BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

ROBERT HAGG, Appellant, vs. UNIVERSITY OF WASHINGTON, Respondent.	CASE NO. R-DISM-10-006 FINDINGS, CONCLUSIONS AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, DJ MARK, Chair, and JOSEPH PINZONE, Vice Chair. The hearing was held on September 21 and 22 and December 21, 2011, in the Personnel Resources Board hearing room in Olympia, Washington. Written closing arguments were submitted on January 20, 2012. LAURA ANDERSON, Personnel Resources Board Member, recused herself from this appeal and did not participate in the hearing or in the decision due to a possible conflict of interest.

1.2 **Appearances.** Appellant Robert Hagg was present and was represented by Donna Mack, Attorney at Law. Respondent University of Washington was represented by Jessica Russell, Assistant Attorney General.

1.3 **Nature of Appeal.** This is a dismissal appeal for insubordination for allegedly engaging in unprofessional communication, questioning management's authority and undermining management's directions.

II. PRELIMINARY MOTIONS

2.1 At the outset of the hearing, Respondent made a Motion in Limine to exclude evidence regarding allegations of retaliation, discrimination and violation of the Family Medical Leave Act. Respondent argued that such matters were not with the Board's jurisdiction. In their closing argument, Respondent renewed its motion.

2.2 At the hearing, Appellant acknowledged the Board's jurisdiction and argued that the evidence was intended to show that Appellant was ill during the critical time that the matters under appeal were at issue and to question whether due process was met.

2.3 The Board orally granted the motion in part stating that the Board does not have jurisdiction to make judgment on matters of the Family Medical Leave Act or discrimination. The Board further stated that it would allow limited testimony on the issue of Appellant's illness as it pertains to his appeal. The Board also stated that if testimony was provided on matters outside of the Board's jurisdiction, counsel may object at that time.

2.4 During the hearing, counsel did not object to the testimony touching on Appellant's illness. Further, in their closing arguments, both parties addressed the issue of just cause. Respondent provided no persuasive argument to support reconsideration of its motion or modification of the Board's oral ruling.

III. FINDINGS

3.1 Appellant Robert Hagg was an Engineering Technician 3 and a permanent employee for Respondent University of Washington (UW). Appellant worked for the Shipboard Science Support Group (SSSG) and onboard the Research Vessel Thomas G. Thompson (Thompson). 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 August 19, 2010.

3.2 Appellant began his permanent employment as an engineering technician at UW on September 9, 1998. As an engineer technician within the SSSG, Appellant sailed onboard the Thompson for extended periods of time. He provided technical assistance to research scientists on the ship and acted as a liaison between the crew and scientific staff. It is imperative that personnel onboard the ship work together collaboratively. And, given the limitations in

communicating with staff and management onshore, it is imperative that scientists are confident that the technicians on the ship can provide the technical support they need. It is also imperative that management onshore trusts the technicians to act professionally and to comply with management's directives.

3.3 Prior to the disciplinary action at issue in this appeal, Appellant received oral and written counseling, a letter of reprimand, and written action plans and work expectations. In addition, he had numerous one-on-one sessions with a consultant to help him improve his communication skills. The expectations that Appellant engage in professional interactions with others and utilize appropriate communication skills were addressed on numerous occasions beginning in January 2004 until the date of his dismissal.

3.4 Appellant received counseling on April 10, 2009 and a final action plan on April 14, 2009. The action plan stated in part:

> . . . I expect you to take very seriously the need to change your own behavior and learn new strategies for dealing with conflicts and potential conflicts.
> . . . .
> . . . [s]hould you fail to meet expectations by repeating intimidating or inappropriate conduct . . . the next step is dismissal. I also remind you that retaliation against any individual who participates in an investigation will not be tolerated . . . .

3.5 The events that ultimately led to Appellant's dismissal began in spring 2010. Appellant sailed with the Thompson for the first leg of a Dutch Harbor cruise. He was expected to leave the ship in Dutch Harbor and return to Seattle on or about June 15, 2010. After returning to Seattle, he was expected to help with the pre-cruise logistics for a cruise schedule for July.

3.6 Before the beginning of the second leg of the Dutch Harbor cruise, Appellant's supervisor, James Postel, SSSG Manager, received resignations from the two engineering technicians assigned to the second leg of the cruise. Mr. Postel immediately began the search for replacement technicians. Appellant offered to stay onboard for the second leg of the cruise. Mr.

Postel asked for Appellant's opinion on the technicians who were available but he declined Appellant's offer that he stay onboard for the second leg. Instead, Mr. Postel instructed Appellant to return to Seattle and work on the pre-cruise logistics for an upcoming cruise.

3.7 Appellant made it clear that he disagreed with Mr. Postel's decision and went so far as to contact Mr. Postel's supervisor, William Wilcock, Associate Director of the School of Oceanography, to voice his concerns. During a telephone conversation on June 4, 2010, Mr. Wilcock told Appellant that the decision was final and told Appellant to comply with Mr. Postel's directions. Mr. Wilcock also told Appellant not to raise the issue with the scientists who were scheduled to be on the cruise.

