

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

BRIAN DENTLER,)
)
Appellant,) Case No. R-DISM-16-002
)
v.) FINDINGS, CONCLUSIONS AND
) ORDER OF THE BOARD
WASHINGTON STATE UNIVERSITY,)
)
Respondent.)
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INTRODUCTION

Hearing. This matter came before the Personnel Resources Board, NANCY HOLLAND YOUNG, Chair, and SUSAN MILLER, Vice Chair. The hearing was held on June 29 and 30, 2016, at Washington State University (WSU) in Pullman, Washington.

Appearances. Appellant Brian Dentler was present and was represented by Larry Kuznetz, Attorney at Law. Donna Stambaugh, Senior Assistant Attorney General, represented Respondent, Washington State University (WSU).

Nature of Appeal. This is an appeal of a dismissal. Respondent alleges that Appellant’s admitted inappropriate conduct with his then thirteen year old step-daughter, CH, undermined the university’s mission of providing a safe and secure environment for students and visitors.

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WITNESSES

For Respondent. Lisa Gehring, HR Director, WSU; Donnie Bennler, Senior HR Consultant, WSU; Melynda Huskey, Interim Vice President, Student Affairs; Deputy Michael, Whitman County Sheriff's Office; Sergeant Chris Chapman, Whitman County Sheriff's Office; Matthew Skinner, Associate Vice President, Finance, and Appointing Authority; Brian Dentler, Appellant.

For Appellant. Cheryl Rajcich; Dr. Gregory Wilson, Psychologist; Deborah Holstad, Fiscal Analyst, WSU; Justin Krieger, Fiscal Analyst, WSU; Kim Small, Director, Sponsored Programs, WSU; Kelly Backman-Nigro, Fiscal Analyst, WSU; John Hart, Attorney at Law; Dr. Katherine Brown, Psychologist; Mark Thomas Monson, Attorney at Law; Brian Denter, Appellant.

PRELIMINARY MATTERS

Appellant's motions in limine. Appellant submitted a Motion in Limine requesting the Board exclude the testimony of Sergeant Chris Chapman and Deputy Michael Melcher of the Whitman County Sherriff's Office. Appellant contended WSU relied on police reports, not testimony, when making the decision to terminate Appellant. Appellant asserts information from the officers outside of the police reports would be hearsay.

Appellant's second motion in limine. Appellant submitted a second Motion in Limine requesting the Board move to exclude the testimony of Melynda Huskey and Kaela Rice because they were not produced in discovery until after the discovery cut-off. Appellant also moved to exclude Donette Neu, a Child Protective Services worker, who was present during the police interview with CH. Appellant contended Ms. Neu's testimony was not considered by the Appointing Authority when making the termination decision and therefore she should be excluded from testifying at the hearing. Appellant also moved to exclude the *Whitman County Sheriff's Office Interview Transcript; Summary of Camps, Recruitments, Orientations, etc. on Campus*, and the *Dear*

1 *Colleague Letter from United States Department of Education.* Appellant stated that these
2 documents were hearsay, were not produced before the discovery cut-off, and were not considered
3 when making the decision to terminate him.

4 Respondent opposed Appellant's Motions in Limine asserting that Ms. Huskey, Ms. Rice and Ms.
5 Neu were disclosed in discovery responses and all witnesses were included on the witness list
6 provided by WSU in a timely manner. Respondent contended the Board typically allows rebuttal
7 witnesses to testify in response to evidence even though the witnesses may not have been disclosed
8 earlier. Respondent asserted the Board is not precluded from considering hearsay evidence and
9 typically denies Motions in Limine, rather considers objections and admissibility questions at the
10 time the evidence is presented.

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12 The Board denied Appellant's motion to exclude hearsay and stated technical rules do not apply,
13 including hearsay, and would determine the appropriate weight to give to any hearsay evidence
14 offered and admitted during the hearing [see WAC 357-52-100(2); RCW 34.05.452; RCW
15 34.05.461(4)].

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17 **Respondent's motion to exclude polygraph results.** Respondent requested the Board exclude
18 Appellant's polygraph results because the Board does not normally admit polygraph reports.
19 Therefore, Respondent requested that the polygraph and any testimony around it be excluded from
20 the hearing. Appellant asserted the polygraph results showed no sexual intent the night the alleged
21 actions took place.

22
23 This Board has previously addressed the issue of the admissibility of polygraph evidence. In
24 keeping with prior decisions (see Cabotage v. Dept. of Corrections, PAB No. *DISM-97-021*,
25 Rondeau v. Dept. of Corrections, PAB No. *DISM-00-0048*), the Board granted Appellant's
26 motion to exclude the polygraph results.

27 **Appellant's motion for a directed verdict.** After the Respondent rested, Appellant requested
28 the Board move on a directed verdict, since Respondent had not met their burden of proof.
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1 The Board dismissed the motion in favor of hearing testimony from both sides.
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4 **FINDINGS**

5 Appellant Brian Dentler was a permanent employee for Respondent WSU until his termination
6 on February 23, 2016. Appellant and Respondent are subject to Chapter 41.06 RCW and the
7 rules promulgated thereunder, Title 357 WAC. Appellant filed a timely appeal with the Personnel
8 Resources Board on March 9, 2016.

