

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CLARK RANSOM,

Appellant,

v.

BOARD OF INDUSTRIAL INSURANCE  
APPEALS,

Respondent.

) Case No. SUSP-97-0039

)  
) 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; GERALD L. MORGEN, Vice Chair; and NATHAN S. FORD Jr., Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on Wednesday, July 14, 1999.

1.2 **Appearances.** Appellant Clark Ransom did not appear and no representative appeared on his behalf. Respondent Board of Industrial Insurance Appeals was represented by Michael P. Sellars, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a seven-day suspension for neglect of duty, inefficiency, incompetence and gross misconduct. Respondent alleges that Appellant failed to meet the performance expectations of his position by not complying with the directives of a formal corrective action plan, failing to issue the minimum number of required

orders which resulted in a severe backlog of his workload, and failing to issue orders within the prescribed timeframes.

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); Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997); Plaisance v. Dep't of Social and Health Services, PAB No. D86-75 (Kent, Hrg. Exam.), *aff'd by Board* (1987); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

## II. MOTION

2.1 On July 13, 1999, the Personnel Appeals Board received a letter from Appellant requesting that "the hearing on this matter scheduled for Wednesday, July 14 be continued. I have another trial in Pierce County which cannot be re-set." At the outset of the hearing on July 14, 1999, the Board, as a preliminary matter, heard argument from Respondent on Appellant's request for continuance.

2.2 Respondent opposed Appellant's request for continuance, arguing that Appellant did not follow the Board's rules regarding requests for continuances, provided no showing of why he could not follow the rules, and failed to serve Respondent with the request for continuance.

2.3 The Board denied Appellant's request, citing WAC 358-30-040, which requires that motions for continuance be filed five days prior to the scheduled date. An exception can be made only where the reason for the continuance could not reasonably have been foreseen. Appellant has failed to establish that his trial in Pierce County "could not reasonably have been foreseen."

### III. FINDINGS OF FACT

3.1 Appellant Clark Ransom was an Industrial Appeals Judge 2 and permanent employee for Respondent Board of Industrial Insurance Appeals (BIIA). 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 November 6, 1997.

3.2 By letter dated September 22, 1997, Janet R. Whitney, Chief Industrial Appeals Judge, informed Appellant of his seven-day suspension, effective October 12, 1997. Ms. Whitney based Appellant's suspension on the charges of neglect of duty, inefficiency, incompetence and gross misconduct for Appellant's failure to meet the performance expectations of his position by not complying with the directives of a formal corrective action plan, failing to issue the minimum number of required orders which resulted in a severe backlog of his workload, and for failing to issue orders within the prescribed timeframes.

3.3 Appellant began his employment with the BIIA in 1988. As an Industrial Appeals Judge (IAJ) 2, Appellant's responsibilities included scheduling and conducting hearings on appeals of decisions of the Department of Labor and Industries regarding benefits for work related injuries or determinations of medical benefits (workers' compensation appeals). Appellant's official workstation was in Olympia, Washington, and he was geographically assigned to conduct hearings in Tacoma, Washington. Prior to the action that is the subject of this appeal, Appellant had no other formal disciplinary action imposed against him

3.4 Appellant's employee evaluations reflect that while he frequently met the normal or minimum requirements of his job, concerns regarding his work performance were documented. A common thread throughout Appellant's performance evaluations are his supervisor's concerns that Appellant was not meeting the level of production expected of his position, frequently failed to

1 meet requisite timelines for issuing orders, had an excessively large number of back logged cases  
2 and required an inordinate amount of supervision (Exhs. R2 through R6). Appellant's performance  
3 evaluation for the time period of February 1996 through June 1997, rates him as failing the  
4 minimum requirements in "Accomplishment of Job Requirements" and "Job Reliability." (Exh. R-  
5 7).

