appellant left the office and walked toward the equipment bay. When Mr. Laidler told Appellant that they needed to discuss the issue further, Appellant said no, he needed to get to work.

2.11 Mr. Laidler followed Appellant because he did not feel that the matter had been satisfactorily resolved. Appellant refused to listen to Mr. Laidler and told him to leave him alone. Mr. Laidler tried to tell Appellant that Mr. Lawson was in charge of the crew but Appellant got into the cab of the scoop and turned on the engine. The noise from the scoop prevented Appellant from hearing Mr. Laidler. Mr. Laidler stepped up onto the ladder of the scoop and told Appellant to turn off the engine. Appellant complied and Mr. Laidler instructed him that Mr. Lawson was in charge. Mr. Laidler further instructed Appellant to discuss with him any problems he had with Mr. Lawson.

2.12 Mr. Laidler felt that Appellant's behavior was inappropriate, that he was overly defensive, and that he started the scoop deliberately to prevent Mr. Laidler from talking to him. Mr. Laidler reported the situation to Don Wherry, Maintenance Superintendent. They met with Rick Gifford and told him what had occurred.

2.13 Mr. Gifford asked Mr. Laidler to write a statement of the incident and to have the employees who attended the safety meeting write statements. After consulting with DOT personnel staff, Mr. Gifford determined that misconduct had occurred and that formal disciplinary action was warranted.

2.14 On November 11, 2001, Mr. Gifford held a pre-determination meeting with Appellant and his representative. Mr. Gifford considered Appellant's responses to the charges, but determined that Appellant had engaged in the alleged misconduct. He concluded that in spite of management's attempts to change his behavior, Appellant exhibited a continuing pattern of misconduct that including making derogatory and insubordinate comments, raising his voice and behaving unprofessionally. Mr. Gifford considered Appellant's prior counselings, evaluations and reprimand and determined that a reduction in salary was appropriate. By letter dated December 13, 2001, he informed Appellant of the reduction in salary, effective January 1, 2002 through March 31, 2002.

2.15 DOT's guideline on managing violence in the work place states, in part:

> . . . [w]e honor the right of every individual to be treated fairly and with respect . . . Therefore, the department will not tolerate employees or other individuals within the WSDOT work environment who engage in behaviors that are intimidating, harassing, hostile, or violent. Such behavior by any person is strictly prohibited and may be cause for appropriate management intervention. . . .

2.16 In addition, the guideline sets forth the standard of conduct for employees and states, in relevant part:

> Employees are expected to conduct themselves in accordance with WSDOT's value of respect for others. Intimidating and/or harassing behavior will not tolerated, which may include, but are not limited to, the following:
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> . . . .
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> - verbal threats toward a person or property;
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> . . . .
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> - Disparaging, derogatory, or inflammatory comments or slurs
> - verbal intimidation
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> - threatening, intimidating gestures
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III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that this case is a result of Appellant's bad attitude. Respondent contends that Appellant's behavior and demeanor in dealing with his lead and supervisor were inappropriate and unprofessional. Respondent contends that when his derogatory comment about Mr. Lawson was challenged, Appellant became defensive, upset and reacted inappropriately by raising his voice and behaving in an intimidating and threatening manner. Respondent argues that Appellant was deliberately insubordinate when he refused to stay in Mr. Laidler's office as directed to discuss the issue and when he started the scoop to prevent Mr. Laidler from speaking to him. Respondent asserts that Mr. Lawson and Mr. Laidler were appropriately performing their lead and supervisory duties when they tried to clarify and resolve Appellant's concerns and in doing so, they acted professionally and did not raise their voices in anger. Respondent contends that despite training, negative performance evaluations, counseling sessions and a reprimand, all for similar behavior, Appellant continued to act in an inappropriate manner. Respondent asserts that Appellant's demeanor, attitude, and tone of voice were threatening and created a negative working environment. Respondent argues that in light of Appellant's history of similar misconduct, his continued misconduct warranted a reduction in salary.

3.2 Appellant asserts that this case is a result of Mr. Lawson's and Mr. Laidler's bad attitudes and micro-management leadership style. Appellant contends that he was placed in a lose-lose situation and that his best choice was to walk away from the situation. Appellant argues that his comment during the safety meeting was simply a statement of the truth and was not derogatory. Appellant further argues that he was never derogatory or insubordinate and asserts that he left the meeting because he had a job to do and the crew was waiting for him. Appellant contends that Mr. Lawson and Mr. Laidler failed to treat him with respect, that the meeting was poorly handled, and that he should not be disciplined as a result of their arrogance and inappropriate management style.

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 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 and Health Services, PAB No. D94-025 (1995).

4.5 Violation of policy is established by facts showing the existence and publication of the policy, Appellant's knowledge of the policy, his/her failure to comply with the policy and presumes a deliberate act. Chung v. University of Washington, PAB No. D94-079 (1995).

4.6 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).

4.7 Respondent has shown by a preponderance of the credible evidence that Appellant engaged in intimidating and threatening behavior toward Mr. Lawson and Mr. Laidler consistent with his past behavior. In addition, Respondent has shown that Appellant's comment during the safety meeting was intended to be derogatory toward Mr. Lawson, in part, because Mr. Lawson was not present at the meeting to respond to the accusation. Appellant's behavior constituted a neglect of his duty to treat others with respect and in a professional manner. Furthermore, Appellant was insubordinate when he failed to change his behavior in response to his past corrective actions and he was insubordinate when he refused to discuss the October 9th issue with Mr. Laidler after being instructed to do so. Appellant's behavior of walking out of the meeting and getting into and starting the scoop was egregious and deliberate and warrants formal discipline.

4.9 Respondent has failed to meet its burden of proof that Appellant's actions rose to the level of gross misconduct. Respondent failed to establish that Appellant's behavior adversely impacted the agency's or the work unit's ability to carry out their functions.

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 offense. 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 charge is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

4.11 Under the totality of the proven facts and circumstances, including Appellant's history of informal discipline for engaging in similar behavior, the disciplinary sanction of a three-month reduction in salary is warranted. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Richard Griffin is denied.

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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