BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

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| BARBARA MATTSON,<br><br>Appellant,<br><br>v.<br><br>DEPARTMENT OF SOCIAL AND HEALTH SERVICES,<br><br>Respondent. | Case No. DEMO-04-0009<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 March 25 and 29, 2005.

1.2 **Appearances.** Appellant Barbara Mattson was present and was represented by Gregory Rhodes, of Parr, Younglove, Lyman & Coker, P.L.L.C. Laura Wulf, 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 demotion for neglect of duty, inefficiency, gross misconduct, and willful violation of published employing agency or



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Department of Personnel rules or regulations. Respondent alleges Appellant disclosed confidential information and used the state's computer for personal use.

## II. FINDINGS OF FACT

2.1 Appellant is an Office Assistant Senior and permanent employee for Respondent Department of Social and Health Services. 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 April 12, 2004.

2.2 Appellant works in the Division of Child Support (DCS) and has been an employee of the Department of Social and Health Services (DSHS) for approximately 15 years.

2.3 By letter dated April 7, 2004, Mary Jo Seaholm, District Manager for Region 5, Division of Child Support/Tacoma, notified Appellant of her demotion within the Tacoma Office of the Division of Child Support (DCS) from a Support Enforcement Officer (SEO) 2 to an Office Assistant Senior, effective April 26, 2004. Ms. Seaholm charged Appellant with neglect of duty, inefficiency, gross misconduct, and willful violation of published employing agency or Department of Personnel rules or regulations for 1) unlawfully disclosing confidential information on a case on two occasions and 2) and using the state's internet and e-mail network for personal use.

Disclosing Confidential Information

2.4 Incident # 1

The following is not disputed:

> On August 4, 2003, Appellant contacted a non-custodial parent's (NCP's) commanding officer, a captain in the U.S. Army, and as a result of that telephone



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> call, sent a Notice and Finding of Financial Responsibility containing confidential child support and wage information to the attention of the commanding officer.

2.5 In October 2003, Appellant's supervisor, SEO 4 Donald Sandstrom, and Program Administrator Janice Atchison received a report that Appellant inappropriately disclosed personal and confidential case information. Mr. Sandstrom and Ms. Atchison reviewed the official case record in the Support Enforcement Management System (SEMS) and agreed Appellant's comments appeared to indicate she had violated confidentiality regulations.

2.6 On November 6, 2003, Mr. Sandstrom issued a Conduct Investigation Report (CIR) and met with Appellant to discuss the allegations. Appellant confirmed that she sent the notice of financial responsibility form to a non-custodial parent at the attention of his commanding officer but denied that she inappropriately disclosed confidential information.

2.7 The DCS Manual Chapter 22, Public Disclosure, WAC 388-14A-2105 and RCW 26.23.120 all discuss confidentiality rules related to the division of child support.

> The DCS Manual Chapter 22 "Public Disclosure" in the Support Enforcement Handbook, Section 22.101, page 4, authorizes an SEO to disclose a notice establishing child support to the non-custodial parent (NCP), custodial parent (CP), or authorized representative.
>
> WAC 388-14A-2105 states in relevant part:
>
> **Basic confidentiality rules for the division of child support** (1) Under RCW 26.23.120, all information and records, concerning persons who owe a support obligation or for whom the division of child support (DCS) provides support enforcement services, are private and confidential.

2.8 Chapter 6 of DSHS's Support Enforcement Manual, Establishment of a Support Obligation, addresses service on members of the armed forces: "Military authorities have no responsibility for serving process, but upon request they may give the member the opportunity to voluntarily accept



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service." (Section 6.025, Serving Support Notices Out of State). The Office of the Judge Advocate General is the point of contact listed to facilitate service of legal process on members of the Army. The manual provides tips for using this agency, stating in part, "[w]rite the member's commander first, and use these offices [Office of the Judge Advocate General] only if you do not get a response or if the response is unsatisfactory."

2.9 Appellant testified she had experienced problems serving paperwork on the non-custodial parent in this case, Gilbert T., and stated Gilbert T.'s commanding officer, Captain Gradnigo, instructed her to address the document to Gilbert T., adding an attention line to Captain Gradnigo to ensure delivery. Appellant further stated that she reiterated to Captain Gradnigo that Gilbert T. was the actual recipient of the document.

2.10 In determining whether Appellant inappropriately disclosed confidential information in this instance, we find Appellant's communication with Gilbert T.'s commanding officer regarding facilitation of service on a document that was in a sealed envelope and clearly addressed to the intended recipient at the attention of his commanding officer to be in accordance with the Support Enforcement Manual's instructions on service to members of the armed forces.