6  
7 3.5 Respondent requires that after completion of the hearing on appeals, IAJ's issue Proposed  
8 Decisions and Orders within 60 days from the date that the complete record in the appeal, including  
9 a transcript of the proceedings, is referred to the IAJ. Not included in the 60-day timeframe are  
10 delays caused by holidays, annual leave, sick leave, other authorized leave, staff meetings, and  
11 workload. Respondent also requires IAJ's to issue an average of four Proposed Decisions and  
12 Orders (PD&O's) per month. The agency's mission is to ensure that parties appearing before the  
13 BIIA, which consists primarily of injured workers, receive timely resolution on issues that  
14 determine whether or not benefits will be awarded. The 60-day timeframe was established to  
15 ensure that no backlog of these cases occurred and to ensure that timely decisions are issued. In  
16 addition, Respondent expects its IAJ's to issue an average of four orders per month. Appellant was  
17 aware of these performance expectations.

18  
19 3.6 Appellant's personnel file includes an extensive history of counseling memos issued by  
20 Stephen E. Allison, Appellant's supervisor. Mr. Allison addressed concerns with Appellant's work  
21 performance, specifically concerns with workload backlogs, not issuing PD&O's within the 60-day  
22 time frame and not issuing an average of four PD&O's per month. Memos addressing these work  
23 performance problems and setting forth performance expectations were issued on the following  
24 dates:

- 25  
26
- September 7, 1989 memo in which Appellant and his supervisor agreed that Appellant would issue PD&Os within the 60-day timeframe and notify his

1 supervisor with any anticipated difficulties in doing so. The memo advised  
2 Appellant that failure to improve his performance could result in further  
corrective or disciplinary action.

- 3 • March 9, 1990 memo addressing Appellant's continued problems with issuing  
4 orders within the 60-day timeframe and the backlog created by his failure to meet  
5 the timeline. Appellant was directed to advise his supervisor of workload  
6 problems. The memo advised Appellant that failure to improve his performance  
7 could result in further corrective action.
- 8 • May 1, 1991 memo addressing Appellant's continued work performance  
9 problems, including the large backlog of orders on his caseload to be issued and  
10 his failure to issue them in a timely manner.
- 11 • October 8, 1993 memo outlining the difficulty Appellant was having issuing  
12 PD&O's within the 60-day time and outlining a future work plan, which included,  
13 in part, Appellant meeting with Mr. Allison each month to review his files and to  
14 ensure that his PD&O's were being drafted in a timely manner; directed  
15 Appellant to prepare and submit a monthly overage case report containing a list of  
16 every PD&O issued by Appellant beyond the 60-day time period with the reason  
17 for the delay; required Appellant to inform Mr. Allison of any anticipated  
18 difficulties getting his orders issued on time; and required Appellant to work at  
19 the Olympia office on any days that hearings were not scheduled elsewhere.
- 20 • October 22, 1993 memo reminding Appellant of his responsibility to meet agency  
21 performance standards and warning him that disciplinary action could ensue if he  
22 failed to do so.
- 23 • March 15, 1994 memo outlining Appellant's failure to accomplish and meet the  
24 directives established in the October 8, 1993 job performance plan. The memo  
25 outlined a future performance plan which included the requirement that Appellant  
26 maintain a current workload and provide the reasons for issuing orders beyond the  
timeframes.

(Exh. R12, 13, 14, 16, 18 and 19).

3.7 By memo dated May 27, 1997, Mr. Allison established a formal corrective action plan for  
Appellant based on his repeated unsuccessful attempts to correct Appellant's poor job performance.  
The corrective action plan directed the Appellant to comply with the following:

