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BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DANIEL KANNEGAARD JR,)	Case No. DISM-01-0039
)	
Appellant,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND ORDER OF THE BOARD
v.)	
)	
WASHINGTON STATE UNIVERSITY,)	
)	
Respondent.)	

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at Washington State University, Lighty Building, Pullman, Washington, on May 22, 2002. RENÉ EWING, Member, did not participate in the hearing, however, she reviewed the file, exhibits and the recorded proceedings and participated in the decision in this matter.

1.2 **Appearances.** Appellant Daniel Kannegaard was present and was represented by Edward Earl Younglove III, Attorney at Law, of Parr and Younglove, P.L.L.C. Donna J. Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, insubordination, and gross misconduct. Respondent alleges that Appellant made a threatening remark to another employee and behaved unprofessionally and inappropriately when he threatened his superior a lawsuit.

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2 1.4 **Citations Discussed.** WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of
3 Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No.
4 D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995);
5 Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Aquino v. University of Washington,
6 PAB No. D93-163 (1995); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

8 II. FINDINGS OF FACT

9 2.1 Appellant Daniel Kannegaard was a Food Service Worker and permanent employee for
10 Respondent Washington State University. Appellant and Respondent are subject to Chapters 41.06
11 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a
12 timely appeal with the Personnel Appeals Board on May 9, 2001.

13
14 2.2 By letter dated April 25, 2001, Greg Royer, Vice President of Business Affairs, informed
15 Appellant of his dismissal effective at the close of his shift on May 10, 2001. Mr. Royer charged
16 Appellant with neglect of duty, insubordination and gross misconduct. Lori Lamb Assistant Vice
17 President for Personnel and Administration, wrote a memo recommending disciplinary action, dated
18 April 23, 2001. Ms. Lamb outlined the specific allegations against Appellant, stating that 1) on
19 March 29, 2001 Appellant made a threatening statement to Susan McCarty in reference to Ms.
20 McCarty's husband, and 2) later that day he yelled out to his superior, Eric Webb, "You better have
21 a god damn good lawyer, I'm suing your ass. That's a promise, not a threat," when Mr. Webb
22 served him with a pre-disciplinary letter and notice of home assignment.

23
24 2.3 Appellant began his employment with Washington State University in June 1995. Appellant
25 was assigned to work in the kitchen of the Compton Union Building (CUB). Appellant has been the
26 subject the following disciplinary actions:

- By letter dated October 20, 2000, Appellant received a three-day suspension for unprofessional and inappropriate conduct toward two student workers, use of profanity and physically touching a student an during angry outburst. Kannegaard v. WSU, PAB No. SUSP-00-0042 (2002).
- By letter dated March 28, 2001, Appellant was demoted to a position as a Food Service Worker from his position as a Food Service Worker Lead for refusing to follow the instructions of his supervisor. Kannegaard v. WSU, PAB No. DEMO-01-0011 (2002) *appeal pending in Thurston County Superior Court.*

Allegation #1

2.4 On March 29, 2001, the day after Appellant received his demotion letter from Tim McCarty, Appellant and Susan McCarty were walking towards each other in a hallway of the CUB. As they passed, Ms. McCarty greeted Appellant. Appellant first met Ms. McCarty when he began working at the CUB, and their relationship had been friendly in nature and limited to “small talk.”

2.5 Appellant was aware that Ms. McCarty, who at the time was also employed by the university, was the wife of Tim McCarty.

2.6 Appellant was upset with the demotion letter he had received the previous day from Mr. McCarty, and he perceived Ms. McCarty’s greeting as sarcastic. He also believed Ms. McCarty was aware that her husband had just demoted him and that she believed that Appellant was involved in a whistleblower complaint previously filed against her.

2.7 Appellant was admittedly frustrated when he responded to Ms. McCarty’s greeting, however, the content and nature of his response are in dispute. Ms. McCarty testified that Appellant told her, “Good luck in Walla Walla after I’m through with Tim.” Appellant was aware that Mr. McCarty and his family were relocating to Walla Walla.