3.8 Nonetheless, on June 9, 2010, Appellant emailed the Captain of the Thompson; Chief Scientist David Shull; and several scientists who were sailing on the Thompson and expressed his concerns about staffing for the cruise. In addition, several scientists took their concerns to Mr. Wilcock's supervisor, Russell McDuff, Director of the School of Oceanography. Mr. McDuff recognized the severity of the impact of their concerns and as a result, he traveled to Alaska to meet with the scientists and alleviate their concerns.

3.9 By email on June 13, 2010, Appellant continued to express his concerns to Mr. Wilcock and Mr. Postel even though he had been told the staffing decision was final.

3.10 While visiting the Thompson, Mr. McDuff learned that Appellant's serious health condition had returned. Mr. McDuff met with Appellant in Dutch Harbor before Appellant returned to Seattle. Subsequently, by email on June 18, 2010, Mr. McDuff instructed Appellant that his first priority was to get the needed medical attention and that second he was to comply with Mr. Postel's expectations for the upcoming cruise. Mr. McDuff also told Appellant that he was not approved to use vacation leave and that if he needed to use sick leave, he must contact his supervisor.

3.11 In spite of Mr. McDuff's oral directives and the written expectations outlined in his June 18, 2010, email, on the same day, Appellant sent an email stated that he was using two days of sick leave and then would be on vacation leave until July 12, 2010. Appellant subsequently changed his plan and took sick leave from June 22 through July 12, 2010.

3.12 A preponderance of the credible evidence establishes that in the past, leave policies and procedures for the research technicians within the SSSG were informal. Technicians would decide to take leave following cruises and they would tell management of their plan. Their leave was not preapproved. In addition, the technicians generally remained available to work offsite through the computer or were available by phone to provide assistance while they were on leave. However, at the time of the actions giving rise to this appeal, this process had changed. In March 2010, Mr. Postel notified Appellant of the expectation that vacation leave be preapproved and that technicians take a more active role on shore between cruises. Mr. Postal made Appellant aware of the change from past practice.

3.13 On June 23, 2010, Mr. Wilcock, Mr. McDuff and Linda Hoffman, Senior Human Resources Consultant, met with Appellant. During the meeting, Appellant was reprimanded for challenging management's authority, lobbying against management's directives, attempting to undermine management's decisions, and disregarding the directive that he report to Seattle rather than take vacation. Mr. Wilcock credibly testified that the discussion included the expectation that Appellant not contact any persons onboard the Thompson. The issues discussed at the meeting were summarized in a June 23, 2010, letter from Mr. Wilcock to Appellant. The letter reiterated that Appellant was not to contact the crew of the Thompson and that his access to University property was terminated until his health was restored and he received a full release from his physician. Nonetheless, three days after the meeting, Appellant initiated an email conversation with one of the technicians onboard the Thompson.

3.14 Mr. Wilcock felt that Appellant had once again violated management's directive. As a result, Mr. Wilcock drafted his recommendation that Appellant be dismissed. Because Mr.

Wilcock had been involved in the prior meetings with Appellant, Darlene Feikema, Director of Finance and Administration with the College of the Environment, conducted the pre-determination meeting.

3.15 By letter dated July 2, 2010, Ms. Feikema notified Appellant of the dismissal recommendation and scheduled a pre-determination meeting for July 15, 2010. Appellant was medically cleared to return to work on July 13, 2010. During the meeting and by follow-up email, Appellant requested additional time to respond to the charges. Ms. Feikema agreed with his request and allowed him until July 19 to submit a written response. Appellant submitted his response, with sixteen attachments, in a letter dated July 16, 2010. In his response, Appellant asked for time to consider resigning rather than being dismissed.

3.16 By letter dated July 20, 2010, Ms. Feikema notified Appellant of his dismissal effective immediately for reasons including but not limited to insubordination. However, Ms. Feikema indicated that she was willing to accept Appellant's resignation provided she received the resignation before the end of the day on August 2, 2010. Appellant did not submit a resignation and was terminated.

IV. ARGUMENTS OF THE PARTIES

4.1 Respondent argues that Appellant was notified orally and in writing of the need to improve his performance and he was given every opportunity to demonstrate improvement; yet, he continued to undermine his managers and fail to follow the appropriate chain of command when raising concerns. Respondent further argues that when Appellant's concerns were address, he chose to disregard the responses he received from his supervisor and manager. Respondent contends that in spite of repeated efforts to help Appellant improve his performance, including one-on-one coaching at University expense to improve his communication and professional interactions, Appellant failed to accept management authority, failed to improve his communication, and failed to act professionally.

Respondent asserts that Appellant's behavior harmed the reputation of Marine Operations and unnecessarily caused concerns within the science community using the Thompson. Respondent also asserts that by refusing to follow the appropriate process for requesting pre-approved leave, Appellant placed pre-cruise planning and preparation for the upcoming cruise in potential jeopardy.