2.11 <u>Incident # 2</u>

> On August 5, 2003, Appellant entered the following comments in the SEMS record (Exhibits R-2 and A-3):
>
> T/C TO CPTN GRADNIGO @ (706) 544-4772, REPTD NCP T/C & THREAT AGAINST CP & CH. TLD HER CP WAS DOING POLICE REPT & FILING FOR A RESTRAINING ORDER. CPTN SD SHE CONTACTED NCP BUT DID NOT SAY WHO CALLED HER & TLD HIM IT HAD BEEN BROUGHT TO HER ATTEN HE HAD A CS OBLIG PENDING & NEEDED TO PROVIDE PRF OF ANY PAYTS MADE TO CH. TLD HER PAPERWRK ON THE WAY. CPTN OK.



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2.12 Appellant testified that her SEMS entries contained errors and were inaccurate and that she had actually returned a call to Captain Gradnigo, who had been inquiring about the child support paperwork. Appellant stated her reason for returning Captain Gradnigo's call was to let her know the paperwork was on its way. Appellant further stated that Captain Gradnigo was already aware of Gilbert T.'s child support obligation at the time of the call and that it was the Captain who initiated the discussion about Gilbert T.'s threats.

2.13 Program Manager Janice Atchison explained that any disclosure of information to a third party is a breach in confidentiality. Ms. Atchison further explained that disclosing a possible domestic violence situation goes beyond the scope of an SEO's duties and that any such discussion or acknowledgement of information already known to that individual would still be considered a breach in confidentiality.

2.14 The custodial parent, Melanie B., kept a written record of her phone calls concerning her effort to obtain child support from Gilbert T. (Exhibit A-4). Melanie B.'s journal indicates she spoke with Gilbert T. at 9:30 p.m. on August 4, 2003. Melanie B. testified that Gilbert T. had made threatening remarks to her during that telephone conversation.

2.15 On August 5, 2003, at 7:30 a.m., Melanie B. wrote that she spoke with Appellant about the pervious night's call and that she was "told to call police and file report."

2.16 Appellant's scan record for August 5, 2003, indicates she made a call to telephone number (706) 544-4772 in Columbus, Georgia at 8:22 a.m. (Exhibit R-4).

2.17 At 9:30 a.m. on August 5, 2003, Melanie B.'s journal indicates she called Lakewood Police.



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2.18 On August 5, 2003, Melanie B. further noted that Appellant called "stating that she spoke to CPT Gradnigo about phone conversation" and that at 12:45 p.m. CPT Gradnigo then called [Melanie B.] with Gilbert T.'s supervisor on speaker phone.

2.19 In determining whether Appellant inappropriately disclosed confidential information in this instance, we find the credible evidence clearly supports that Appellant spoke with Melanie B. at 7:30 a.m. on August 5, Melanie B. informed Appellant about Gilbert T.'s threats, and Appellant then called Captain Gradnigo at 8:22 a.m. that same morning and repeated the details of her earlier conversation with Melanie B. Since Melanie B. never spoke with Captain Gradnigo until 12:45 p.m. on August 5, Captain Gradnigo had to have learned about Gilbert T.'s threats directly from Appellant during their telephone conversation earlier that morning. In addition, we find Appellant's entries in the SEMS record further support the likelihood Appellant discussed Gilbert T.'s threats and the need for police intervention with Captain Gradnigo.

Personal Use of State's Email Network and Internet

2.20 On October 30, 2003, Mr. Sandstrom discovered that Appellant's computer contained numerous emails that appeared to be personal in nature. Consequently, Mr. Sandstrom asked Computer Technical Supervisor Scott McCarron to record the contents of Appellant's email and Internet folders. The results of Mr. McCarron's review showed 397 personal emails in Appellant's state email account from February 28, 2002, through November 4, 2003.

2.21 Appellant's personal emails included chain letters, jokes, pictures, videos, and inappropriate/offensive messages. Appellant sent 188 email messages to other employees, including 44 chain letters and 17 messages containing inappropriate material. Many of the personal



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emails contained large attachment files that Appellant downloaded onto her state computer. In addition, a review of Appellant's computer showed she had accessed non-business related websites.

2.22 Appellant admitted she received personal emails on her state email account and admitted to downloading images and forwarding some of the emails to her co-workers.

2.23 DSHS has adopted Administrative Policy 6.04, Standards of Ethical Conduct for Employees, which "requires employees to perform duties and responsibilities in a manner that maintains standards of behavior that promote public trust, faith, and confidence."

2.24 Further, DSHS has adopted Administrative Policy 15.15, Use of Electronic Messaging Systems and the Internet, which prohibits staff from using state-provided electronic messaging systems for personal use. In addition, DSHS's Internet Access Request and Agreement prohibits employees from accessing the Internet for personal reasons.

