BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

GLADYS LEACH, Appellant, vs. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	CASE NO. R-DISM-10-007 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, DJ MARK, Vice Chair, and JOSEPH PINZONE, Member. The hearing was held on February 23, 2011, in the Personnel Resources Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Gladys Leach did not appear and no representative appeared on her behalf. Respondent Department of Social and Health Services was represented by Laura Wulf, Assistant Attorney General.

1.3 **Nature of Appeal.** This is a dismissal appeal for disrespectful conduct, insubordination, failure to follow supervisory instructions, unauthorized absences, unsatisfactory performance, and inefficiency.

II. FINDINGS OF FACT

2.1 Appellant Gladys Leach was a Human Resource Consultant 1 and permanent employee for Respondent Department of Social and Health Services (DSHS). Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder, Title 357 WAC. Appellant filed a timely appeal with the Personnel Resosurces Board on August 26, 2010.

2.2 By letter dated August 20, 2010, Glen Christopherson, Senior Director of the Human Resources Division, informed Appellant of her dismissal effective August 20, 2010. Mr. Christopherson charged Appellant with disrespectful and insubordinate conduct, failure to follow supervisory instructions, unauthorized absences, unsatisfactory job performance, and inefficiency in the use of work time.

2.3 Appellant's disciplinary history includes a four day suspension without pay in April 2010. The suspension was based, in part, on Appellant engaging in disrespectful and insubordinate conduct, failing to attend scheduled meetings, and failing to report to work and to report her absences from work. The letter of suspension was signed by Mr. Christopherson and directed Appellant to:

- Interact with other employees in a respectful and courteous way.
- Participate in discussions with your Office Chief and Supervisor concerning your assigned work, job performance and your conduct in the workplace.
- Comply with all work instructions given by me, your Office Chief and your Supervisor.
- Call and report all absences to your Supervisor or Office Chief.

2.4 In addition, Appellant was aware of her responsibility to read and be familiar with DSHS administrative policies. On October 15, 2009, Appellant signed an Employee Annual Review Checklist indicating that she had reviewed various DSHS policies and procedures including Administrative Policy 18.64 Standards of Ethical Conduct for Employees. The policy requires, in part, employees to "[i]nteract with all DSHS staff with respect, concern, and responsiveness."

2.5 Ellen Andrews was Appellant's supervisor from the fall of 2008 until Appellant's termination in August 2010. In December 2009, Ms. Andrews and Appellant signed a Performance and Development Plan for Appellant. The plan contained Appellant's performance expectations including, in part, that she adhere to expectations on punctuality and attendance. As a follow-up to the plan, Ms. Andrews and Appellant met on April 1, 2010. Ms. Andrews credibly

testified that the meeting was to address issues regarding Appellant's work performance and her job expectations.

2.6 Ms. Andrews summarized the topics discussed at the April 1 meeting in a document titled Work Expectations – Related to Position CW44 – Human Resource Consultant 1. The document indicates that Ms. Andrews and Appellant discussed Appellant's hours of work and work schedule, her responsibility to provide phone coverage for the DSHS headquarters Human Resources Division phone line, her responsibility to process incoming Position Description Forms received by mail, fax and in the Classification and Compensation Unit electronic mailbox, and the expectation that she participate in meetings with anyone in her chain of command. The document indicates that Appellant's work schedule was 8 a.m. to 5 p.m. Monday through Friday. Her breaks were scheduled for 10 a.m.–10:15 a.m. and 3 p.m.-3:15 p.m., and her lunch was scheduled for 11:30 a.m. to 12:30 p.m. In addition, the document indicates that a follow-up meeting would take place in June 2010.

2.7 On June 1, 2010, Ms. Andrews schedule a June 10, 2010 follow-up meeting with Appellant. The meeting was scheduled for 10:30 a.m. The purpose of the meeting was to review Appellant's work expectations and accomplishments, her workload, and to revise her expectations. Appellant questioned Ms. Andrews about whether the meeting was mandatory and indicated that she felt that the meeting was not appropriate for her classification. Ms. Andrews notified Appellant that the meeting was appropriate and arranged for Art Stratton, Human Resource Manager to also attend the meeting.

2.8 At approximately 4 p.m. on June 9, 2010, Appellant told Ms. Andrews that she would be late on the following day, June 10. When Ms. Andrews reminded Appellant of the pre-scheduled meeting, Appellant indicated that she might not make the meeting. Appellant further indicated that she knew what her expectations were and that the meeting was not necessary. On the morning of June 10, 2010, Appellant left a voice message for Ms. Andrews indicating that she would not be at the 10:30 a.m. meeting and asking Ms. Andrews to provide her with a copy of

the expectations that would be discussed at the meeting. Ms. Andrews sent Appellant an email outlining what would be discussed at the meeting.

