BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

LEONARD CANTRELL, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. DISM-01-0055 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, GERALD L. MORGEN, Vice Chair, and RENÉ EWING, Member. The hearing was held at Rainer School in Buckley, Washington, on June 20, 2002. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Leonard Cantrell was present and was represented Robert Hamilton, Attorney at Law. Laura L. Wulf, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, insubordination, gross misconduct and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleged that Appellant made threatening statements in the work place and violated the directives set forth in his home assignment letter.

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); Dahn v. Dep't of

Social & Health Services, PAB No. D91-007 (1991); Countryman v. Dep't of Social and Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

II. FINDINGS OF FACT

2.1 Appellant Leonard Cantrell was a Painter and a permanent employee of Respondent Department of Social and Health Services (DSHS). 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 July 18, 2001.

2.2 Appellant had been employed by DSHS at Rainer School since December 1979. Appellant had no history of disciplinary action. However, his performance evaluation for the period of December 6, 1998 through December 5, 1999, documented a decrease in the quality and quantity of Appellant's work and a decrease in his attendance. On March 29, 2000, Appellant was placed on an attendance/medical verification program due to his continuing attendance problems.

2.3 By letter dated June 6, 2001, Respondent notified Appellant of his dismissal, effective June 21, 2001. Respondent charged Appellant with neglect of duty, insubordination, gross misconduct and willful violation of published employing agency or department of personnel rules or regulations. Respondent alleged that Appellant made threatening statements in the work place and violated the directives set forth in his home assignment letter.

2.4 Appellant's relationship with his co-workers began to deteriorate approximately two years prior to the incidents giving rise to this appeal. During this period of decline, Appellant's co-workers expressed concerns about Appellant's personal hygiene and the quality of his work.

Appellant expressed concerns that his co-workers were picking on him and that management failed to be supportive and to take his concerns seriously. Starting in approximately June 1999, Appellant's attendance problems increased and he was counseled on numerous occasions regarding tardiness and excessive absenteeism.

Threatening statements:

2.5 Appellant had a history of violent outbursts at work that including throwing objects, kicking chairs and yelling. In addition, Appellant had a history of making inappropriate comments and engaging in inappropriate behavior at work. For instance, on May 5, 2000, following a disagreement with coworker Larry Kennedy, Appellant brought a personal hatchet into the shop, proceeded to sharpen it, and then stood behind Mr. Kennedy making Mr. Kennedy feel uncomfortable. In March 2000, Appellant commented that he was liable to "go postal." In October 1999, following a confrontation with a coworker, Appellant commented that he was going to go home, get a gun and shoot the co-worker. The next day, Appellant reported to work wearing a black trench coat and the proceeded to wear it during an all staff meeting. Appellant's co-workers felt that Appellant's behavior in regard to the hatchet and the trench coat was meant as a type of intimidating statement. However, no one felt threatened and no formal complaints or reports were made at the time.

2.6 On May 3, 2000, Mr. Kennedy, Painter Riley Mulligan and Paint Shop Supervisor Bruce Sawyer were in the paint shop. Appellant came into the shop, approached Mr. Sawyer and complained about Mr. Kennedy being in the shop. Appellant pointed at Mr. Kennedy and Mr. Kennedy told Appellant to worry about himself and quit playing games. Appellant replied that he played for keeps.

2.7 On May 4, 2000, Appellant and Mr. Kennedy engaged in a verbal altercation. Mr. Mulligan, Painter Don West, and Administrative Assistant Audrey Campbell observed portions of the altercation. Following the incident, Ms. Campbell and Mr. Kennedy reported the incident to Plant Manager Cary Bermudez. Subsequently, Mr. Bermudez received statements from Appellant, Mr. Kennedy, Mr. Mulligan, Mr. West, and Ms. Campbell. The incident started when Mr. Kennedy asked Appellant how his attitude was that day. Appellant responded that his was the same to which Mr. Kennedy replied that was the problem. Appellant responded, "Fuck yourself" to Mr. Kennedy and a verbal altercation ensued.