1 2.8 Appellant denies that he threatened Ms. McCarty with physical harm and testified that his
2 statement was “Good luck in Walla Walla after my attorneys get done with Tim,” a reference to
3 plans he had to file a lawsuit against Mr. McCarty and the university.
4

5 2.9 Ms. McCarty had been the subject of a whistleblower complaint filed against her in 1998.
6 Ms. McCarty speculated that someone within her department, along with the assistance of union
7 shop steward Kay Grende, filed the complaint against her. However, she did not believe that
8 Appellant was responsible. Ms. McCarty credibly testified that she was unaware that Appellant had
9 been demoted or had received notification of his demotion the previous day.
10

11 2.10 We find Ms. McCarty’s testimony credible and find no evidence to substantiate that Ms.
12 McCarty had a motive to retaliate against Appellant. After reviewing the testimony and demeanor
13 of Appellant and Ms. McCarty during the hearing, we find that more likely than not, the incident
14 took place as follows.
15

16 2.11 Ms. McCarty was bewildered by Appellant’s comment and his tone of voice, which she
17 perceived as harsh and intimidating. Ms. McCarty thought the comment by Appellant was out of
18 character based on her previous cordial interactions with him. She became frightened and felt in
19 her “gut” that the comment “was wrong.” Based on Appellant’s tone of voice, Ms. McCarty
20 became concerned because she and her young daughter would be alone for a period of days while
21 her husband was in Walla Walla. Ms. McCarty immediately reported the incident to her husband.
22

23 2.12 Later that day, Lori Lamb, Assistant Vice President for Personnel and Administration, was
24 informed of Appellant’s comment to Ms McCarty. Ms. Lamb immediately drafted a pre-
25 disciplinary notice. The notice stated that Appellant’s comment to Ms. McCarty left her “feeling
26

1 very threatened and intimidated.” The letter also confirmed that a pre-disciplinary meeting to
2 discuss the charge would be held on April 2, 2001.

3
4 ***Allegation #2***

5 2.13 Eric Webb, Assistant Food Services Manager, was responsible for delivering Ms. Lamb’s
6 pre-disciplinary letter and a letter placing Appellant on home assignment effective immediately.
7 Mr. Webb approached Appellant, who was working in the kitchen dish area, and asked him to come
8 with him because he needed to give him a letter. Appellant responded, “Now what?” Appellant
9 requested to have a union representative present with him when he met with Mr. Webb. Mr. Webb
10 responded that he was merely providing him with a letter and that union representation was not
11 necessary.

12
13 2.14 Mr. Webb and Appellant entered an office where Appellant reviewed the letter. Appellant
14 denied that he made the statement described in the letter, and he angrily told Mr. Webb, “I hope you
15 have a damn good attorney because I’m going to sue you for five millions dollars!”

16
17 2.15 Appellant was upset as he proceeded to the kitchen to gather his personal belongings.
18 Appellant angrily told Mr. Webb, who was accompanying him, that he did not need an escort.
19 Appellant again stated, “I hope that you have a damn good attorney because I am going to sue your
20 ass!” We find that Appellant, more likely than not, raised his voice when he threatened Mr. Webb
21 with filing a lawsuit against him. Appellant was subsequently escorted out of the building by
22 campus police officers.

23
24 2.16 Ms. Lamb, who was not in Appellant’s chain of command, conducted an investigation into
25 the events of March 29, 2001. Ms. Lamb met with Ms. McCarty on April 2, 2001. Ms. McCarty
26 described her encounter with Appellant. Ms. Lamb also met with Appellant on April 2, and during

1 the meeting he denied threatening Ms. McCarty and asserted that he told Ms. McCarty, “Good luck
2 in Walla Walla after my attorneys get done with Tim.” During the meeting, Appellant asserted that
3 management was subjecting him to harassment and discrimination due to his involvement in filing a
4 whistleblower complaint against his previous supervisor, Yves LaTouche. Appellant also asserted
5 that Ms. McCarty believed that he was involved in the whistleblower complaint filed against her.

6
7 2.17 As a result of April 2 meeting, Ms. Lamb directed Heidi Hutchinson, Assistant Director of
8 Human Resources, to conduct an investigation into Appellant’s claims of discrimination and
9 harassment. On April 13, 2001, Ms. Hutchinson issued her report stating that she found no facts to
10 support Appellant’s claims that management harassed, discriminated or retaliated against him for
11 his whistleblower activities.

12
13 2.18 After reviewing the statements from Appellant and Ms. McCarty, Ms. Lamb found that Ms.
14 McCarty was more credible and she concluded that Appellant told Ms. McCarty, “Good luck in
15 Walla Walla, after I take care of Tim.” Ms. Lamb concluded that Appellant’s statement was
16 “inappropriate and unprofessional” and constituted a threat toward the “physical safety” of Mr. and
17 Mrs. McCarty. Ms. Lamb further concluded that Appellant’s comment to Mr. Webb was
18 disrespectful of authority and should not be tolerated by the university.