2.9 On June 10, 2010, Appellant arrived at work at approximately 12:30 p.m. and Ms. Andrews told her that they would meet at 1 p.m. At 1:00, Ms. Andrews and Mr. Stratton waited for Appellant in the conference room. After about 5-6 minutes, Ms. Andrews went to Appellant's desk and told her that they were waiting for her in the conference room and that she was expected to participate in the meeting. Ms. Andrews waited another 5-6 minutes and Appellant did not appear for the meeting.

2.10 Ms. Andrews credibly testified that Appellant's attendance was a recurring problem and that Appellant had a number of incidents of unauthorized absences. For example, on June 14, 2010, she did not report to work and did not call to report her absence. On June 16, 2010, she called and said she was running late. She arrived at work at approximately 8:30 a.m. but she left at 9:22 a.m. and did return to work until June 17, 2010.

2.11 Wendy Long, Office Chief for Position Management, is Appellant's second-level supervisor. On June 17, 2010, Ms. Long met with Appellant to discuss her conduct regarding the June 10, 2010, meeting and her unauthorized absences. During the meeting, Appellant said that she did not believe the performance meeting was appropriate for her classification because the language in the class specification indicated that positions at the Human Resource Consultant 1 level work independently and make decisions about which work process or methods to use. Appellant also said that she did not report her absence on June 14, 2010 because her phone was broken.

2.12 On June 17 and 18, 2010, Sue Thomas, Human Resource Administrator, observed Appellant on several occasions sitting at her desk, staring into space, and not appearing to work. In addition, on June 18, 2010, at about 2:20 p.m., Ms. Long observed Appellant drinking coffee

at her desk with the computer off and no work on her desk. Ms. Long asked Ms. Andrews to speak to Appellant.

2.13 On June 18, 2010, Ms. Andrews spoke to Appellant about her use of work time. Appellant said that she felt that Ms. Andrews did not like her because Ms. Andrews was old. Ms. Andrews reported Appellant's comment to Ms. Long. Ms Long then went to Appellant's desk and observed that she was not working. Ms. Long spoke to Appellant and said she needed to complete her assigned work. Appellant responded orally to Ms. Long in an inappropriate manner and shook her finger at Ms. Long. Appellant then left the office at 3:40 p.m. and did not return. Appellant's absence was unauthorized.

2.14 On June 22, 2010, Appellant asked Ms. Andrews if she could adjust her lunch hour to accommodate a dentist appointment. Ms. Andrews agreed and told Appellant that she could take lunch from 1 p.m. to 2 p.m. Ms. Andrews then made arrangements for another staff person to provide phone coverage beginning at 1. At 12:30 p.m., Appellant told Ms. Andrews that she was taking her afternoon break early and was leaving at 12:45. Ms. Andrews told Appellant that leaving early was not the agreement and that she was expected to cover the phones until 1 p.m. Ms. Andrews went by Appellant's desk at 12:45 and Appellant had left. Appellant's absence was unauthorized.

2.15 On June 23, 2010, Ms. Long went to Appellant's desk and handed her a letter responding to the June 18, 2010, comments Appellant made to Ms. Andrews and to Ms. Long. A moment later, Appellant appeared at Ms. Long's office and handed her back the letter with the word "LIAR" written on it.

2.16 One of Appellant's responsibilities was to use the GMAP tracking log to document the receipt of classification packages sent to the Classification and Compensation Unit. After receiving an inquiry in June 2010 about a package that was sent in May, which Appellant said had not been received, it was discovered that the package had been received by email on May 7,

2010 but that Appellant had failed to log the email into the GMAP tracking log. As a result, Ms. Andrews searched the Classification and Compensation Unit public folder and discovered a number of additional deficiencies in Appellant's job performance. Ms. Andrews discovered the following:

- On May 13, Ms. Andrews sent Appellant priority work assignments. On May 14, Appellant informed Ms. Andrews that Priority I and II were completed. Ms. Andrews found that this was not true and that Appellant had disregarded her work assignment.
- A screen shot of the Classification and Compensation Unit public folder showed that a May 7 classification package was received but not logged in and that other packages received on May 7, 2010 were erroneously logged in as having been received on June 15, 2010.
- A number of additional classification packages that were not correctly logged and a number of reallocation requests that were not given to the Classification and Compensation Specialists for action.

2.17 On June 25, 2010, at 11:40 a.m. Appellant told Ms. Andrews that she was going home to put drops in her eyes and to make a medical appointment. Ms. Andrews told Appellant to call her if she was not returning to work. At about 3:35 p.m., Appellant called a co-worker and told her she would not be returning. When the co-worker asked if Appellant wanted to be transferred to Ms. Andrews, Appellant declined and told her co-worker to relay the message. This leave was unauthorized.

2.18 By letter dated August 2, 2010, Mr. Christopherson tried to notify Appellant that he was intending to take disciplinary action against Appellant up to and including dismissal. In the letter, Mr. Christopherson told Appellant that a pre-disciplinary meeting was scheduled for August 11, 2010, and explained that the meeting was an opportunity for her to respond to the allegations of misconduct and work performance deficiencies and to provide any information she wanted him to consider in determining his next steps. Mr. Christopherson also told Appellant that she could choose to respond to the allegations in writing by 5 p.m. on August 11, 2010.

