

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

REBECCA BEACH,

Appellant,

v.

WASHINGTON STATE UNIVERSITY,

Respondent.

Case No. R-RED-14-002

FINDINGS, CONCLUSIONS AND
ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came before the Personnel Resources Board, NANCY HOLLAND YOUNG, Chair; SUSAN MILLER, Member; and VICKY BOWDISH, Member. The hearing was held on April 1, 2015, in Spokane, Washington. Subsequent to this hearing but prior to issuing this decision, the Board's titles changed. The signatures on this document reflect the Board's current titles.

1.2 **Appearances.** Appellant Rebecca Beach was present and represented herself *pro se*. Cheryl Wolfe, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal from a reduction in salary. Respondent alleged that Appellant violated policy when she was under the influence of alcohol at work.

II. FINDINGS OF FACT

2.1 Appellant Rebecca Beach is a permanent employee for Respondent Washington State University (WSU). 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 November 13, 2014.

2.2 Appellant has been employed with WSU for over 27 years. At the time of the action giving rise to this appeal, Appellant was a Custodian 4 in the Custodial Services Division of

1 Facility Services-Operations. Prior to the action giving rise to this appeal, Appellant had no
2 history of receiving formal or informal disciplinary action.

3
4 2.3 Appellant was aware of WSU's expectation that employees do not drink on the job or
5 come to work under the influence. WSU's Executive Policy #20 in WSU's Alcohol and Drug
6 Policy. The policy ". . . aims to eliminate alcohol and drug abuse and to educate the University
7 community on relevant laws and consequences. . . ." In addition, Appellant received an email
8 copy of WSU Alcohol and Drug Abuse Manager Guidelines. The guidelines state, in part:

9 Contact your local Human Resource Services Office if an employee is suspected
10 of substance abuse because he or she smells of alcohol and/or drugs and/or
11 exhibiting behaviors such as slurred speech, uncoordinated movement, gait stupor,
12 excessive giddiness, unexplained periods of exhilaration and excitement, and/or
13 impaired judgment.

14 The precise course of action taken is dependent on the specifics of the situation.
15 The supervisor/manager should take into account the seriousness of each
16 situation.

17 . . .

18 Depending on the scenario, the supervisor/manager may immediately contact law
19 enforcement or send the employee home.

20 2.4 Dan Costello, Assistant Vice President of Facilities Services-Operations, was Appellant's
21 supervisor and appointing authority. On August 15, 2014, Mr. Costello was told by another
22 employee that Appellant was drunk at work. Mr. Costello received the report at approximately
23 12:30 p.m.

24 2.5 Because of the serious nature of the allegation, Mr. Costello asked Craig Cole, Director of
25 Construction Services, to accompany him to Appellant's office in Daggy Hall where they met
26 with Appellant. When they first arrived in Appellant's office, Appellant was assisting a
27 customer. Appellant did not appear unable to appropriately assist the customer. After the
28 customer left, Mr. Costello told Appellant that they were there because someone had reported
29 that Appellant had been drinking. While in Appellant's office, Mr. Costello and Mr. Cole
smelled a slight odor of alcohol and noted that Appellant's eyes were watery and her speech was

1 slightly slurred. While in Appellant's office, Mr. Costello called WSU police and reported that
2 Appellant was suspected of using alcohol on the job and asked them to come and make an
3 assessment.

4
5 2.6 Before the police arrived, Appellant, Mr. Costello and Mr. Cole left Appellant's office
6 and walked through the work area and went upstairs where Appellant showed them some lights
7 that needed to be repaired and how supplies came into Daggy Hall. During the "walk-around,"
8 Appellant exhibited some difficulty walking but her ability to discuss the needed repairs and the
9 supply area did not appear impaired.

10
11 2.7 Mr. Costello testified that he felt that by looking at the work area, it gave other staff the
12 appearance of a purpose for him to be meeting with Appellant. As a Custodian supervisor,
13 Appellant's work duties require her to drive a WSU vehicle on campus. Mr. Costello testified
14 that he was concerned about Appellant's driving under the influence while on duty.

15
16 2.8 Before the end of the "walk-around," Mr. Costello went back downstairs and met the
17 WSU police officers in the front hallway. Other employees, including subordinates of Appellant,
18 were in the area because it was near the end of shift. Mr. Costello, two WSU police officers, Mr.
19 Cole and Appellant entered a classroom off the hallway so that they could meet with Appellant
20 out of the sight and hearing of the other employees.