19
20 2.19 On April 23, 2001, Ms. Lamb issued a memorandum to Gregory Royer, Vice President for
21 Business Affairs, recommending that Appellant be dismissed from his position as a Food Service
22 Worker. Ms. Lamb outlined the reasons for recommending termination, including Appellant’s
23 employment history and his suspension on October 20, 2000 and demotion on March 28, 2001. Ms.
24 Lamb wrote:

25
26 Obviously, these prior attempts to impress upon Mr. Kannegaard the need to
conform his behavior to acceptable workplace standards have been unsuccessful.

1 His conduct is totally unacceptable, is disruptive, and inhibits our ability to
2 conduct business at the CUB and to provide a safe and secure work environment
3 for all of our employees. Further, Mr. Kannegaard's inability to respect authority
4 is startling. Previous corrective and disciplinary actions have failed to convince
5 him to take steps to control his anger and conduct himself appropriately.

6 2.20 Mr. Royer was Appellant's appointing authority at the time the discipline was imposed.
7 Prior to issuing the termination letter, Mr. Royer reviewed Ms. Lamb's memorandum
8 recommending Appellant's termination. Mr. Royer also met with Ms. Lamb and Ms. Hutchinson to
9 review the findings and their conclusions regarding their respective investigative reports. Mr.
10 Royer testified that as an employer, the Washington State University has a responsibility to provide
11 its employees with a work environment of trust and respect and a workplace that is safe and secure.
12 Mr. Royer reviewed Appellant's prior disciplines, which included issues with Appellant's anger, his
13 inappropriate behavior toward coworkers and his failure to follow supervisory directives. Mr.
14 Royer concluded that Appellant failed to learn from his actions and failed to change his behavior
15 despite the plan of progressive discipline imposed.

16 2.21 Mr. Royer testified that in undertaking the discipline, he also gave great weight to the threat
17 Appellant made to Ms. McCarty and information from Ms. Lamb and Ms. Hutchinson that other
18 employees felt unsafe and threatened by Appellant's behavior. Mr. Royer ultimately concluded that
19 Appellant neglected his duty to treat Ms. McCarty and Mr. Webb with respect, that he was
20 insubordinate toward Mr. Webb, that his behavior had a negative impact on the work environment
21 and that his misconduct constituted gross misconduct. Mr. Royer concurred with the
22 recommendation from Ms. Lamb, and by letter dated April 25, 2001, he informed Appellant of his
23 termination, effective May 10, 2001.

1 **III. ARGUMENTS OF THE PARTIES**

2 3.1 Respondent argues that the testimony supports that Appellant made a threatening remark to
3 Ms. McCarty. Respondent asserts that Appellant engaged in inappropriate behavior when he made
4 the threatening comment, which left Ms. McCarty feeling frightened and alarmed by his tone of
5 voice. Respondent asserts that Appellant’s comment was menacing and hostile and made in an
6 attempt to intimidate Ms. McCarty by threatening “to get” her husband. Respondent asserts that
7 Ms. McCarty had a reasonable belief that her safety was in danger.

8 Respondent argues that Appellant’s behavior was inappropriate when he spoke to Mr. Webb
9 in a threatening manner and showed a lack of regard for those in authority. Respondent argues that
10 Appellant was not entitled to have a union representative present when he was served with a pre-
11 disciplinary letter by Mr. Webb because simply handing Appellant a letter did not violate his right
12 to union representation.

13 Respondent argues that Appellant had been given repeated opportunities to prove that he
14 could meet workplace expectations and engage in the minimum standards of behavior toward his
15 coworkers and supervisors. Respondent argues that Appellant’s failure to behave in an appropriate
16 manner left the appointing authority with no choice but to terminate him from employment.

17 Respondent contends that Appellant failed to provide any proof that he was subjected to
18 retaliation or that Ms. McCarty’s allegation stemmed from a two-year old whistleblower complaint.

19 Respondent asserts that the appointing authority had a duty to provide a safe and secure
20 environment for other employees, but that Appellant’s behavior impeded that mission. Respondent
21 asserts that the appointing authority, in deciding to dismiss Appellant, considered Appellant’s prior
22 incidents of misconduct and Appellant’s blatant disregard for authority. Respondent asserts that the
23 appointing authority’s ultimate responsibility was to protect university employees and that
24 termination under the circumstances was appropriate and should be upheld.