9 Appellant was employed with WSU from 1999 to 2003, and again in 2014 through his dismissal
10 on February 23, 2016. At the time of his dismissal, Appellant was a Fiscal Analyst 2 for
11 Sponsored Programs within the Department of Financial Services. Appellant's job did not
12 involve interacting with students and visitors.

13
14 Prior to the action giving rise to appeal, Appellant did not receive any letters of reprimand,
15 counselling or other disciplinary actions.

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17 Cheryl Rajcich, Appellant's wife and CH's biological mother, testified that on September 18,
18 2015, CH told her, "Brian touched me inappropriately last night."

19
20 Appellant testified and told police that before bed he gave her two Sudafed, an over-the-counter
21 sleep aid, and a Benadryl due to a cold or flu. Ms. Rajcich stated she gave CH the same
22 medication earlier that week to help her sleep. Evident in the police report, CH later admitted she
23 also took a Zyrtec before bed without Appellant's knowledge.

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25 Appellant and Ms. Rajcich testified that because CH was a runner, she regularly asked for
26 massages and both he and his wife performed those massages. He further testified that CH
27 requested a massage on the night the allegations took place. While Appellant admits to coming
28 close to her vaginal area, he said that was not unusual when massaging her legs and buttocks.
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1 Appellant's testimony and the police report indicate Appellant denied he engaged in
2 inappropriate sexual contact with his step-daughter.

3
4 On September 19, 2015, CH was interviewed by police and provided details regarding
5 inappropriate physical contact by Appellant. On September 20, 2015, Appellant was interviewed
6 by police and admitted to giving CH a massage on her legs and buttocks, including coming
7 within one inch of her vagina, but did not perform any of the sexual acts CH alleged.

8 October 22, 2015, Appellant was charged with second degree molestation.

9
10 One November 11, 2015, WSU became aware of the charges filed against Appellant. WSU
11 placed Appellant on home assignment on December 2, 2015, pending further police
12 investigation.

13
14 A pre-disciplinary notice, dated December 15, 2015, notified Appellant he was being disciplined
15 for admitted actions and notified Appellant of a pre-disciplinary meeting.

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17 On December 21, 2015, a telephonic pre-disciplinary meeting was conducted. Present were
18 Matthew Skinner, Associate Vice President, Finance (appointing authority); Lisa Gehring,
19 Human Resources Director; Larry Kuznetz, Attorney for Appellant; and Appellant. At this
20 meeting Appellant stated his words in the police report were taken out of context and he declined
21 to say anything further upon the advice of Mr. Kuznetz.

22
23 Respondent's disciplinary letter stated Appellant's actions "interfered with the mission,
24 functions, processes, and goals of the university community." Respondent testified Appellant
25 worked in close proximity to student service units who host students and visitors in various
26 activities and programs and, as such, determined Appellant's admitted actions impaired the
27 university's ability to provide a safe and secure environment.

1 By letter dated February 23, 2016, Appellant was dismissed from his position as a Fiscal Analyst
2 2.

3 On March 9, 2016, a third police interview was conducted with CH. In this interview, CH
4 recanted her allegations stating she was 80% sure Appellant's actions were a dream, possibly due
5 to medication.
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7 On March 16, 2016, criminal charges against Appellant were dismissed with prejudice.
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9 Ms. Rajcich testified that CH told her she wanted to recant her allegations. Ms. Rajcich states
10 that after CH spoke with a counsellor, she realized the allegations may not have taken place and
11 could have been hallucinations or a dream resulting from the medicine.
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13 Sergeant Chapman from the Whitman County Sheriff's Office participated in the third interview
14 with CH and testified CH declared the allegations were a dream or did not happen.
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16 Ms. Rajcich testified that massages of CH's legs and buttocks were a regular occurrence, since
17 CH was a runner. Ms. Rajcich further testified that massages close to CH's pelvic area were not
18 uncommon and often CH would be massaged simultaneously by both Ms. Rajcich and Appellant.
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20 Ms. Rajcich testified she gave CH the same quantity of medicine earlier in the week as Appellant
21 did the night the allegations took place: Two Sudafed, one Benadryl, and one over-the-counter
22 sleep aid.
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24 **ARGUMENTS OF THE PARTIES**

25 **Summary of Respondent's Arguments.** Respondent states Appellant's admitted actions in the
26 detailed police report to be incompatible with the standards of integrity, trustworthiness and respect
27 the university asks of all employees at WSU. Respondent further states Appellant's admitted
28 actions are in direct conflict with WSU's charge to provide students with a safe living and learning
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1 community. Mr. Skinner, the appointing authority, testified he carried a huge burden in making the
2 decision whether to keep Appellant in WSU's employ and did not take the decision lightly.