21
22 2.9 Officer Eric Welter took the lead in questioning Appellant. Officer Darren Jones
23 primarily observed the questioning. Officers Welter and Jones credibly testified that they began
24 assessing Appellant immediately. Officer Welter credibly testified that at first Appellant declined
25 to answer his questions. Officers Welter and Jones both credibly testified that Appellant appeared
26 very agitated and smelled of alcohol. Appellant denied being under the influence and indicated
27 that she had a medical condition that caused similar symptoms. Officer Welter asked Appellant if
28 she would voluntarily take a breathalyzer test and she declined.
29

1 2.10 At one point during the questioning, Mr. Cole left the room. Later, Officer Welter and
2 Mr. Costello left the room. Officer Jones credibly testified that while Officer Welter and Mr.
3 Costello were out of the room, he talked with Appellant and continued to smell alcohol as she
4 spoke.

5 2.11 Officer Welter and Mr. Costello returned to the classroom and they, Appellant and
6 Officer Jones then walked to Appellant's office so that she could collect her belongings. On the
7 way to her office, Appellant asked one of her subordinates to complete the checkout process on
8 her behalf.

9 2.12 While in the classroom, Officer Jones offered to give Appellant a ride home after the
10 meeting. Officer Jones credibly testified that during the drive to Appellant's house he continued
11 to smell alcohol coming from her breath.

12 2.13 After Appellant left with Officer Jones, Mr. Costello contacted the WSU Human
13 Resource Services Office to report the incident. He also contacted Thomas Parrish, Director of
14 Custodial Services, to inform him of the incident and that Appellant was taken home.

15 2.14 Mr. Costello credibly testified that while he found no evidence that Appellant was
16 drinking at work, he believed that she was under the influence on August 15, 2014. In reaching
17 his conclusion, Mr. Costello observed that Appellant had a slight odor of alcohol, she was not as
18 mentally aware as usual, her eyes were watery and slightly droopy, her speech was slightly
19 slurred and she had more difficulty walking than usual. The police report (Exhibit R-3), supports
20 Mr. Costello's observation that Appellant had the odor of intoxicants coming from her breath.

21 2.15 Perry Berger has known Appellant for 25 years and has worked with her for 13 years. Mr.
22 Berger credibly testified that he spoke with Appellant in the morning of August 15, 2014, and
23 noticed no abnormalities in her speech or actions. However, Appellant left the WSU campus for
24 her lunch break sometime after Mr. Berger spoke with her. Mr. Berger did not speak to Appellant
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1 after she returned to campus following her lunch break but he did see her walking down the hall
2 with the officers and Mr. Costello.

3
4 2.16 Based on his own observations and the opinions of Officers Welter and Jones, Mr.
5 Costello charged Appellant with being under the influence at work. On August 29, 2015, Mr.
6 Costello provided Appellant with a pre-disciplinary letter notifying her of the charge. The letter
7 scheduled a meeting for September 4, 2014 to discuss Appellant's "inappropriate conduct and
8 behavior . . . which occurred on Friday, August 15, 2014." (Exhibit R-2) During the meeting
9 Appellant provided a written response denying the charge and expressing, in part, her anger and
10 distrust of management for the way the incident was handled in front of her co-workers.

11 2.17 By letter dated September 4, 2014, Appellant's physician provided WSU's Human
12 Resource Services Office information concerning Appellant's medical condition. Some of the
13 symptoms of Appellant's condition include loss of balance, blurred vision, dizziness, and
14 difficulty walking. The symptoms do not include the smell of alcohol.

15
16 2.18 Following the pre-disciplinary meeting, Mr. Costello considered Appellant's response to
17 the charges, her work history and length of service at WSU, the seriousness of the incident and
18 the sanctions imposed on other employees for similar behaviors. Mr. Costello concluded that
19 Appellant's recollection of the event was inconsistent and that during the event her speech was
20 slurred and she smelled of alcohol. Mr. Costello concluded that, as supported by the WSU
21 Officers' assessments, Appellant reported to work under the influence on August 15, 2014. Mr.
22 Costello felt that disciplinary action was warranted.

23 2.19 By letter dated October 1, 2014, Mr. Costello imposed a 3 step, 6 month reduction in
24 Appellant's salary. In the letter, Mr. Costello stated, in part:

25 . . . Your records indicate your performance has been exceptional. I have also
26 received an email update from Human Resource Services (HRS) Disability
27 Services that indicated HRS has received medical documentation to support
28 periodic watery eyes, and lack of balance, however, this does not support the
29 smell of alcohol, the slightly slurred speech, or the false recollection of the events

1 that took place. I conclude that as a supervisor, you are held to a higher standard
2 as you should set an example and enforce policies for those you supervise. . . .