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1 3.2 Appellant he denies that he made a threatening statement to Ms. McCarty, and he asserts
2 that he told her, “Good luck in Walla Walla when my attorneys get done with Tim.” Appellant
3 asserts that the statement he made to Mr. Webb, threatening legal action, supports his version of the
4 event with Ms. McCarty. Appellant asserts that his comments about suing the university stemmed
5 from his frustration regarding unfounded allegations that resulted in a prior suspension and the
6 demotion letter he received on March 28. Appellant denies that he yelled at Mr. Webb and he
7 asserts that his threat of bringing legal action against Mr. Webb did not constitute a threat of
8 violence.

9 Appellant asserts that the discipline stemming from his interaction with Mr. Webb on the
10 afternoon of March 29 should not be considered because it violated his rights under the law and the
11 collective bargaining agreement to have a union representative present when meeting with Mr.
12 Webb were violated. Appellant asserts that he was entitled to have a union representative present
13 when he was served with the pre-disciplinary letter because he had a reasonable belief, based on his
14 prior interactions with management, that the meeting could lead to discipline.

15 Appellant further argues that the appointing authority considered information that unnamed
16 persons complained to management that they felt threatened by Appellant. Appellant asserts,
17 however, that he is entitled to receive the specified charges against him, is entitled to know who
18 those persons were and what the circumstances were. Appellant argues that it is unfair to base his
19 termination on these anonymous concerns that were factored into the appointing authority’s
20 decision to terminate him.

21 Appellant argues that the university has subjected him to a pattern of harassment. Appellant
22 asserts that the discipline should be set aside and that he should be fully reinstated.

23 24 **IV. CONCLUSIONS OF LAW**

25 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
26 herein.

1
2 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
3 the charges upon which the action was initiated by proving by a preponderance of the credible
4 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
5 sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-
6 240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

7
8 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
9 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
10 of Social & Health Services, PAB No. D86-119 (1987).

11
12 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior
13 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
14 Dep't of Social & Health Services, PAB No. D94-025 (1995).

15
16 4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
17 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

18
19 4.6 Respondent has shown by a preponderance of the credible evidence that Appellant told Ms.
20 McCarty, "Good luck in Walla Walla after I'm through with Tim." Appellant's statement and his
21 tone of voice was threatening and intimidating. Appellant's statement and his tone of voice, which
22 when combined with his anger over his employment problems, was a sign of ill will, intimidation
23 and hostility. Ms. McCarty fear under the circumstances was reasonable. Appellant's behavior
24 was inappropriate and uncalled for under the circumstances and sufficiently alarmed Ms. McCarty
25 to where she felt the need to report the incident.

1 4.7 Appellant's admitted frustration over his employment issues with the university does not
2 mitigate his misconduct. Furthermore, even if Appellant's comment to Ms. McCarty was, as he
3 asserts, merely a threat of bringing legal action against Mr. McCarty and not a threat of physical
4 violence, it is not appropriate for any employee to make such a statement in the workplace to
5 another employee. Respondent has met its burden of proving that Appellant neglected his duty
6 and this his misconduct rises to the level of gross misconduct.

7
8 4.8 We are concerned with Mr. Webb's failure to comply with Appellant's request to have a
9 union representative present when Mr. Webb served him with Ms. Lamb's letter. When
10 considering the history of discipline taken against Appellant in the prior year, it was not
11 unreasonable for Respondent to grant Appellant's request for representation. Nonetheless,
12 Appellant was on notice that further instances of misconduct could lead to further discipline, and he
13 should have had a heightened awareness of the need to behave himself with professionalism and
14 decorum in the workplace. There is no dispute that Mr. Webb clearly indicated to Appellant that
15 his sole reason for meeting with Appellant was to deliver some correspondence from Ms. Lamb.
16 Mr. Webb did not engage Appellant in any conversation beyond that nor did he question Appellant
17 about the issue outlined in the pre-disciplinary letter.

18
19 4.9 Therefore, we cannot conclude that Appellant's outburst of anger and his display of
20 disrespect toward Mr. Webb was mitigated under the circumstances. Appellant was fully aware of
21 the pre-disciplinary process and his avenues for disputing the allegation. Appellant's display of
22 anger and his threat of initiating legal action against Mr. Webb were of his own volition, were
23 unwarranted and a showed willful disrespect for his superior. Respondent has proven that
24 Appellant neglected his duty to treat his superior with respect and professionalism.

