BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

KATHY LORENTZEN, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. DISM-02-0073 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 Airway Heights Corrections Center, 11919 W. Sprague Avenue, Airway Heights, Washington, on September 9 and 10, 2003.

1.2 **Appearances.** Appellant Kathy Lorentzen was present and was represented by Spencer Thal, General Counsel, Teamsters Local 17. Adrienne Harris, Assistant Attorney General, represented Respondent Department of Corrections.

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 agency rules or regulations. Respondent asserts Appellant provided confidential offender information to at least one offender, knowingly permitted

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one or more offenders visual access to the computer screen in her work area while accessing confidential information and provided false statements during the investigation.

II. FINDINGS OF FACT

2.1 Appellant Kathy Lorentzen was a Seamstress 2 and permanent employee for Respondent Department of Corrections at the Airway Heights Corrections Center. 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 September 16, 2002.

2.2 By letter dated August 30, 2002, Airway Heights Corrections Center (AHCC) Superintendent, Maggie Miller-Stout (Superintendent), informed Appellant of her suspension, effective August 31, 2002 followed by her immediate dismissal, effective September 15, 2002. Superintendent Miller-Stout alleged that Appellant provided confidential offender information to at least one offender, permitted one or more offenders to have visual access to the computer screen in her work area while accessing confidential information and provided false statements during the investigation.

2.3 Appellant became a state employee in 1984 and she began her employment at the Airway Heights Corrections Center in March 1995. At the time the discipline was imposed, Appellant worked in the Clothing Department issuing state inmate clothing to newly arriving inmates, completing laundry and lost clothing exchanges, submitting order requests, filing, storing and mending clothing and supervising four inmate workers.

2.4 As an employee of the Department of Corrections, Appellant was aware of her responsibility to abide by agency policies, including Policy 800.010 (I, A, 1, e), which prohibits disclosing

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confidential information to an unauthorized person or using confidential information for personal benefit or to benefit another; Policy 280.925, which limits offender access to computers; and Policy 801.005, which prohibits employee relationships with offenders. Appellant was also aware of the DOC Employee Handbook, which states that computers and computer terminals are to be used for business purposes only and should not be left on and unattended if offenders can access them.

2.5 Appellant has been the subject of a previous disciplinary action. By letter dated April 28, 1998, the department reduced Appellant's pay after learning that Appellant gave the address of a close personal friend to an offender; for accepting collect calls from the offender and allowing the offender to speak to her friend; and for introducing contraband to the institution in the form of a sandwich that contained marijuana.

2.6 In the fall of 2001, offenders began to raise concerns that confidential offender information was being obtained and released by other offenders. One claim was made to an AHCC counselor. Specifically, an inmate claimed that inmates were accessing the computer located in the Clothing Department to access the Offender Based Tracking System (OBTS). The institution conducted a preliminary investigation, which included questioning Appellant. Appellant denied any knowledge of offender information originating from the Clothing Department. Finding there was no credible information to the claims other than inmate rumors, the institution did not pursue the investigation further.

2.7 Inmates continued to make claims that someone was getting information off OBTS. From October 2001 to Spring 2002, the allegation was that the information was originating from the clothing/laundry area. The general allegation was the information released was primarily about offenders convicted of sex crimes. An inmate informant eventually made contact with AHCC investigators claiming that an inmate nicked-named "Caveman" was saying that he could get

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information on any offender anywhere in the institutional system and that he obtained the information from "Kathy" in the laundry. Inmate Ronald D. was known as Caveman, and he worked for Appellant as a clerk in the Clothing Department. The confidential informant indicated that "Caveman" was willing to provide him with offender information if the informant provided him with an offender's name and identification number.

2.8 The Superintendent determined that the claims should be investigated further, and she requested authorization from DOC headquarters to install a surveillance camera in the Clothing Department.

2.9 The Superintendent also approved the release of an inmate's name and inmate number to the confidential informant to determine whether offender information was being released. The name of "Eric C," an inmate housed at the Washington State Penitentiary, was used because he had no history at AHCC and there was no reason for anyone in the institution to want information on him.

2.10 Using an assumed identity, DOC Investigator Shumaker wrote and sent a letter to the confidential inmate informant, who was expecting the letter, and asked him to provide offender information about an inmate named Eric C.

2.11 On May 15, 2002, the confidential informant contacted Investigator Gerry Shumaker (Shumaker) and provided him information that Eric C. was incarcerated at the Washington State Penitentiary and was not convicted of a sex crime. Shumaker verified that the informant's information matched the information contained in Eric C's OBTS.

