

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JAMES LAFEVER,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

) Case No. DISM-98-0050

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and NATHAN S. FORD Jr., Member. The hearing was held at Eastern State Hospital, Medical Lake, Washington, on December 14, 1999. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant James LaFever was present and was represented by Gina M. Bissell, Attorney at Law, of Morgan Hill, P.L.L.C. Respondent Department of Social and Health Services was represented by Patricia Thompson, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, insubordination and gross misconduct resulting from Appellant's involvement in a physical altercation with a co-worker.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

II. FINDINGS OF FACT

2.1 Appellant James LaFever was a Stationary Engineer 2 and permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on September 25, 1998.

2.2 By letter dated September 16, 1998, Tom Bumgarner, Administrator for Consolidated Support Services, advised Appellant of his dismissal based on the charges of neglect of duty, insubordination and gross misconduct. The disciplinary letter outlined an incident in which Appellant engaged in a physical altercation with coworker James McMunn.

2.3 Appellant had been employed as a Stationary Engineer 2 at Eastern State Hospital in the Consolidated Support Services (CSS) department for approximately 9 years. Appellant had no prior formal disciplinary action imposed against him. However, his employment record includes the following corrective actions:

- A letter of reprimand dated April 6, 1995 which directed Appellant to treat coworkers with dignity and courtesy because of an incident in which Appellant yelled at a coworker.
- A letter of expectations dated April 24, 1995, which directed Appellant, in part, to use positive, problem solving techniques and to use conflict resolution techniques to resolve conflicts.
- A memo dated August 29, 1995 which directed Appellant to conduct himself in a professional manner and to not allow his personal feelings or conflicts to interfere

1 with his work assignments. The memo advised Appellant that his behavior was
2 unacceptable and that he could be subject to disciplinary action if it continued.

- 3 • A memo of counseling dated October 23, 1997 for Appellant's failure to answer any
4 reasonable questions asked of him by coworker James McMunn. The memo directed
5 Appellant to act in a professional and productive manner in all work related issues.

6
7 2.4 It is undisputed that Appellant and coworker James McMunn, Stationary Engineer 2, had an
8 antagonistic relationship dating back a number of years. It was not unusual for Appellant and Mr.
9 McMunn to ignore each other and speak only regarding work-related issues. Mr. McMunn believed
10 that Appellant was intentionally pestering and playing tricks on him and he frequently reported his
11 concerns to management. Appellant also reported his difficulties with Mr. McMunn to
12 management and he was advised to document the problems and make a formal complaint. Mr. Tom
13 Bumgarner, the department's administrator, was aware of the problems that existed between
14 Appellant and Mr. McMunn, however, considered the issues they reported to be trivial. Although
15 both Appellant and Mr. McMunn complained about each other's actions they failed to come
16 forward with issues that could be investigated and resolved.

17 2.5 As a result of the difficulties and tension created by the poor working relationships among
18 the stationary engineers, Mr. Bumgarner began to seek ways of resolving the problems. By memo
19 dated April 13, 1995, to All Stationary Engineers, Mr. Bumgarner addressed the issue of
20 "Interpersonal Relationships and Workplace Expectations." Mr. Bumgarner emphasized the
21 importance of getting along with coworkers, being a part of the solution, not the problem, and not
22 causing others "unnecessary upset."

23 2.6 Respondent provided Appellant with training in conflict resolution in the workplace and
24 anger management. Appellant had also been directed by Mr. Bumgarner on numerous occasions to
25 implement the techniques taught in order to avoid and deescalate conflicts in the workplace,
26 especially when working with Mr. McMunn. Despite Mr. Bumgarner's directives, Appellant and

1 Mr. McMunn continued to have an antagonistic relationship and to interact inappropriately in the
2 workplace.

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4 2.7 On January 3, 1998, Appellant was asked to work the shift of another employee who had
5 called in sick and could not work his regularly scheduled shift in the North Boiler Plant. At
6 approximately 10:20 p.m., Appellant entered the office in the South Boiler Plant, where he normally
7 worked, to retrieve some personal items from his locker before proceeding to the North Boiler
8 Plant. Mr. McMunn, who was finishing his shift, was sitting at a desk located in the office. Mr.
9 McMunn greeted Appellant and asked how he was doing. Appellant responded, "okay," and made
10 no other comments. Mr. McMunn did not hear Appellant respond to his greeting.