Respondent acknowledges that Appellant was dealing with a serious health issue but explains that Appellant was allowed to use sick leave and was instructed not to return to work until he was fully cleared to do so by his physician. Respondent further explains that after Appellant was cleared to return to work, he participated in the pre-determination process and per his request, he was given additional time to prepare and provide a written response following the pre-determination meeting.

Respondent contends that Appellant's unprofessional conduct negatively impacted Marine Operations and caused management to lose trust in Appellant. Respondent argues that given the minimal oversight provided to technicians when they are at sea, it is imperative that management's directives are followed and that ship operations run smoothly. Because management had lost its ability to trust Appellant and in light of his history of undermining management's decisions, Respondent asserts that termination was appropriate to prevent recurrence and preserve the integrity of the program.

4.2 Appellant argues that he thought he was following management's expectations that he work collaboratively and collegially and asserts that he understood that there would be no chain of command but rather that he was to work in cooperation with others toward their common goals. Appellant contends that his actions, including his offer to stay on board during the second leg of the cruise, were motivated by his desire to do what was needed to support science and to assure that the scientists on board were prepared for the cruise.

Appellant asserts that dismissal was too severe given the limited impact of his actions. Appellant contends that he never refused to comply with Mr. Postel's directions, that there were no ongoing concerns about the technicians that Mr. Postel assigned to the second leg of the cruise, and that there was no negative impact to the University's reputation. Appellant asserts that he was directed to not have contact with the crew on the Thompson and he complied with that direction. Appellant contends this prohibition did not apply to his contacts with the science party or the technicians on board. Appellant further asserts that the prior disciplinary actions and counseling he received should not be considered because they were not the basis for his termination and were not for incidents of alleged insubordination.

Appellant contends that the leave policies were vague and that there was a lack of clarity regarding what was expected of him when he returned to Seattle. Appellant explains that the use of leave, including the use of sick leave, was handled informally and that he followed past practice in regard to notifying management of his plan to use leave. Appellant contends that he had no intention to be insubordinate regarding his use of leave.

Appellant admits that he strongly advocated for his position but argues that he never defied Mr. Postel's directives and that he was not insubordinate. Appellant further argues that given the lack of clarity regarding his work expectations and status and given the past practice in regard to the use of leave, his actions do no rise to a level of egregiousness that warrants dismissal.

V. CONCLUSIONS

5.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.

5.2 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.

5.3 Respondent has met its burden of proof.

5.4 When considering whether there was just cause for a disciplinary action, we consider factors such as whether the employee was aware of the expectations, rules, or policies allegedly violated, whether the employee was aware of the need to comply with the rule or policy or to improve performance, whether the employee had an opportunity to demonstrate compliance or improvement, whether the discipline was imposed for good reason, whether the disciplinary process and procedures followed were appropriate, and whether the sanction imposed was sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. Gill v. University of Washington, PRB Case No. R-DISM-10-008 (2011) and Oliver v. Employment Security Department, PRB Case No. R-DEMO-08-006 (2009).

5.4 Appellant was aware of the expectation that he comply with management directives include the directive from Mr. McDuff that the use of vacation leave or comp time be preapproved. Nonetheless, after receiving the email from Mr. McDuff confirming this directive, Appellant informed management that he was using vacation leave without seeking pre-approval to do so. Appellant was also aware of the expectation that he not communicate with individuals onboard the Thompson while he was on sick leave. Yet, in direct violation of the verbal directives he received during the June 23, 2010, meeting and as summarized in the follow-up memo, Appellant contacted staff onboard the Thompson. Further, after being told not to raise the issue of the replacement technicians for the second leg of the Dutch Harbor cruise with the scientists, Appellant proceeded to share his opinions with the scientists rather than support the decisions made by management. Appellant had a history of corrective actions and counseling addressing the need for him to improve his communication and to raise issues in the appropriate manner. Nevertheless, he continued to circumvent the chain of command and raise issues with the scientists rather than support the decision made by management even after he was told that the decision was final.

5.5 Respondent has established that Appellant was insubordinate when he engaged in communication with staff after being told not to, questioned management's authority, and failed to comply with and attempted to undermine management's directives. Given Appellant's history of corrective actions and counseling and the extensive efforts management employed to help Appellant address the problems, the Respondent has proven that the level of discipline imposed was appropriate. Further, Respondent followed an appropriate pre-disciplinary process and afforded Appellant ample opportunity to respond to the charges prior to the disciplinary determination. Under the totality of the proven facts and circumstances, dismissal was the appropriate sanction to prevent recurrence, deter others, and maintain the integrity of the SSSG.

5.6 Respondent has met its burden of proof and the appeal should be denied.

VI. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Robert Hagg is denied.

DATED this _____ day of _____, 2012.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Chair

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JOSEPH PINZONE, Vice Chair