2.12 Shumaker also reviewed the surveillance tape recorded on May 1, 2002, which no longer exists. However, the Superintendent Miller-Stout and Investigator Shumaker both observed the

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tape and credibly testified that Appellant was seated at the desk with the computer monitor in front of her. Ronald M. was standing to her side, and they were engaged in conversation; Appellant motioned toward the computer, and Ronald M. turned to look at the computer screen. Furthermore, still pictures created from the video surveillance tape show a male identified as Ronald M. standing slightly back and to the right of Appellant looking at the computer screen while Appellant is seated at the desk.

2.13 On May 17, 2002, Shumaker and Investigator Hooper interviewed Appellant to discuss the claims that she was providing OBTS information to inmates and allowing them to view the computer located in the Clothing Department. She admitted that inmate Ronald M. asked her to look up information on two inmates but that she declined. Appellant denied that inmates had ever accessed the Clothing Department computer and that she would know if they had. Appellant also confirmed that inmates were not supposed to have access to the computer and that there was no reason for inmates working in the Clothing Department to view anything on the computer because their jobs did not require such access.

2.14 On May 21, 2002, Investigators Shumaker and Hooper conducted a second interview with Appellant. When asked Appellant stated that although she was not certain, she may have run Eric C.'s name and reviewed his OBTS information, but she claimed that, it would have been in connection with checking her daughter-in-law's brother who was incarcerated at the Washington State Penitentiary. Appellant continued to deny ever having shared OBTS information with inmates. Appellant also admitted that she was curious about Inmate James R. and checked his OBTS to see if he was still in prison, but she denied that it was at the request of an inmate. Appellant stated that inmates could possibly have looked over her shoulder and see her screen. She asserted, however, that if inmates were accessing offender information from her computer, it was

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without her knowledge. During the interview, Appellant was shown the videotape of Ronald M. looking over at the screen while she was seated at the terminal.

2.15 Associate Superintendent Kerry Wise also interviewed Appellant. When asked about the video surveillance tape, Appellant explained that she may have been viewing a manifest, which is a document used to determine what clothing offenders are to be issued and contains the names/numbers of incoming offenders and the institutions they are coming from. The manifest may also contain special transport needs or possibly note any psychological concerns or other special needs. Appellant speculated that she might have engaged in conversation with Ronald M. about changes to the list.

2.16 On May 31, 2002, the institution initiated an Employee Conduct Report against Appellant.

2.17 On June 17, 2002, Associate Superintendent Wise completed the investigation report and provided it to Superintendent Miller-Stout. The report contained information gathered from Appellant, other staff and numerous inmates interviewed, including Ronald M.

2.18 Superintendent Miller-Stout was Appellant's appointing authority when the discipline was imposed. On June 27, 2002, she met with Appellant to discuss the allegations and provide Appellant with an opportunity to respond to the charges that Appellant knowingly allowed inmates to view the computer screen located in the Clothing room, provided confidential offender information to Ronald M. and that she provided false statements during the investigation. Appellant continued to deny that she released confidential information to inmates and asserted that she had been truthful throughout the investigation. Superintendent Miller-Stout took into account Appellant's admission that she and Inmate Ronald M. were looking at the computer together and that Appellant allowed Ronald M. access to information contained in the manifest.

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2.19 Superintendent Miller-Stout was not persuaded by Appellant's denials or explanations, and she concluded that Appellant released confidential information to inmates and allowed Ronald M. visual access to the computer screen. The Superintendent further concluded that Appellant released more than just manifest information, and that information she released was related to inmates convicted of sex crimes. The Superintendent concluded that Appellant was dishonest during the investigative interviews, showed favoritism to offenders and was discriminatory toward sex offenders. She further concluded that Appellant's release of sex offender information created a potential safety risk to sex offenders from the general inmate population who typically despised them.

2.20 In determining the level of discipline, the Superintendent reviewed Appellant's employment file, including her annual evaluations and prior disciplinary history. After considering the nature of Appellant's past problems and the ineffectiveness of the prior disciplinary action, she concluded that Appellant was engaging in a pattern of behavior that created safety and security risk for the institution and the inmates. The Superintendent was concerned that Appellant's tendency to become overly familiar with offenders placed her at risk for manipulation. The Superintendent ultimately concluded that dismissal was the appropriate sanction.

