BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

MARGARET LEE, Appellant, vs. DEPARTMENT OF CORRECTIONS, Respondent.	CASE NO. R-DEMO-10-001 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, LAURA ANDERSON, Chair, and JOSEPH PINZONE, Member. The hearing was held on July 28, 2010, in the Personnel Resources Board hearing room in Olympia, Washington. Closing arguments were submitted in writing on August 20, 2010.

1.2 **Appearances.** Appellant Margaret Lee was present and was represented by Harriet Strasberg, Attorney at Law. Kara Larsen, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a demotion for alleged violation of agency policy and expectations by disclosing confidential information about a DOC employee to another employee.

II. FINDINGS OF FACT

2.1 Appellant Margaret Lee is a permanent employee for Respondent Department of Corrections (DOC). 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 Resources Board on January 29, 2010.

2.2 Appellant has been employed by the State of Washington since 1987. At the time of the actions giving rise to this appeal, Appellant was a Human Resources Manager at the Washington Corrections Center (WCC). Appellant's position was in the Washington Management Service (WMS). She had been a Human Resources Manager for approximately 12 years. In her position, she had access to highly confidential information about employees.

2.3 In approximately 2000, Appellant learned about the criminal conviction of another DOC employee, employee X. At the time of the action giving rise to this appeal, employee X was the employed at another DOC facility. Employee X had formerly been employed at WCC.

2.4 Approximately 2-3 years prior to September 2009, during a conversation with WCC employee John Campbell, Appellant disclosed that employee X had a felony record. After she made the disclosure, Appellant knew that she should not have disclosed the information. However, she did not report the disclosure to her supervisor.

2.5 In September 2009, Appellant learned that Mr. Campbell had reported the disclosure to his supervisor, Associate Superintendent Scott Russell. On September 29, 2009, Appellant called her supervisor, Shirley Morstad, and reported the disclosure because she wanted Ms. Morstad to hear about it directly from her first. Ms. Morstad reported the incident to Donna Haley, DOC's Human Resource Director. Ms. Haley was Appellant's Appointing Authority.

2.6 On October 1, 2009, Ms. Haley placed Appellant on home assignment pending an investigation into the allegation that she disclosed confidential information. Ms. Haley asked Rose Mattison, a former DOC human resource employee, to conduct the investigation. While employed with DOC, Ms. Mattison became acquainted with Ms. Morstad and Ms. Haley. Their acquaintance continued after Ms. Mattison no longer worked for DOC.

2.7 Ms. Mattison completed her investigation on November 24, 2009, and provided her report to Ms. Haley. During the investigation, Appellant admitted that she disclosed to Mr. Campbell that employee X had a felony record. Appellant did not admit that she disclosed the specific charge.

2.8 On December 9, 2009, Ms. Haley conducted a pre-disciplinary meeting with Appellant. Ms. Haley determined that Appellant was in a position that required leadership and that she was expected to exemplify the highest standards of integrity, professionalism, and ethical conduct. Ms. Haley felt that by disclosing confidential information to Mr. Campbell, Appellant undermined the trust and confidence placed in her and damaged her credibility. Ms. Haley determined that Appellant failed to exhibit sound judgment and professionalism and as a result, she could no longer serve as a Human Resources Manager.

2.9 After considering the information provided in the investigation report and by Appellant during the pre-disciplinary meeting, Ms. Haley determined that Appellant's actions were inappropriate, unprofessional, demonstrated a lack of judgment and violated fundamental human resource expectations, DOC policies, the DOC handbook and directives, and the core competencies in her Position Description. Ms. Haley concluded that she could no longer trust Appellant to maintain confidentiality and that disciplinary action was appropriate.

2.10 DOC Policy 810.150 provides, in relevant part, that WMS employees ". . . occupy positions of leadership . . . have a role as managers to ensure the work environment reflects the stated values of the organization, and should exemplify the highest standards of professionalism, integrity, and ethical conduct."

2.11 DOC Policy 800.010 addresses DOC staffs' responsibility to act with unfailing honesty and to maintain high professional and ethical standards at all times. The DOC Employee

Handbook also requires staff to "[a]dhere to the confidentiality requirements of any information you have access to in the workplace."

2.12 The DOC Human Resources Guiding Principles and the DOC Core Competencies, which are included in Appellant's Position Description form, address the expectation for and importance of ethical behavior and integrity and of being trustworthy and maintaining confidentiality.

2.13 In performing her duties at WCC, Appellant worked closely with WCC Superintendent Doug Waddington. However, Ms. Haley did not consult with Mr. Waddington prior to determining the level of discipline to impose. Mr. Waddington credibly testified that he could continue to work with Appellant if she was the Human Resources Manager for WCC and that he could continue to trust and have confidence in her. He further testified that Appellant really cared for employees, that she was interested in employees succeeding and doing well, and that he would welcome her back at WCC.

2.14 Although she did not consult with Mr. Waddington, in determining the level of discipline to impose, Ms. Haley did consider Appellant's good work history and found that there was no apparent pattern of breaches of confidentiality. Ms. Haley testified that she wanted to give Appellant another chance and did not want to ruin her career. Therefore, she created a Washington General Service Human Resource Consultant 4 position in the Workplace Diversity Unit and placed Appellant in the position. Ms. Haley testified that in the diversity position, Appellant would have less opportunity to form lasting relationships with staff and would be less likely to be baited and compromised. By letter dated January 11, 2010, Ms. Haley notified Appellant of her demotion, effective February 1, 2010.

