BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

PHYLLIS EVANS, Appellant, v. EMPLOYMENT SECURITY DEPARTMENT, Respondent.	)	Case No. R-DEMO-12-004 FINDINGS, CONCLUSIONS AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, JOSEPH PINZONE, Chair, and DJ MARK, Vice Chair. The hearing was held on June 12, 2013, in the Personnel Resources Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Phyllis Evans was present and represented herself *pro se*. Marlo Oesch, Assistant Attorney General, represented Respondent Employment Security Department.

1.3 **Nature of Appeal.** This is an appeal from a demotion. Respondent alleged that Appellant engaged in pattern of erratic behavior that created an unprofessional working environment including inappropriate communication, making derogatory comments to staff and being unavailable and unapproachable to staff.

II. FINDINGS OF FACT

2.1 Appellant Phyllis Evans is a permanent employee for Respondent Employment Security Department (ESD). 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 October 4, 2012.

2.2 Appellant began her employment with ESD in 1986. In May 2009 she was appointed to a Washington Management Service (WMS) Band 2 District Tax Office (DTO) Administrator position in ESD's South Sound District Tax Office in Tacoma, Washington. As the DTO Administrator, Appellant was the highest level of authority located in the South Sound District Tax Office.

2.3 Prior to the action giving rise to this appeal, Appellant had no history of receiving formal disciplinary action. However, she did receive oral counseling and coaching to improve communication with her and her subordinate supervisors. In addition, her January 1 through June 30, 2010, performance evaluation noted that Appellant needed "to improve her delegation & communication skills as they apply to her direct reports and office leads." A preponderance of the credible evidence establishes that Appellant was aware of the concerns about her communication with staff.

2.4 Appellant was also aware of ESD policies. Most recently, on October 21, 2010, Appellant confirmed that she reviewed, understood and agreed to adhere to ESD's policies including Policy 1016 Employee Conduct.

2.5 ESD Policy 1016 – Employee Conduct states, in relevant part:

> Behavior
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> The department places the highest priority on quality customer service and accomplishes this goal, in part, by building position relationship with customers and co-workers, and through teamwork. The key to the delivery of quality service is the attitude the individual employees display in carrying out their assignments.
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> 1. Courtesy and Positive Work Attitude
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> a. Employees are expected to be courteous and helpful in their contact with the public and with each other, whether in person, over the phone or through correspondence. They are to display a cooperative and positive work attitude and be tactful in dealing with difficult situations. They are expected to exercise sound judgment in hostile situations by maintaining self-control and seeking appropriate assistance when necessary to defuse the situation.

> b. Inappropriate behavior or abusive language will not be tolerated. Abusive language is defined by (or may include) any remark that can be construed as unreasonable or derogatory, such as shouting, or demeaning remarks. Bullying or aggressive behavior for the sole purpose of intimidating are also a violation of this policy. This policy encompasses remarks made either to or about a customer or coworker. For this particular portion of this policy, failure to comply will be grounds for nothing less than disciplinary action, up to and including dismissal.
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> 3. Teamwork
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> Teamwork is critical to the agency's success. Employees are expected to constructively participate in their work teams, and display communication and listening skills that encourage full participation by all team members.

2.6 By letter dated March 6, 2012, the Washington Federation of State Employees (WFSE) reported to ESD's human resources office that Appellant engaged in inappropriate workplace behavior and inappropriate verbal and written communication. WFSE alleged that Appellant's actions violated Article 47 of the Collective Bargaining Agreement and did not foster mutual respect and professionalism in the office. WFSE asked ESD to investigate the situation.

2.7 Amy Estes, Human Resource Consultant, was assigned responsibility to investigate WFSE's allegations against Appellant. However, shortly after the investigation began, Appellant was out of the office on approved leave for medical purposes. Appellant was out of the office from March 15, 2012 through April 10, 2012. As a result, the investigation was pended until after her return to work.

2.8 After her return to work, ESD offered Appellant reasonable accommodation. Initially, Appellant expressed an interest in the process, but she subsequently informed ESD that she did not have a disability and did not wish accommodation.

2.9 The preponderance of the credible evidence establishes that after Appellant returned to work in April 2012, she continued to display erratic and inappropriate behavior in the work place.