2.25 District Manager Mary Jo Seaholm was Appellant's appointing authority when the discipline was imposed. In determining the level of discipline, Ms. Seaholm considered Appellant's length of service, her employment record, and the seriousness of her misconduct. Ms. Seaholm also considered a written response Appellant submitted to her subsequent to the fact finding meetings. Ms. Seaholm found inconsistencies in Appellant's statements when compared to the official SEMS record and determined Appellant had violated confidentiality rules. In addition, Ms. Seaholm determined Appellant's breach in confidentiality subjected the department to liability and jeopardized its ability to carry out its mission, therefore, rising to the level of gross misconduct.

2.26 With regard to Appellant's email misuse, Ms. Seaholm was concerned about the high volume of personal emails and how that impacted her work, concluding Appellant's excessive



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personal email demonstrated inefficiency. Ms. Seaholm determined Appellant neglected her duty as an SEO 2 and violated agency policies when she disclosed confidential information and repeatedly used the state's computer for personal use. Therefore, Ms. Seaholm could not trust Appellant's judgment and believed a demotion to a position with restricted computer use was the only viable option.

## III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues the department's policy clearly prohibits divulging confidential information to a third party and argues Appellant violated that policy when she shared information about a non-custodial parent with that person's commanding officer. Respondent asserts Appellant's breach in confidentiality created a liability for the department because the department has strict requirements to adhere to state and federal laws regarding confidentiality. In addition, Respondent argues it was inappropriate for Appellant to share domestic violence information with a third party and could have resulted in greater harm to the victim.

Additionally, Respondent argues Appellant admitted to using her state computer for personal email and asserts Appellant failed to present any reasons to mitigate her actions. Respondent contends Appellant's excessive email misuse alone would warrant demotion and argues any reasonable employee would understand that the degree of Appellant's personal email use was unacceptable. Respondent argues Appellant's actions posed serious consequences for the agency, asserts Appellant simply does not understand the seriousness of her misconduct, and argues demotion was the appropriate sanction.

3.2 Appellant denies that she violated any confidentiality rules. Appellant asserts she has been consistent on the exact information she disclosed to Gilbert T.'s commanding officer and asserts she attempted to clarify the notes she incorrectly entered in the SEMS record. Appellant argues she was having difficulty serving Gilbert T. due to his military status and argues, under the circumstances,



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she was not breaching any confidentiality rules when she allowed a commanding officer in the U.S. Army to facilitate service on an Army member under that officer's command. Appellant further argues she did not disclose Gilbert T.'s threats to his commanding officer because the commanding officer was already aware of the situation and contends she did not provide any information to the commanding officer regarding the threats.

Furthermore, Appellant argues she does understand the seriousness of her misconduct regarding her email use and asserts she has been completely amenable to correcting her behavior regarding use of the computer. Appellant asserts she did not realize the inappropriateness of accepting the various emails containing primarily jokes and inspirational messages. Nevertheless, Appellant contends she takes full responsibility for her computer misconduct and asserts she is willing to accept the appropriate level of discipline regarding misuse of email but argues she should not be disciplined for the more serious offense of violating confidentiality rules. Therefore, Appellant asserts a demotion is too severe and asks the Board to impose a lesser penalty based solely on misusing her state email account.

## 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; [WAC 251-12-240(1)]; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).



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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 Inefficiency is the utilization of time and resources in an unproductive manner, the ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of effective operations as measured by a comparison of production with use of resources, using some objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

4.5 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).

4.6 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).

Disclosing Confidential Information

4.7 A preponderance of the credible evidence supports that Appellant followed departmental procedures when she attempted to serve child support papers on the non-custodial parent to the attention of his commanding officer. Appellant, however, neglected her duty to maintain confidentiality and violated agency policy when she disclosed a possible threat by the non-custodial



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parent as relayed to her by the custodial parent. Further, Respondent has proven Appellant's improper disclosure of a possible domestic violence threat to the alleged perpetrator's commanding officer created a liability for the department.

Personal Use of State's Email Network and Internet

4.8 Appellant clearly neglected to act in a manner consistent with her duties as an SEO 2 when she used an excessive amount of personal email in her state email account. Appellant's actions also violated departmental policies on ethical conduct and use of email systems. In addition, Appellant's misuse of state resources jeopardized the department's ability to maintain public trust and constituted gross misconduct. Furthermore, Respondent has proven Appellant was inefficient in her use of time and resources due to the large volume of Appellant's personal emails and her personal use of the Internet.

4.9 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness 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. An action does not necessarily fail if one cause is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

4.10 The proven charges are sufficient to warrant demotion in this case. Therefore, under the proven facts and circumstances, demotion is appropriate, and the appeal should be denied.



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## V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Barbara Mattson is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member



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