11
12 2.8 Appellant proceeded to get his items, which included a stationary engineering book, and to
13 check his mail box. Mr. McMunn asked Appellant why he was there, however, Appellant refused to
14 answer. Mr. McMunn became annoyed with Appellant's lack of response and commented to
15 Appellant, "You should try reading the book." Appellant did not respond. Mr. McMunn
16 admittedly began to feel more angered with Appellant and told him to "get the fuck out." Appellant
17 continued to ignore Mr. McMunn and he left the office and walked in the direction of his car.

18
19 2.9 Mr. McMunn noticed that Appellant had some personal items hanging from a coat rack in
20 the office. Mr. McMunn picked up the items, stood at the outside door of the building, and threw
21 the items on the sidewalk, and stated to Appellant, "here you go, you might need these too."

22
23 2.10 Appellant and Mr. McMunn presented conflicting testimony about what occurred at this
24 point. Mr. McMunn asserts that Appellant turned around and rushed toward him, stating, "I'm
25 going to kick your butt!" Mr. McMunn also testified he reentered the building and attempted to hold
26 the door shut to prevent Appellant from entering. Mr. McMunn used the door's "crash bar" to hold

1 the door closed, however, he was unable to maintain his grip on the door and Appellant entered the
2 foyer. Mr. McMunn grabbed a shovel located in the foyer in an attempt to “ward off” Appellant
3 who was attempting to grab him.
4

5 2.11 Appellant testified that after Mr. McMunn threw his items on the ground, he turned around,
6 retrieved them and calmly headed toward the building to put the items back. Appellant testified that
7 as he approached the plant door, he could not see Mr. McMunn. Appellant testified that as he
8 entered the foyer, Mr. McMunn grabbed the shovel and started jabbing him with the shovel.
9

10 2.12 In making a determination of which scenario was more likely to have occurred, we have
11 carefully weighed the credibility and motives of both Appellant and Mr. McMunn. Appellant’s
12 description of this event - that he was calmly returning his items to the office - is not believable.
13

14 2.13 Mr. McMunn was admittedly angered by Appellant’s failure to respond to him and he
15 admits that Appellant’s demeanor “pushed his buttons.” Mr. McMunn also admits that he
16 intentionally attempted to provoke Appellant. Mr. McMunn’s motive was clear: to elicit a
17 response from Appellant. We believe that Mr. McMunn has been forthright about his aggressive
18 behavior and his part in the incident and find no reason to disbelieve his version of the events.
19 Furthermore, we find that a reasonable person would not have reentered a building where he knew a
20 clearly angry and irate coworker was waiting, unless he also wanted to engage in a confrontation.
21 Therefore, we find it was more likely than not that Appellant went back into the building with the
22 intent of engaging in a physical confrontation with Mr. McMunn.
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24 2.14 Both Appellant and Mr. McMunn presented similar testimony regarding the remaining
25 events. As Mr. McMunn used the shovel against Appellant, he lost his grip and dropped it. Mr.
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1 LaFever stated, “hit me, hit me.” Mr. McMunn then grabbed Appellant by the front of his shirt and
2 pushed him out of the building. Appellant did not strike Mr. McMunn during the incident.

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4 2.15 Mr. Bumgarner was Appellant’s appointing authority. In determining whether misconduct
5 occurred, Mr. Bumgarner reviewed the investigative report and Appellant’s history with the
6 department. Mr. Bumgarner also met with Appellant and considered Appellant’s version of the
7 events. Mr. Bumgarner concluded that Appellant ultimately provoked the physical confrontation
8 with Mr. McMunn when he returned to the boiler plant after Mr. McMunn threw his items on the
9 ground. Although Mr. Bumgarner took into consideration that Mr. McMunn was intentionally
10 provoking Appellant, he believed Appellant understood the expectations and directives about
11 appropriate workplace behavior and about the necessity of avoiding workplace conflict, especially
12 when interacting with Mr. McMunn. Mr. Bumgarner concluded that Appellant had a duty to
13 deescalate the conflict, which he failed to do.

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15 2.16 In determining the appropriate level of discipline, Mr. Bumgarner evaluated the impact of
16 Appellant’s behavior on the mission of the agency, to provide its employees a workplace that is free
17 from violence. Mr. Bumgarner concluded that Appellant, despite counseling and training, had
18 failed to control his anger and take more appropriate steps to diffuse the situation. Mr. Bumgarner
19 determined that based on the agency’s zero tolerance policy against violence in the workplace,
20 Appellant’s behavior could not be tolerated and that dismissal was the appropriate sanction.