- You will work a minimum of 40 hours per week at this agency and prioritize the issuance of your proposed decisions and orders, both those that are overdue and those that continue to become due every month.
- You will work in your office in Olympia on any day that you do not have scheduled proceedings elsewhere. If you have proceedings in Tacoma that complete by 1:30, you will return to your office in Olympia to complete the work-day.
- By 12 noon each Monday, you will submit a report to me outlining your work activities for the prior week. While this need not be in the form of a time-sheet, the report should set forth the work accomplished and the approximate amount of total time spent on each work activity. The report should detail the proposed orders you drafted, the orders that were actually issued, and the time spent in drafting and issuing your orders.
- You will meet with me as needed to review your job performance report and to assess your progress on getting caught up with your overdue PD&Os.
- You will meet with me as needed to review your job performance report and to assess your progress on getting caught-up with your overdue PD&Os.
- Should any impediments develop to the drafting and issuance of your PD&Os, such as the absence of your secretary, you are to inform me immediately so that I can take steps to ensure that your work is not delayed.
- You will provide me with an overage case report without fail by the end of each month based on the computer reports for the previous month which are distributed on approximately the 20<sup>th</sup> of each month. The overage case report is to contain an explanation for the delays on any case beyond the six-month completion guideline that has not yet reached ready status. It should also contain the number of credit days you are claiming against the 60-day performance expectation for the issuance of your PD&Os. Finally, it should contain a list of your pending PD&Os and the date by which you expect them to be issued.

3.8 In addition to meeting with Appellant on a monthly basis to review Appellant's case load, his progress toward meeting deadlines and reducing his caseload, Mr. Allison attempted to assist Appellant by transferring cases on Appellant's workload to other judges, having other judges cover Appellant's hearings, and assigning the writing of decisions to other judges.

1 3.9 After issuing the May 27, 1997 memo, Mr. Allison again reviewed Appellant's performance  
2 between July 1996 and June 1997, and noted that Appellant's PD&O lag time was an average of  
3 159 days and that he issued an average of 2.6 orders per month. In July 1997, Appellant issue no  
4 orders and in August 1997 he issued 2 orders. Mr. Allison also noted that Appellant failed to  
5 submit weekly reports outlining his work activities. After a review of Appellant's case load, Mr.  
6 Allison concluded that Appellant had ample and adequate work time when no proceedings were  
7 scheduled in which to write orders.

8  
9 3.10 Janet Whitney, Chief Industrial Appeals Judge, discussed with Mr. Allison the failed  
10 attempts to help Appellant meet the expectations of his position. By letter dated September 2, 1997,  
11 to Appellant, Ms. Whitney advised Appellant that she was considering taking formal disciplinary  
12 action against him based on his failure to consistently meet agency performance expectations  
13 regarding timelines and production standards and his failure to comply with the formal corrective  
14 action plan. Ms. Whitney specifically advised Appellant that she wanted to meet with him and give  
15 him an opportunity to explain his failure to meet PD&O performance expectations between July  
16 1996 through June 1997 and his failure to comply with the corrective action plan.

17  
18 3.11 On September 5, 1997, Ms. Whitney met with Appellant and his shop steward to discuss the  
19 allegations she set forth in the September 2, 1997 letter. Ms. Whitney concluded that Appellant  
20 provided no reasonable explanations for his substandard productivity and failure to comply with the  
21 corrective action plan.

22  
23 3.12 As Appellant's appointing authority, Ms. Whitney determined that disciplinary action was  
24 warranted. In determining the level of discipline, Ms. Whitney considered that Appellant was  
25 aware of his duty to meet the agency's timeframe and production standards and that he was aware  
26 of his responsibility to comply with the corrective action plan. Ms. Whitney noted that any

1 improvements in Appellant's performance were short lived. Ms. Whitney concluded that  
2 Appellant's failure to improve his performance deficiencies negatively affected the agency's ability  
3 to make timely decision on workers' compensation appeals. Based on the negative impact to the  
4 agency and its constituents, Ms. Whitney concluded that a seven-day suspension was warranted.