2.19 At about 4 p.m., Mr. Christopherson asked Mr. Stratton to place a sealed envelope containing the August 2, 2010, pre-disciplinary letter on Appellant's desk. Appellant was at her desk when Mr. Stratton placed the envelope containing the letter on her desk. Appellant then left work for the day without approval and left the unopened envelope on her chair. After she left, Appellant called Ms. Andrews and asked her to open the envelope. Ms. Andrews told her it was personal mail and that she would not open it. Ms. Long then retrieved the envelope and gave it to Margaret Maddox, Operations Chief for Human Resources Division. The letter was redated August 3, 2010.

2.20 At approximately 8:50 a.m. on August 3, 2010, Mr. Stratton again tried to deliver the letter to Appellant. Appellant refused to accept it. Appellant indicated that she did not know what was in the envelope, she was not going to accept it, and she was not going to open it. Mr. Christopherson then asked his Confidential Secretary, Donna Thompson, to call Appellant and ask her to come to his office. When Ms. Thompson called Appellant, the word "cover" appeared on her phone which indicated that Appellant was not answering her calls. Mr. Christopherson then called Ms. Long and told her to locate Appellant and ask her to come to his office. Ms. Long found Appellant sitting at her desk. Appellant arrived at Mr. Christopherson's office at approximately 1:55 p.m.

2.21 Mr. Christopherson offered the pre-disciplinary letter to Appellant but she refused to accept it. Mr. Christopherson laid the letter on his desk and moved it toward Appellant. Appellant then looked down and scanned through the first two pages. She then picked up the letter, tossed it on Mr. Christopherson's desk, and walked out.

2.22 In addition to attempting personal service, the August 3, 2010, pre-disciplinary letter was mailed to Appellant by regular and certified mail. Additionally, on August 5, 2010, Ms. Thompson sent Appellant an electronic meeting request for the August 11, 2010, pre-disciplinary meeting. The meeting was scheduled for 3 p.m.

2.23 On August 11, 2010, Mr. Christopherson and Ms. Thomas waited for Appellant in the conference room until about 3:12 p.m. Because Appellant had not appeared for the meeting, Mr. Christopherson asked Ms. Thomas to call Appellant to see if she was coming to the meeting. Appellant told Ms. Thomas that she did not have the meeting on her calendar. At 3:42 p.m., Appellant arrived at Mr. Christopherson's office. However, Mr. Christopherson was in another meeting so Appellant spoke to Ms. Thomas. Appellant told Ms. Thomas that she could not be in meetings that became argumentative. Appellant chose not to meet with Mr. Christopherson or to provide a written response to the letter.

2.24 Mr. Christopherson considered the evidence and historical information in Appellant's personnel file. He determined that Appellant's actions constituted insubordination, disrespectful conduct, failure to follow supervisory instructions, unauthorized absences, unsatisfactory job performance, and inefficient use of work time. Mr. Christopherson concluded that Appellant's conduct warranted dismissal. By letter dated August 20, 2010, Mr. Christopherson notified Appellant of her immediate dismissal.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant was no longer willing to do her job, and that her conduct was causing problems, and that her behavior was completely unacceptable. Respondent contends that when Appellant was warned about her behavior and work deficiencies, rather than improve, her actions worsened. Respondent argues that Appellant engaged in a recurring pattern of misconduct including unauthorized absences, disrespectful behavior, and insubordination. Respondent asserts that termination was the appropriate level of discipline.

3.2 Appellant opted not to appear for the hearing, did not provide a defense to the charges, and did not dispute the appropriateness of the disciplinary sanction before the Board.

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IV. CONCLUSIONS OF LAW

4.1 The Personnel Resources 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 357-52-110.

4.3 Respondent proved that the agency followed an appropriate course of progressive discipline. Respondent established that Appellant was aware of the performance expectations of her position and that she was aware of her duty to comply with the directives of her superiors and those set forth in her letter of suspension. Respondent further established that Appellant failed to comply with her performance expectations and supervisory directives.

4.4 Appellant has a responsibity to meet with her supervisors when they request that she do so, to complete the work assigned to her as directed by her supervisors, to report her unscheduled absences, and to remain at work for the duration of her work shift unless leaving early is authorized. Appellant also has a responsibility to abide by DSHS policies including interacting with her supervisors with respect and responsiveness. Appellant failed to fulfill her responsibilities and instead engaged in an ongoing and egregious pattern of disrespectful, insubordinate behavior.

4.5 Respondent provided extensive evidence of its repeated attempts to meet with Appellant to discuss performance concerns. Appellant's refusal to meet and her insubordinate behavior toward her superiors shows a serious lack of regard for her job, for the people with whom she works, and for the expectations of her position. Respondent proved that termination is the appropriate sanction and that the appeal should be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Gladys Leach is denied.

DATED this _____ day of _____, 2011.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Vice Chair

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JOSEPH PINZONE, Member