21 22 **III. ARGUMENTS OF THE PARTIES**

23 3.1 Respondent argues that Appellant had a responsibility to behave in a professional manner in
24 the workplace and to avoid conflict with Mr. McMunn. Respondent asserts that despite clear
25 directions from management, Appellant failed to walk away from the conflict with Mr. McMunn
26 and instead he returned to the plant with the intent of engaging in a physical confrontation with Mr.

1 McMunn. Respondent argues that Appellant had a history of aggressive behavior and an extensive
2 history of conflict with Mr. McMunn. Respondent argues that Appellant should have used his
3 training in conflict resolution to deescalate the incident and follow the appropriate reporting
4 procedures. Respondent argues that Appellant neglected his duty, failed to follow the directives of
5 his supervisors and that his behavior rose to the level of gross misconduct. Therefore, Respondent
6 argues that dismissal is the appropriate sanction.

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8 3.2 Appellant argues that when he arrived at the boiler plant to retrieve his items, Mr. McMunn
9 began to provoke him. Appellant argues that when he reentered the plant after Mr. McMunn tossed
10 out his personal items, his intention was to return them to the office, not to engage in an altercation.
11 Appellant denies that his behavior was aggressive and asserts that Mr. McMunn attacked him with
12 the shovel upon his entry into the plant foyer. Appellant argues that Mr. McMunn was the
13 aggressor and his version of the events is not credible. Appellant asserts that Mr. Bumgarner did
14 not know who to discipline as a result of the incident and that he chose to dismiss them both even
15 though there was no evidence to substantiate that Appellant was the aggressor or that he incited the
16 violence. Appellant argues that he was a nine-year employee with a good employment history and
17 that Respondent failed to implement a program of progressive discipline.

18 19 20 **IV. CONCLUSIONS OF LAW**

21 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
22 herein.

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24 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
25 the charges upon which the action was initiated by proving by a preponderance of the credible
26 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the

1 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
2 Corrections, PAB No. D82-084 (1983).

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4 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
5 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
6 of Social & Health Services, PAB No. D86-119 (1987).

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8 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior
9 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
10 Dep't of Social & Health Services, PAB No. D94-025 (1995).

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12 4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
13 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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15 4.6 Respondent has met its burden of proof that Appellant's behavior constituted a neglect of
16 his duty, insubordination and rose to a level of gross misconduct.

17 4.7 Appellant was charged with returning to the boiler plant where he and Mr. McMunn
18 engaged in a physical confrontation in which they struck each other. Although the evidence did not
19 establish that Appellant struck Mr. McMunn during the altercation, it did establish that his actions
20 in returning to the boiler plant ultimately led to the physical altercation. After Appellant entered the
21 foyer of the plant, he was obviously at a disadvantage since Mr. McMunn had obtained the shovel
22 and was in a better position to overpower him. However, Appellant's conduct is not mitigated by
23 his physical disadvantage during the altercation or by Mr. McMunn's inappropriate behavior.
24 Appellant neglected his duty to deescalate the incident and behave in a professional and appropriate
25 manner in the workplace.

1 4.8 Appellant had been counseled about his interactions with Mr. McMunn and had been
2 directed to behave in a professional manner and to not allow his personal animosity and conflicts
3 with Mr. McMunn to interfere with his workplace responsibilities. Appellant failed to comply with
4 his superior's directives and his actions were insubordinate.

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6 4.9 Respondent has met its burden of proof that Appellant's interactions with Mr. McMunn
7 constituted gross misconduct. Appellant's behavior was clearly unprofessional and inappropriate
8 and Appellant's actions interfered with Respondent's ability to provide a safe and secure workplace
9 for its employees. Although Appellant asserts that Mr. McMunn was the instigator during the
10 incidents, Appellant had a choice to walk away from the situation and report Mr. McMunn's
11 behavior to his supervisor. However, Appellant chose to return to the boiler room where he knew
12 Mr. McMunn, who was obviously angry, was working. Appellant was aware that no further acts of
13 conflict would be tolerated yet he knowingly provoked conflict by returning to the boiler plant.
14 Appellant must be held responsible for his actions.
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17 4.10 Under the facts and circumstances of this case, including the seriousness of the offenses, we
18 conclude that Respondent has proven that the sanction of dismissal is appropriate, and the appeal
19 should be denied.
20

21 **V. ORDER**

22 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of James LaFever is denied.

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24 DATED this _____ day of _____, 2000.
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26 **WASHINGTON STATE PERSONNEL APPEALS BOARD**

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Walter T. Hubbard, Chair

Nathan S. Ford Jr., Member