#### 6 **IV. ARGUMENTS OF THE PARTIES**

7 4.1 Respondent argues that Appellant was well aware of the requirement that he issue orders  
8 within the 60-day timeframe and that he was required to issue an average of four orders per month.  
9 Respondent argues that Appellant was given every opportunity to improve his performance and that  
10 despite his supervisor's continued efforts, which included meeting with Appellant on many  
11 occasions, numerous memos outlining work problems and expectations, and performance  
12 evaluations specifically addressing work performance deficiencies, Appellant continued to work  
13 below expected standards. Respondent argues that Appellant further failed to comply with the  
14 instructions outlined in the corrective action plan. Respondent asserts that it attempted for  
15 approximately nine years to get Appellant to comply with agency expectations, and while there  
16 were occasional periods when his work performance would improve, Appellant's work productivity  
17 would eventually drop to unacceptable levels. Respondent argues that a seven-day suspension is  
18 more that warranted.

19  
20 4.2 Appellant did not provide a defense to the charges nor did he dispute the appropriateness of  
21 the disciplinary sanction before the Board.

#### 23 **V. CONCLUSIONS OF LAW**

24 5.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
25 herein.



1 5.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
2 the charges upon which the action was initiated by proving by a preponderance of the credible  
3 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
4 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
5 Corrections, PAB No. D82-084 (1983).

6  
7 5.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
8 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
9 of Social & Health Services, PAB No. D86-119 (1987).

10  
11 5.4 Appellant was aware of his duty to meet the agency's performance standards to issue  
12 Proposed Decisions and Orders within the 60-day timeframe, to issue an average of four orders per  
13 month and to comply with the directives of the May 27, 1997 corrective action plan. Appellant's  
14 failure to do so constitutes neglect of duty.

15  
16 5.5 Inefficiency is the utilization of time and resources in an unproductive manner, the  
17 ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of  
18 effective operations as measured by a comparison of production with use of resources, using some  
19 objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal*  
20 *dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

21  
22 5.6 Respondent has shown that Appellant had adequate time and resources to complete the  
23 duties and performance expectations of his position. Respondent made extensive attempts to help  
24 Appellant meet time deadlines and production goals, yet, despite these efforts, Appellant failed to  
25 meet minimum standards. Respondent has proven that Appellant was inefficient in the use of his  
26 available work time.

1  
2 5.7 Incompetence presumes a lack of ability, capacity, means, or qualification to perform a  
3 given duty. Plaisance v. Dep't of Social and Health Services, PAB No. D86-75 (Kent, Hrg. Exam.),  
4 aff'd by Board (1987).

5  
6 5.8 Respondent has failed to meet its burden of proving the charge of incompetence. Sufficient  
7 evidence exists to show that while Appellant was not meeting the work performance and production  
8 goals, he was capable of performing the duties of his position.

9  
10 5.9 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
11 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

12  
13 5.10 Appellant's failure to issue orders within the agency's prescribed timelines and his failure to  
14 issue an average of four orders on a monthly basis adversely affected the agency's ability to issue  
15 timely determinations regarding benefits for employees suffering from work-related injuries and  
16 rises the level of gross misconduct.

17  
18 5.11 In determining whether a sanction imposed is appropriate, consideration must be given to  
19 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
20 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
21 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
22 program. An action does not necessarily fail if one cause is not sustained unless the entire action  
23 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

24  
25 5.12 Appellant was given repeated guidance and had ample opportunity to improve his work  
26 performance, yet his work output and timeframes continued to decline. The impact of Appellant's

1 actions on the parties appearing before Respondent was highly detrimental and Appellant's  
2 continued poor performance should not be tolerated. Respondent has proven that the sanction of a  
3 seven-day suspension is appropriate and the appeal should be denied.

4  
5 **VI. ORDER**

6 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Clark Ransom is denied.

7  
8 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

9  
10 WASHINGTON STATE PERSONNEL APPEALS BOARD

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12 \_\_\_\_\_  
13 Walter T. Hubbard, Chair

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15 \_\_\_\_\_  
16 Gerald L. Morgen, Vice Chair

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19 Nathan S. Ford Jr., Member  
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