2.10 Also, after her return to work, Appellant received counseling and a May 7, 2012, written performance expectation record concerning her failure to attend scheduled meetings. The May 7, 2012, performance expectation record also noted that Appellant's "communication style with staff and stakholders (*sic*) outside of your office is often abrupt and ineffective to the point of being counter productive." Appellant also received a June 25, 2012, letter of reprimand for an unauthorized absence which resulted in her missing two important meetings.

2.11 Because concerns with Appellant's behavior continued, Ms. Estes proceeded with the Article 47 investigation requested by WFSE.

2.12 During the investigation, Ms. Estes interviewed employees identified by WFSE, employees whose names were mentioned by the other interviewees, and Appellant. On August 6, 2012, Ms. Estes provided her investigation report to Lisa Marsh, Deputy Assistant Commission.

2.13 In part, the investigation report summarizes Ms. Estes' findings as follows:

> Based on the information obtained in the interviews with the staff of the South Sound District Tax Office, staff believe Ms. Evans' behavior does not reflect that of a manager or leader. According to staff, Ms. Evans does not interact with, nor available for her staff *(sic)*. She is either gone from the office or, when she is there, her door is closed. Two employees stated they felt Ms. Evans has threatened them by making comments such as: she can make arrangements for them to work at a different tax office; she can take away alternate schedules; and implying she would have never hired them if she had been on the interview panel. Staff reported they have to go to other resources to obtain vital information that has come out from Central Office, because Ms. Evans doesn't pass this information along. Several employees stated they felt Ms. Evans has made inappropriate comments about and towards other staff . . . . Staff have reported that Ms. Evans dances down the aisles of the office.

2.14 While Appellant objected to and denies making some of the statements that the witnesses reported she had made about and towards staff, a preponderance of the credible testimony establishes that she did engage in written and oral communication toward staff that was intimidating, threatening and unprofessional. For example, staff credibly testified that they felt intimidated and threatened when Appellant indicated that she had the authority to change flex schedules or to transfer staff to other offices.

2.15 A preponderance of the credible testimony also establishes that Appellant sometimes used a loud, unprofessional voice in the office and demonstrated unprofessional behavior in the presence of customers, that she failed to share important information about changes to laws and work processes, that her workplace behavior was erratic, that she was unapproachable and moody at times, and that she sometimes dressed inappropriately at the office. Staff credibly described that the atmosphere in the office was like "walking on eggshells" and tension you could "cut with a knife," and that Appellant's behavior was "like a rollercoaster" because you never knew if she would be in a good mood and approachable or if she would be having a bad day and respond to staff by being curt, rude, or aggressive. Staff testified that on a good day Appellant would be "bouncing off the walls" and on a bad day she would go to her office, close the door, play loud music and be unavailable to staff. Staff also credibly described the difficulties created by Appellant's unscheduled absences from the office and staff's inability to contact Appellant or to refer others to her during these absences.

2.16 After Ms. Marsh received Ms. Estes' investigation report, she proceeded with the pre-disciplinary process. Ms. Marsh provided Appellant with a pre-disciplinary letter containing the allegations of unprofessional behavior and poor performance. She scheduled and held a pre-disciplinary meeting with Appellant on August 22, 2012, but during the meeting she learned that Appellant had not been provided a copy of the Ms. Estes' report. As a result, Ms. Marsh gave Appellant a copy of the report and rescheduled the pre-disciplinary meeting for August 29, 2012, to provide Appellant an opportunity to review and respond to the allegations. While Appellant

provided her response to the allegations, Ms. Marsh found that her response was disjointed and confusing and did not explain, justify or mitigate Appellant's behavior.

2.17 After considering the charges, and Appellant's response, work history and work performance, Ms. Marsh determined that disciplinary action was warranted. Ms. Marsh concluded that Appellant communicated with staff in a negative manner, that she was unapproachable and unavailable to staff, that she created an unprofessional work environment in the Tacoma office, and that her behavior in the workplace was erratic, unprofessional and intimidating.

2.18 Ms. Marsh also concluded that Appellant was aware of the ESD policy and expectations for professional behavior, had been counseled and warned that her communication with staff needed to improve, and had been given an opportunity to improve. After reviewing all of the information, Ms. Marsh considered termination as the disciplinary sanction. But taking into account Appellant's history with the agency, she felt Appellant should be placed in a position where she could utilize her knowledge and skills but that did not require her to supervise or manage other staff. Therefore, by letter dated September 27, 2012, she demoted Appellant to a Tax Specialist 3 position effective October 10, 2012. In the letter, Ms. Marsh stated, in part:

> . . . you are well aware of the expectation, and your responsibility, to comply with all agency procedures and policies, especially those addressing our personal conduct. Your inappropriate behavior and clear lack of judgment have negatively impacted the entire workforce within the South Sound District Tax Office. Work has been disrupted, morale has become poor, and your credibility as a manager and supervisor has been irreparably diminished. The behavior and judgment you have used would not be tolerated if you were a first line supervisor. As a manager, your behavior and judgment are completely egregious. You give me no alternative but to remove you from a leadership position."