2.8 During May 2000, Appellant was assigned to perform a painting project in Columbia House. Betsy Stringfield was an Attendant Counselor 1 assigned to the house. While he was working in Columbia House, Appellant told Ms. Stringfield about the problems he was having at work. Appellant stated that if he was laid off, his was going to "take his bosses out." Ms. Springfield told Appellant that he would go to jail and Appellant responded that he did not care, that it would be worth it. Ms. Stringfield reported this comment on June 9, 2000.

2.9 Appellant's attendance program consisted of two portions: a requirement to provide medical verification for absences due to illness and a requirement to report his absences one hour before the start of his shift. By letter dated May 11, 2000, Mr. Sawyer thanked Appellant for complying with the medical verification portion of his attendance program. However, Mr. Sawyer noted that Appellant had not complied with the attendance portion of the program. Mr. Sawyer specifically listed six days from March 19, 2000 to May 10, 2000, where Appellant was on nonscheduled leave or was late for work and did not call in one hour before the start of his shift. Mr. Sawyer informed Appellant that his attendance was not acceptable and warned him that further violation of the attendance program could result in corrective action.

2.10 On May 18, 2002, Cary Bermudez met with Appellant regarding his failure to comply with the attendance program.

2.11 On May 19, 2000, Appellant provided a written response to the meeting. Appellant stated that the attendance program was harassment and was another form of tormenting him. Appellant indicated that he had become depressed and ill and that he did not care what happened, accused his supervisor and co-workers of spying on him and provoking him into arguments, and stated that he was close to being insane again and going for treatment. Appellant stated, "I don't know if I can survive another battle like that and if I don't it would be better than the hell I'm going thru now." Appellant asked that all the issues be looked at and treated with the same set of rules and that everyone be treated with dignity, respect and common courtesy. Appellant further stated, "It can't continue the way it is without something major happening and no one wants that to occur."

2.12 Given Appellant's past history, Mr. Bermudez found Appellant's statement threatening. Mr. Bermudez forwarded the statement to Yvonne Jahn, Acting Superintendent. Ms. Jahn found Appellant's statement to be threatening in nature and referred the matter to the investigation unit. By letter dated May 25, 2000, Ms. Jahn placed Appellant on home assignment. Mr. Jahn instructed Appellant orally and in writing to be available for contact by telephone during his normal working shift except for his normal lunch break. In addition, Appellant was referred for a risk assessment.

2.13 Phyllis Thompson and Cynthia Purdy performed investigations for Respondent's internal investigation unit. On May 24, 2000, they interviewed Appellant and his union representative. Although questions were directed to Appellant, he allowed his union representative to respond on

his behalf. However, when Ms. Thompson asked Appellant what he meant by "something major happening," Appellant replied, "I'm not going to say. You don't want to know."

2.14 On June 27, 2000, the matter of Appellant making threatening statements was forwarded to the Washington State Patrol (WSP) for investigation. In addition, the matter was referred to the Buckley Police Department and subsequently to the Pierce County Prosecutor's Office. Both the Buckley Police Department and the Pierce County Prosecutor's Office declined to enter criminal charges against Appellant.

2.15 On June 6 and June 9, 2000, Dr. Timothy Cahn conducted a risk assessment of Appellant. Dr. Cahn concluded that Appellant was suffering with residual paranoia and persecutory ideas, likely due to both his history of amphetamine-induced psychotic disorder and multiple long-standing problematic personality traits. Appellant had participated in inpatient drug treatment in October 1999 but he abandoned his follow-up care. Dr. Cahn stated, "Given Mr. Cantrell's untreated, residual, enduring paranoia and persecutory ideas, associated personality features, anger management deficits, and unclear substance abuse status and withdrawal from all substance abuse treatment services, I cannot clear him to return to work at this time." Dr. Cahn met with Appellant and Appellant's wife and orally reviewed his report. On June 30, 2000, the report was forwarded to Respondent.

