BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

SUSANNE COCHRAN, Appellant, v. WASHINGTON STATE UNIVERSITY, Respondent.	)))))))))	Case No. R-DISM-11-012 ORDER OF DISMISSAL

I. INTRODUCTION

1.1 **Consideration of Motion.** This matter came before the Personnel Resources Board, DJ MARK, Chair, and JOSEPH PINZONE, Vice Chair, for dismissal of the appeal. This matter was considered on written documents without oral argument.

1.2 **Representation.** Appellant Susanne Cochran represented herself. Donna J. Stambaugh, Assistant Attorney General, represented Respondent Washington State University (WSU).

1.3 **Documents Considered.** The Board considered the files and documents in this matter including Respondent's Motion to Dismiss, filed May 23, 2012, Respondent's Memorandum in Support of Motion to Dismiss, the Affidavit of Counsel, and the Affidavit of Karin Skalstad.

II. FACTS

2.1 Appellant was dismissed from her position as a Program Assistant and Student Insurance Coordinator at WSU, effective November 28, 2011. On December 5, 2011, Appellant filed an appeal of her dismissal.

2.2 On January 17, 2012, the Board sent a Notice of Scheduling to the parties setting the hearing for July 11 and 12, 2012. The Notice of Scheduling also set the telephone status conference for

March 5, 2012. Respondent's Assistant Attorney General participated in the status conference call, but Board staff was unsuccessful in contacting Appellant for the call. Staff left a voice message for Appellant and asked her return the call. However, Appellant did not return staff's call.

2.3 On March 6, 2012, Board staff issued the Statement of Results of the Pre-hearing Conference. The Statement of Results directed that all discovery must be served by no later than May 11, 2012.

2.4 On March 9, 2012, Respondent mailed to Appellant Respondent's First Set of Interrogatories Propounded to Appellant and Requests for Production of Documents. The discovery request was mailed by regular and certified mail. The certified mail was claimed on March 14, 2012.

2.5 When Appellant did not respond to Respondent's discovery request, Respondent's counsel attempted to communicate with Appellant several times by telephone and by mail to confer with her regarding her responses to Respondent's discovery request. As of April 23, 2012, Appellant had failed to answer Respondent's discovery request or to respond in any way to repeated attempts by Respondent's counsel to communicate with her.

2.6 Respondent filed its Motion to Compel Responses to Discovery on April 25, 2012. On April 26, 2012, the Board issued an Order Compelling Appellant to Provide Discovery Responses by no later than 5 p.m. on Friday, May 18, 2012. Appellant failed to comply with the Board's order.

2.7 Respondent filed a Motion to Dismiss on May 23, 2012. The Board issued a notice of scheduling consideration of the motion on written argument. The notice stated that Appellant's response to the motion was due no later than Wednesday, June 6, 2012. The notice was mailed by regular and certified mail. Appellant did not file a response to the motion.

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III. DISCUSSION

3.1 The Board may decide an appeal by motion if the documents on file, depositions and affidavits show there is no genuine issue as to any material fact and the appeal should be dismissed as a matter of law. WAC 357-52-140. All facts and reasonable inferences therefrom are to be determined in favor of the nonmoving party. *See*, Hall v. University of Washington, PAB No. 3863-V2 (1995).

3.2 The issue here is whether Appellant's appeal should be dismissed based on her failure to comply with the Board's order to respond to Respondent's discovery requests.

3.3 WAC 357-52-255 provides for "discovery procedures in a manner consistent with the civil rules for superior courts of the state of Washington and as provided in any prehearing statement of results or other order of the board."

3.4 In this case, Respondent properly served Appellant with Respondent's First Set of Interrogatories Propounded to Appellant and Requests for Production of Documents. Appellant failed to respond and Respondent filed a Motion to Compel. The Board granted the motion and on April 26, 2012, ordered Appellant to provide responses to Respondent's discovery request. Appellant once again failed to respond.

3.5 Appellant had ample opportunity to provide a response to Respondent's discovery request, yet she failed to do so. Therefore, we find there are no disputed facts to be resolved or inferences that need to be drawn to decide this issue. Even when viewing all facts in the light most favorable to Appellant there is no question that she failed to comply with her duty to cooperate with the discovery process.

3.6 Therefore, Respondent's motion should be granted and the appeal should be dismissed.

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IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is granted and the appeal of Susanne Cochran is dismissed.

DATED this _____ day of _____, 2012.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Chair

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JOSEPH PINZONE, Vice Chair