3 It is the intent of this disciplinary action to impress upon you the seriousness of
4 your behavior. This letter is intended to convey to you the importance of meeting
5 workplace standards and expectations. . . .

6 **III. ARGUMENTS OF THE PARTIES**

7 3.1 Respondent argues that as a supervisor Appellant was aware of the expectations
8 demonstrated in the WSU Alcohol and Drug Abuse Manager Guidelines. Respondent asserts that
9 WSU police officers, Mr. Costello and Mr. Cole were consistent in their testimony that they
10 smelled alcohol on Appellant's breath. Respondent further asserts that throughout the process
11 Appellant's memory and recollection of the events were inconsistent. Respondent contends that
12 Mr. Costello had significant, reasonable and objective evidence to support his conclusion that
13 Appellant was under the influence at work. Respondent further contends that WSU afforded
14 Appellant due process and conducted a fair and prompt investigation. Respondent asserts that
15 given Appellant's behavior and her role as a supervisor, discipline was warranted and that a 3
16 step, 6 month reduction in salary was appropriate to achieve the goals of changing behavior and
17 deterring others.

18 3.2 Appellant argues that she has worked for WSU for 27 years, has an exemplary work history
19 and exceptional performance evaluations. Appellant argues that on August 15, 2014 she was not
20 under the influence at work and she did not violate WSU policies, procedures or rules. Appellant
21 contends that she was singled out, treated differently than others and humiliated in public.
22 Appellant asks that the disciplinary action be rescinded and that all documents related to the issue
23 be destroyed.

24 **IV. CONCLUSIONS OF LAW**

25 4.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.

26
27 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
28 the charges upon which the action was initiated by proving by a preponderance of the credible
29

1 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
2 sanction was appropriate under the facts and circumstances. WAC 357-52-110.

3
4 4.3 Respondent has met its burden of proof that more likely than not, Appellant was under the
5 influence at work and that her behavior violated the WSU Alcohol and Drug Abuse Manager
6 Guidelines. As a long term employee and supervisor, Appellant should be held to a high standard of
7 conduct and should be expected to comply with agency policies and guidelines.

8
9 4.4 When considering whether there was just cause for a disciplinary action, we consider
10 factors such as whether the employee was aware of the expectations, rules, or policies allegedly
11 violated, whether the employee was aware of the need to comply with the rule or policy or to
12 improve 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. Gill v. University of Washington, PRB Case No. R-DISM-10-008 (2011) and Oliver v.
17 Employment Security Department, PRB Case No. R-DEMO-08-006 (2009).

18
19 4.5 Here, Appellant was aware of the expectation that employees not report to work under the
20 influence and she was aware of her responsibility to comply with this expectation. Yet, based on a
21 preponderance of the credible evidence, she reported to work on August 15, 2014, smelling of
22 alcohol and exhibiting behaviors consistent with being under the influence. While it is undisputed
23 that the August 15 meeting with Appellant could have been handled in a more discrete manner
24 away from her work area, Respondent followed appropriate procedures in responding to the
25 incident, conducting the pre-disciplinary process and issuing the discipline.

26
27 4.6 In determining whether a sanction imposed is appropriate, consideration must be given to
28 the facts and circumstances, including the seriousness and circumstances of the offenses. The
29 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to

1 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
2 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

3
4 4.7 In consideration of Appellant's length of service, the lack of any formal disciplinary actions
5 or corrective actions in her work history, and her history of exemplary performance, we find that
6 under the unique facts and circumstances of this case, a 6 month reduction in salary is too severe for
7 a first time offense. While Respondent proved that Appellant reported to work with the smell of
8 alcohol on her breath, the evidence does not establish that she was intoxicated or that she was
9 unable to perform the duties of her position. Therefore, Appellant's reduction in salary should be
10 modified to a 3 step 4 month reduction in salary. This sanction should be sufficient to prevent
11 recurrence, to deter others from similar misconduct, and to maintain the integrity of the program.
12 By reducing the sanction in this case, we are not condoning Appellant's decision to report to work
13 apparently under the influence and caution her that future offenses could result in more severe
14 discipline up to and including dismissal.

15 **V. ORDER**

16 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Rebecca Beach is granted in
17 part and the disciplinary sanction is modified to a 3 step 4 month reduction in salary.

18
19 DATED this ____ day of _____, 2015.

20 WASHINGTON PERSONNEL RESOURCES BOARD

21
22 _____
23 NANCY HOLLAND YOUNG, Chair

24
25 _____
26 SUSAN MILLER, Vice Chair

27
28 _____
29 VICKY BOWDISH, Member