2.16 On October 18, 2000, WSP forwarded their investigation report to DSHS for review and administrative action.

2.17 Following a number of mutually agreeable extensions, due in part to Appellant's arrest and subsequent participation in a drug rehabilitation program, on December 18, 2000, a CIR was initiated against Appellant for making threatening statements.

Violations of Home Assignment Directives:

2.18 Appellant's home assignment began on May 25, 2000. On June 27, 2000, Ms. Jahn made several attempts to contact Appellant, but each of her attempts was unsuccessful. On July 5, 2000, Ms. Jahn issued a letter of counseling to Appellant due to her inability to contact him on June 27, 2000. Ms. Jahn advised Appellant that he was obligated to be available by phone at all times during his regularly scheduled work hours.

2.19 At 3:15 p.m. on September 15, 2000, Appellant's supervisor attempted to contact Appellant by pager and by telephone. Appellant was not available. On September 22, 2000, a CIR was initiated. Following the CIR investigation, Jan Blackburn determined that misconduct occurred and charged Appellant with 10 hours of unauthorized leave without pay.

2.20 At approximately 4:15 p.m. on October 3, 2000, Appellant was seen in a vehicle away from his home work assignment. Appellant had not requested to leave his work assignment and did not submit a leave slip for his absence from his work location.

2.21 At approximately 3:55 p.m. on October 6, 2000, Phyllis Thompson called Appellant's home but the person answering the phone said that Appellant was not there. On October 19, 2000, a CIR was initiated.

2.22 On October 17, 2000, Ms. Thompson called Appellant's home at approximately 8:25 a.m. and again at 3:40 p.m. Both times, the person answering the phone said that Appellant was not there. On October 18, Ms. Thompson called Appellant's home at 7:55 a.m. and then paged him at 3:00 p.m. The person answering the phone said that Appellant was not there and Appellant did not return the page. On October 19, Andrea Swan called Appellant's home and paged him at approximately 3:36 p.m. The person answering the phone said that Appellant was unavailable and Appellant did not return the page. On October 20, Ms. Swan called Appellant's home at approximately 8:25 a.m. The person answering the phone said that Appellant was not home but to page him. Ms. Swan paged Appellant but he did not return the page. On October 27, 2000, a CIR was initiated.

2.23 On February 28, 2001, Superintendent Larry Merxbauer completed the administrative review of the October 2000 and the December 18, 2000, CIRs. He determined that in each instance, Appellant had engaged in misconduct.

2.24 On April 4, 2001, Superintendent Merxbauer conducted a pre-termination meeting with Appellant and his representative. During the pre-termination meeting, Appellant indicated that he was undergoing treatment and that he had been attending Alcoholic Anonymous meetings. Mr. Merxbauer considered the information Appellant provided and reviewed Appellant's personnel file, the WSP's report, the information included in the CIRs, and Dr. Cahn's report. Mr. Merxbauer considers threats of violence in the workplace serious and maintains a position of zero tolerance against such threats. Mr. Merxbauer concluded that Appellant's comments constituted a threat of violence. Mr. Merxbauer considered whether Appellant's behavior warranted a disability separation, but he concluded that making threats against coworkers was not a disability.

2.25 In determining the level of discipline to impose, Mr. Merxbauer concluded that Appellant engaged in hostility toward his supervisors and co-workers, failed to conduct himself in a professional manner, and failed to abide by the directives in his home assignment letter. Mr. Merxbauer also concluded that Appellant's actions constituted neglect of duty, insubordination and willful violation of agency policies and procedures. Mr. Merxbauer further concluded that Appellant's actions were threatening, offensive, created a hostile work environment and undermined his ability to function as a team member at Rainer School. Mr. Merxvbauer determined that Appellant's actions demonstrated a flagrant disregard for the directives of the Acting Superintendent and of agency policies and procedures and rose to the level of gross misconduct. Mr. Merxbauer determined that Appellant's continued employment at Rainer School would not be in the best interest of Appellant or his coworkers. By letter dated June 6, 2001, Mr. Merxbauer notified Appellant of his immediate suspension followed by dismissal.