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that as a WMS employee, Appellant should be held to a higher standard of conduct yet she failed to meet that standard when she engaged in inappropriate and hostile behavior that damaged her working relationships with staff. Respondent alleges that Appellant was

rude to staff, made staff believe that she thought they were not doing their jobs, made staff cry, made threatening statements to staff, and failed to tell staff when she was going to be out of the office, how long she would be gone, where she was going and when she would be back which prevented staff from contacting her or referring others to her for assistance. Respondent argues that staff did not know what to expect from Appellant from one day to the next, that she made staff uncomfortable and that her erratic behavior was disruptive and created an intolerable, stressful work environment. Respondent asserts that Appellant was counseled, was given written performance expectations and was provided a communication coach yet she continued to fail to share relevant and important information with staff. Respondent further asserts that Appellant was aware of ESD Policy 1016 and argues that her behavior towards staff was a direct violation of the policy. Respondent contends that Appellant's behavior negatively impacted staff and the overall operations of the office. Therefore, Respondent argues that it was necessary to remove Appellant from a leadership role. Respondent argues that Appellant failed to meet the higher standard of conduct required of WMS employees and that based on Appellant's work history, demotion was the appropriate disciplinary sanction.

3.2 Appellant argues that she has worked for ESD for 26 years and that she was in charge of the largest district tax office in the state. Appellant asserts that her performance evaluations show she did a good job and that under her leadership, the Tacoma office met or exceeded performance goals. Appellant contends that she was blindsided by the allegations and admits that she may have sounded confused during the August 22, 2012, pre-disciplinary meeting because she did not know the basis for the allegations. Appellant asserts that the allegations are baseless. Appellant states that she did not attend the second pre-disciplinary meeting on August 29, 2012, but rather she sought assistance from ESD's Equal Opportunity/Discrimination officer and later requested a meeting with former Commissioner Paul Trause. Appellant contends that she worked her way up to a management position at ESD through discipline, growth, training and development and asks that she be reinstated to her leadership position.

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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 Appellant was a WMS employee. This Board has consistently maintained that WMS employees should be held to a higher standard of conduct and professionalism, should be expected to comply with agency policies, and should be expected to fulfill their duty to act as positive role models for staff. Appellant failed to fulfill the expectations of a WMS manager.

4.4 A preponderance of the credible testimony clearly established that at the time of the actions giving rise to this appeal, Appellant was not effective as a manager or leader for the staff in the Tacoma office. The testimony overwhelming supports the allegations that Appellant's behavior was erratic, inappropriate and unprofessional and that her behavior disrupted office operations and created a stressful atmosphere of uncertainty within the Tacoma office. Appellant was aware of the expectation for professional workplace behavior and she was aware of ESD's employee conduct policy and the need to comply with the policy. Further, she was aware of the concerns about office communications, she was provided a communication coach and she was provided an opportunity to demonstrate improvement. Nonetheless, Appellant continued to engage in erratic, inappropriate behavior, was unapproachable and unavailable to staff and failed to communicate important information with staff. Appellant's behavior was intimidating and damaged staff morale. Appellant's behavior was a violation of ESD Policy 1016. Respondent has met its burden of proof that the disciplinary sanction of demotion was imposed for good reason and that the disciplinary process and procedures followed were appropriate.

4.5 We acknowledge that Appellant denies making several of the statements testified to by staff. However, absent any evidence or testimony to corroborate Appellant's argument, the testimony of her subordinate staff consistently and overwhelming established that Appellant's negative behavior was erratic, unprofessional, intimidating and highly unacceptable in the workplace. Therefore, under the totality of the proven facts and circumstances, the disciplinary sanction of demotion is appropriate. The appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Phyllis Evans is denied.

DATED this _____ day of _____, 2013.

WASHINGTON PERSONNEL RESOURCES BOARD

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JOSEPH PINZONE, Chair

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DJ MARK, Vice Chair