3 Respondent argues that Appellant's admitted behavior of massaging CH within an inch from her
4 vagina was inappropriate. Respondent further argues that Appellant's behavior with a minor child
5 and CH's original testimony to police is disturbing and calls into question his sexual intent towards
6 students and visitors on campus.

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8 Respondent asserts that at the pre-disciplinary meeting, Appellant had an opportunity to defend
9 himself but said nothing except, "my words were taken out of context." Mr. Skinner had requested
10 a transcript of the police report and after reading the transcript, Mr. Skinner contends he felt an
11 obligation to dismiss Appellant in keeping with the safety of students and visitors on campus and in
12 support of the university's mission.

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14 Respondent contends that Appellant works in and among students and visitors who frequent
15 campus for various events and camps. Respondent states that Appellant's unit has an open door
16 facing student services and that mail delivery is typically handled by student employees.

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18 **Summary of Appellant's Arguments.** Appellant denies he engaged in inappropriate behavior
19 with CH, denies CH's allegations and contends his off-duty behavior does not have a nexus to
20 his position at the university. Appellant asserts he never admitted his behavior was
21 inappropriate, rather contends that WSU added the word, "inappropriate." Appellant asserts his
22 words were taken out of context in the police report and that he was silent during the pre-
23 disciplinary meeting upon the advice of his lawyer.

24 Appellant argues he did nothing different from a usual massage on the night the allegations took
25 place, with the exception of giving her cold medicine. Appellant states he gave her the same
26 dose that Ms. Rajcich had given her during the week to help her sleep: Two Sudafed, one
27 Benadryl, and one over-the-counter sleep aid. Appellant asserts he did not know until several
28 weeks later from her interview with police that CH also took a Zyrtec that night before bed.
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CONCLUSIONS OF THE BOARD

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2 The Personnel Resources Board has jurisdiction over the parties and the subject matter.
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4 In a hearing of an appeal for a disciplinary action, Respondent has the burden of supporting the
5 charges upon which the action was initiated by proving by a preponderance of the credible evidence
6 that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was
7 appropriate under the facts and circumstances (WAC 357-52-110).
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9 When considering whether there was just cause for a disciplinary action, we consider factors such
10 as whether the employee was aware of the expectations, rules, or policies allegedly violated,
11 whether the employee was aware of the need to comply with the rule or policy or to improve
12 performance, whether the employee had an opportunity to demonstrate compliance or
13 improvement, whether the discipline was imposed for good reason, whether the disciplinary process
14 and procedures followed were appropriate and whether the sanction imposed was sufficient to
15 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
16 program.
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18 The board relies on the facts and findings of this case to determine if there is a nexus between
19 Appellant's role at the university and his behavior towards his minor child and/or criminal charges.
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21 Appellant was initially charged with second degree molestation and, as such, the Board understands
22 Respondent's reasoning for home assignment during the police investigation and would have
23 further understood Appellant's remaining on home assignment pending the outcome of the police
24 investigation. However, after CH recanted her allegations, the charges against Appellant were
25 dismissed with prejudice, yet he had since been terminated from employment with WSU and not
26 reinstated to his position. His termination remained in effect because he was dismissed for his
27 admitted actions, rather than for criminal charges.

28 Mr. Skinner testified Appellant was dismissed for his admitted actions, not for actual criminal
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1 charges. However, Appellant never admitted to the police or during testimony that his behavior on
2 the night of September 17, 2015, was inappropriate, rather maintained WSU added the word,
3 “inappropriate.” During the police interview, evident through police reports and transcripts,
4 Appellant denied the sexual actions for which he was accused. Further, Appellant has no charges
5 of child molestation against him, as the charges were dismissed with prejudice after CH recanted
6 her allegations. The Board cannot presume that CH’s recanting was anything other than truthful.
7 The Board finds Appellant poses no risk to adult and students and visitors at WSU and therefore,
8 does not find a nexus between Appellant’s admitted actions and his role at the university. As such,
9 the Board finds the sanction of termination inappropriate.

10 In *Vargas vs. Department of Social and Health Services*, PAB No. *DISM-96-0048*, the Board
11 overturned a termination because the charges against Appellant for selling cocaine were dismissed.
12 In *Myklebust vs. Department of Social and Health Services*, PAB Case No. *DISM-03-0066*, charges
13 of 4th degree assault on his wife held up in court and the Board ruled that termination was an
14 appropriate action.

15 Respondent has not met the burden of proof and did not establish just cause for Appellant’s
16 termination. Therefore, Appellant should be returned to his position as a Fiscal Analyst 2 without a
17 break in service.
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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Brian Dentler is granted and Appellant is to be restored to his position as Fiscal Analyst 2 on a date that provides for no break in service.

DATED this ____ day of _____, 2016.

WASHINGTON PERSONNEL RESOURCES BOARD

NANCY HOLLAND YOUNG, Chair

SUSAN MILLER, Vice Chair