2.26 On April 20, 1994, Appellant signed a statement indicating that he had read and received training on the content of the Rainer School Employee Handbook. The Handbook states, in relevant part, "It is important that you are courteous in any contacts with clients, fellow employees, parents and the general public." In addition, Appellant was expected to comply with Rainer School policies.

2.27 Rainer School Basic Policy 315 addresses employee conduct and states, in part:

> Through acts and deeds, staff will model respect to the people who live here and to each other . . . .
>
> **Rainer School employees will:**
>
> . . . conduct themselves and their relations with co-workers and supervisors in an appropriate and professional manner at all times so as to preclude the development of a hostile living and working environment. . . .

Rainer School employees are prohibited from:

> . . . engaging in any confrontational or disrespectful behavior, either verbally or physically with their co-workers or supervisors that contributes to a hostile living or working environment for the people who live and work at Rainier School.

2.28 DSHS Administrative Police 6.04 addresses ethical conduct for employees and requires employees, in part, to maintain standards of behavior that promote public trust, faith, and confidence; create an environment free from hostility; and interact with coworkers with respect, concern, courtesy and responsiveness.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant was insubordinate when he failed to be available by telephone while he was on home assignment.

In addition, Respondent argues that in the context of Appellant's past behavior, the agency had cause to be concerned about Appellant's May 19, 2000, written statement and his May 24, 2000, oral statement. Respondent contends that Appellant's statements constituted threats and that such conduct cannot be tolerated in the workplace. Respondent asserts that Appellant's coworkers were concerned about Appellant's behavior and that they felt threatened because they did not know what Appellant would do next. Respondent argues that threats in the workplace must be taken seriously, and given the context of Appellant's statements and his demeanor, it was reasonable to conclude that Appellant meant to cause harm. Respondent contends that Dr. Cahn's risk assessment made it clear that Appellant was unable to work, and that even though Dr. Cahn orally reviewed his report with Appellant, Appellant made no effort to take care of his problems until he was arrested and forced to enter treatment or spend time in jail. Respondent further contends Appellant has taken no steps to address his anger management problems and that there is no guarantee that Appellant's

recovery will continue. Respondent asserts that there is no excuse for threatening coworkers and that the decision to terminate Appellant was appropriate,

3.2 Appellant does not contest that he was unavailable when the agency telephoned him while he was on home assignment. However, Appellant contends that the person who answered the telephone failed to give him the messages from Rainer School.

Appellant asserts that this case shows the toll and destruction that occurs with drug use. Appellant contends that he is now drug free, that the concerns Dr. Cahn raised in his report have dissipated, and that he does not pose a threat to the institution or to his coworkers. Appellant argues that his oral and written statements were misconstrued and that the incidents were blown out of proportion. Appellant agrees that the agency must protect its employees, but contends that the agency and Employee Advisory Services let him down and failed to provide him with the help he was requesting.

IV. CONCLUSIONS OF LAW

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

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 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987). An employee has a duty to be present to perform work and failure to report to work or leaving the work site without authorization constitutes neglect. Dahn v. Dep't of Social & Health Services, PAB No. D91-007 (1991).

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

4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's interest or standards of expected behavior.

4.6 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

4.7 Respondent has met its burden of proof. In the context of Appellant's declining performance and increased altercations with coworkers, Respondent's perception of Appellant's statements as threats was not unreasonable. Appellant neglect his duty and willfully violated Rainer School policies when he made threatening verbal and written statements in the workplace. Appellant's

actions were flagrant and rose to the level of gross misconduct. Furthermore, Appellant neglected his duty and was insubordinate when he failed to comply with the directives set forth in his home assignment letter.

4.8 Under the totality of the proven facts and circumstances presented here, Respondent has met its burden of proving the charges in the disciplinary letter. In light of the flagrant and serious nature of Appellant's misconduct, Respondent has established that the disciplinary sanction of dismissal is appropriate. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Leonard Cantrell is denied.

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Gerald L. Morgen, Vice Chair

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René Ewing, Member