2.21 Ronald M. testified before us that Appellant provided him with confidential offender information if he presented her a piece of paper with an inmate's name and number. Typically Appellant accessed the inmate's OBTS on the computer and allowed him to look over her shoulder at the information on the computer screen. He also testified that Appellant looked up information on Inmate James R. at his request, and that she looked up information on many other inmates.

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2.22 We have given little weight to inmate's Ronald M.'s testimony. Nonetheless, there is sufficient credible evidence to support the charges in the August 30, 2002 disciplinary letter. The release of information concerning Inmate Eric C., Superintendent Miller-Stout's and Investigator Shumaker's credible testimony regarding the video surveillance tape, the still picture of Ronald M. viewing the computer screen and Appellant's inconsistent answers during the investigative interviews, all support, more likely than not basis, that Appellant released confidential information. While there is no evidence or testimony as to what Appellant and Inmate Ronald M. were viewing on the screen on May 1, 2002, the act of giving him access to the computer screen was contrary to agency policy.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that the evidence clearly supports that Appellant was giving confidential inmate information to Ronald M. and allowed him to view the computer screen in her work area while she was present. Respondent argues that Ronald M.'s testimony was truthful when he described the conduct occurring in the clothing room. Respondent further asserts that Appellant made false statements to investigators when questioned. Respondent argues that the department had overwhelming evidence to support Appellant neglected her duty, that her misconduct rose to the level of gross misconduct and that she willfully violated agency policy. Respondent asserts that Appellant either had vulnerability issues related to inmates or she did not care that she was releasing information to offenders. Respondent argues that the Department of Corrections must protect the integrity of the institution, and that dismissal was the appropriate sanction.

3.2 Appellant asserts that Respondent failed to provide sufficient evidence to establish that she disclosed confidential information or that she allowed confidential information to be viewed by offenders. Appellant argues that others could have provided confidential information to inmates, and nothing supports she was involved in passing along information to inmates. Appellant contends

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that any information inmate Ronald M. may have seen over her shoulder was probably manifest information, which does not contain confidential offender information. Appellant also argues that she was unaware that disclosure of the manifest was a violation of agency policy. Appellant asserts that she was honest throughout the investigation and that any variations in her responses during the investigation were the result of being asked different questions. Appellant argues that the testimony of Ronald M. is not credible and should not be given weight over her testimony as a staff person. Appellant asks that she be fully reinstated.

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 Respondent has met its burden of proving by a preponderance of the credible evidence that Appellant neglected her duty when she provided confidential information to inmate Ronald M. and when she allowed him visual access to her computer monitor. Furthermore, Appellant was untruthful when she stated that she had never allowed an inmate to view her computer screen and when she stated that if it occurred, it was without her knowledge. Respondent has also proven that

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Appellant neglected her duty to truthfully answer all questions directed to her during the investigation.

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 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 Appellant understood that agency policy prohibited her from disclosing confidential information to unauthorized persons and limited offender access to electronic data, including any confidential data related to inmates. Furthermore, she understood that inmates working in the Clothing Department were prohibited from accessing the computer and computer terminal located in the area. Appellant provided inmate Ronald M. with confidential information. By doing so, she failed to protect the integrity of confidential inmate information and she willfully violated DOC Policies 800.010 and 280.925. Furthermore, Appellant willfully violated DOC Policy 801.005 when she displayed favoritism toward Inmate Ronald M. by providing him with information he requested.

4.7 Gross misconduct is flagrant misbehavior that 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).

4.8 Appellant's misconduct and her dishonesty throughout the investigation impaired her integrity as a DOC employee. Appellant fully understood the agency's mission, policies, procedures and expectations for employee behavior. Respondent has proven that Appellant's

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misconduct interfered with the Department of Correction's ability to ensure integrity of confidential information and posed a potential security risk for offenders; therefore, Appellant's misconduct rises to the level of gross misconduct.

4.9 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 that should be imposed here. Aquino v. University of Washington, PAB No. D93-163 (1995).

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 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).

4.11 Superintendent Miller-Stout had serious doubts about whether she could entrust Appellant to continue working in an institutional setting where the risk for inmate manipulation existed and could create a safety and security issue for others. She ultimately determined, based on Appellant's misconduct, that it was in the best interest of the department to dismiss Appellant.

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4.12 Under the facts and circumstances of this appeal, we conclude the sanction of suspension followed by dismissal was warranted. Therefore, the appeal of Kathy Lorentzen should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Kathy Lorentzen is denied.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

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