1 4.11 Although it is not appropriate to initiate discipline based on prior formal and informal
2 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the
3 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.
4 D93-163 (1995).

5
6 4.12 In determining whether a sanction imposed is appropriate, consideration must be given to
7 the facts and circumstances, including the seriousness and circumstances of the offenses. The
8 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
9 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
10 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

11
12 4.13 The appointing authority testified that one basis for his determination to dismiss Appellant
13 was the information he received from Ms. Lamb and Ms. Hutchinson that other university
14 employees had also reported feeling threatened by Appellant. Appellant had a history of engaging
15 in angry confrontations with coworkers and challenging supervisory directives, and it is not
16 uncommon for a workplace to be disrupted or negatively affected by such displays of anger and
17 hostility in the workplace. However, these unsubstantiated reports should not have been given any
18 weight as a basis for determining the level of discipline. In assessing whether the sanction of
19 dismissal was appropriate, we have given no weight to the appointing authority's testimony
20 regarding these reports. We conclude, nonetheless, that Appellant's behavior toward Ms. McCarty
21 and Mr. Webb warrants a severe disciplinary sanction, especially in light of his prior suspension
22 and demotion for similar misconduct.

23
24 4.14 Finally, there is no credible evidence to show that the agency discriminated, harassed, or
25 retaliated against Appellant.
26

1 4.15 Incidents of violence or threats in the workplace should not be taken lightly, and under the
2 proven facts and circumstances presented here, we cannot conclude that termination was too severe.

3
4 4.16 The appeal of Daniel Kannegaard Jr. should be denied.

5
6 **V. ORDER**

7 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Daniel Kannegaard Jr. is
8 denied.

9
10 DATED this _____ day of _____, 2002.

11
12 WASHINGTON STATE PERSONNEL APPEALS BOARD

13
14 _____
15 Walter T. Hubbard, Chair

16
17 _____
18 René Ewing, Member

19
20 **DISSENT**

21 I must respectfully dissent from the majority of the Board. I must disagree with the decision in this
22 matter first on a principle of the civil service system and, second, on what I believe to be a
23 mitigating factor.

24 One of the principle tenets, not only within the civil service system, but well founded within the
25 law, is that an accused has a right to know the basis of the charges and the right to face their
26

1 accuser. Respondent has failed to provide this basic right to Appellant. The Washington State
2 Personnel Appeals Board, and its predecessor Boards, has consistently held that the charges against
3 an employee must be specific and with enough information to allow an appellant the ability to
4 mount a defense without the need for discovery. Again, Respondent has failed in this burden.

5
6 Specifically, the appointing authority on the first page of the disciplinary letter alleges that “your
7 behavior and conduct has jeopardized this environment for many other individuals” (emphasis
8 added). As disturbing as the allegation is the testimony of the appointing authority in which he
9 finds that most, if not all, of Appellant’s coworkers felt threatened by him and were fearful of
10 coming to work. I believe that the appointing authority gave substantial amount of weight to these
11 other allegations as evidenced by the fact that he wanted to make sure that he established it on the
12 record before this Board. He further testified that he took this action, in part, based on these
13 allegations. Neither the allegations, nor the individuals who made them, are identified in the
14 disciplinary letter thereby precluding Appellant from raising any meaningful defense to the
15 allegations.

16
17 Secondly, I believe that the issue of the inappropriate behavior toward Appellant’s supervisor is
18 mitigated by the fact that the supervisor exacerbated the situation by insisting that Appellant come
19 to his office to receive a letter and by denying Appellant’s request to have a union representative
20 present. While I strongly disagree that the University makes the determination as to when
21 representation is appropriate, this situation obviously dictated approval of the request. There was a
22 history of interactions between Appellant and the supervisor, and there was no reason to believe
23 that this would be any different. The interaction that ensued was inappropriate but may very well
24 have been prevented if Appellant’s request for representation been granted.

1 While not disagreeing with the facts set out in this record, I believe that dismissal is too harsh based
2 on the appointing authority's consideration of allegations not set out in the letter of service and the
3 mitigating factors in relation to the inappropriate interaction with his supervisor.

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Gerald L. Morgen, Vice Chair