2.15 In the January 11, 2010, disciplinary letter, Ms. Haley stated that the disciplinary action was being taken against Appellant "for disclosing confidential criminal history information." In

the letter, Ms. Haley noted that Appellant admitted to this disclosure and although she was remorseful, she only admitted what she did after she knew the disclosure had been reported.

2.16 From reporting the incident, throughout the investigation and the pre-disciplinary meeting, and during the hearing before the Board, Appellant admitted her mistake and expressed remorse. Further, Appellant acknowledged that she was aware of the expectations of her position, agency policies and directives, and of the importance of maintaining confidentiality.

III. ARGUMENTS OF THE PARTIES

3.1 In summary, Respondent argues that Appellant knowingly released confidential criminal history information about a DOC employee to another employee. Respondent contends that given the critical importance of maintaining confidentiality in a human resources environment, demotion was reasonable. Respondent asserts that Appellant's WMS position required a high level of trust and integrity, that Appellant was expected to be a leader and a role model to staff, and that she was expected to exemplify the highest standards of professionalism, integrity and ethical conduct. Respondent contends that Appellant's misconduct was the type that could severely impact organizational interests because employees would lack confidence in human resources staff, would be reluctant to consult with human resources staff, and as a result, would lose access to human resources' specialized knowledge and skills. Respondent asserts that Appellant damaged her credibility when she breached confidentiality and that she put the credibility of the entire human resources department at risk. Respondent argues that although Appellant had no prior discipline in her file and had good performance reviews, as a WMS employee she was held to a higher standard. Respondent argues that confidentiality of human resources information is an issue of significant importance to DOC and its employees. Based on the totality of the facts and circumstances of this case, Respondent asserts that the demotion was a reasonable, measured, and appropriate level of discipline.

3.2 In summary, Appellant argues that she has an unblemished work history, and except for this one instance, she faithfully maintained confidentiality. Appellant further argues that she worked well with leadership and staff at WCC, that she had their trust, and that they continue to trust her. Appellant asserts that she did not disclose an arrest as implied in the disciplinary letter; rather she admits that she told Mr. Campbell that employee X had a felony conviction. Appellant further asserts that the conviction was not confidential and was available to anyone who had access to criminal conviction information. Appellant argues that the discipline was too severe and that a lesser penalty would be sufficient to maintain the integrity of the program and to continue WCC's leadership's and staff's trust in her ability to keep confidences and to maintain their respect for her integrity. Appellant asserts that she has shown significant remorse, that there is no pattern of inappropriate disclosures, and that there is no evidence to support a possibility of recurrence. Appellant contends that a permanent demotion is much too severe. Appellant suggests that Ms. Haley was motivated to impose the demotion so that she could appoint a long-time protégé to the WCC Human Resources Manager position. Appellant asserts that this relationship inappropriately influenced the level of discipline taken against her. Appellant asks that the disciplinary action be dismissed or, in the alternative, that a lesser penalty in the form of a temporary reduction in pay be imposed.

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 Appellant admits that she disclosed information about employee X's felony record. She gained this information through the performance of her duties as the Human Resources Manager at

WCC. Any information of a personal or confidential nature that is received by the human resources staff of an organization must be held in strict confidence. In this case, Appellant admittedly failed to comply with this requirement. Therefore, disciplinary action is warranted.

4.4 Given Appellant's admission of the misconduct and because discipline is warranted, we find no credible evidence showing an ulterior motive for the discipline imposed by Ms. Hayley.

4.5 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).

4.6 This Board and our predecessor, the Personnel Appeals Board, have consistently held that WMS employees are held to a higher standard of conduct and professionalism. We continue to support this premise and have taken this into account in determining the appropriate level of discipline in this case. In addition, we have taken into account Appellant's previously unblemished work history, her admission of and remorse for this one instance of disclosure, and the testimony of staff from WCC who all agreed that they had trust and confidence in Appellant's ability to maintain confidences.

4.7 Nonetheless, Appellant is an experienced, senior level human resources manager and by the very nature of her position at WCC, she was held to a high level of trust, integrity, ethical conduct, and professionalism. She was well aware of the expectation that personal information about employees be kept confidential. Yet, she admittedly disclosed confidential information.

4.8 In Townsend v. Dep't of Transportation, Case No. R-RED-10-001 (2010), we upheld the salary reduction of a Washington General Service employee who released confidential

information to a former employee of the agency. This case can be distinguished from Townsend for a number of reasons. For example, here, Appellant admitted and self-reported her mistake, she was truthful and showed remorse for her actions, and the staff at WCC maintained their trust and confidence in her ability to continue as the Human Resources Manager at WCC. In addition, Appellant was a Washington Management Service employee and held to a higher standard of conduct.

4.9 We have considered the totality of the proven facts, including the level of trust and integrity that is inherent in any Human Resources Manager position. And, after considering the mitigating circumstances of this case, we conclude that a temporary demotion to a Human Resource Consultant 4 position is sufficient to prevent recurrence and maintain the integrity of the program. Therefore, Appellant should be given a seven-month demotion, beginning February 1, 2010.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Margaret Lee is granted in part and the disciplinary sanction is modified to a temporary demotion from a Washington Management Service Band 2 position to a Washington General Service Human Resource Consultant 4 position effective February 1, 2010, through August 31, 2010.

DATED this _____ day of _____, 2010.

WASHINGTON PERSONNEL RESOURCES BOARD

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LAURA ANDERSON, Chair

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JOSEPH PINZONE, Member