

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

MOHINDER CHEEMA,

Appellant,

vs.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

CASE NO. R-DISM-05-006

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

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Washington Personnel Resources Board, LAURA J. ANDERSON, Chair, and LARRY GOODMAN, Member. The hearing was held on May 10, 2006, at the Liquor Control Board Distribution Center in Seattle, Washington. Written closing arguments were due by close of business on May 19, 2006.

1.2 **Appearances.** Appellant Mohinder Cheema was present and represented himself *Pro Se*. Franklin Plaistowe, 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 failure to comply with supervisory directives.

PRELIMINARY MATTER

2.1 At the outset of the hearing, the Board considered Respondent's Motion to Dismiss. Respondent clarified that if the Board denied the motion, Respondent was asking the Board to narrow the scope of the hearing and hold, as a matter of law, that Appellant engaged in misconduct by failing to complete fourteen annual health care assessments as directed.

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2 2.2 Respondent asserted that no issues of material fact existed, that Appellant was repeatedly
3 directed to complete assessments in the Rainier School format, and that he consistently refused to
4 comply with his supervisor's directives.
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6 2.3 Appellant asserted that issues of material fact existed, that Respondent violated Policy 545 in
7 investigating the allegations against him, and that Respondent's actions were discriminatory and
8 constituted retaliation.
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11 2.4 The Board considered the written documentation on the motion and the arguments of the
12 parties and denied the motion.
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14 **III. FINDINGS OF FACT**

15 3.1 Appellant Mohinder Cheema was a permanent employee for Respondent Department of
16 Social and Health Services (DSHS). Appellant and Respondent are subject to Chapter 41.06
17 RCW and the rules promulgated thereunder at Title 357 WAC. Appellant filed a timely appeal
18 with the Personnel Resources Board on October 3, 2005.
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21 3.2 By letter dated September 26, 2005, Neil Crowley, Superintendent of Rainier School,
22 notified Appellant of his dismissal for failure to comply with supervisory directives to correct and
23 rewrite fourteen annual health care assessments in the Rainier School format. Appellant's dismissal
24 was effective October 12, 2005.
25

26 3.3 Appellant began employment with DSHS in February 1991. At the time of his dismissal,
27 Appellant was a Physician 3 Generalist/Specialist at Rainier School, a residential habilitation
28 facility for DSHS clients with development disabilities. The clients at Rainier School required a
29 high level of nursing care or skill development. In addition, they often required extensive

1 medical services both at the school and by physicians and medical personnel outside of the
2 school.

3
4 3.4 Appellant was the Primary Care Physician for Program Area Team (PAT) A clients. He
5 conducted examinations, diagnoses, treatments, and ordered laboratory and radiology tests for
6 clients as needed. In addition, he was responsible for documenting client information including
7 documenting the required annual health care assessments for each client.
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9
10 3.5 In January 1999, the Civil Rights Division of the United States Department of Justice
11 (DOJ) conducted an evaluation of Rainier School following reported allegations that clients'
12 civil rights were being violated. In May 1999, DOJ provided Rainier School with a report
13 containing their findings. While Rainier School did not agree with all of the report's findings,
14 they were concerned about the finding that medical services documentation was not adequate.
15

16 3.6 After receiving the DOJ report, Rainier School contacted Columbus Medical Services
17 (Columbus), asking them to conduct a review of the school as an objective outside observer.
18 The Columbus report was issued in August 2000. The Columbus report also expressed concerns
19 about medical services documentation.
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21
22 3.7 Rainier School developed an action plan to address the concerns raised by DOJ and
23 Columbus. The documentation of clients' annual health care assessments was one of the
24 subjects for which a plan was developed.
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26 3.8 Annual health care assessments provide documentation of a client's comprehensive
27 annual physical and a history of the client's health issues, documentation of medications a client
28 receives and why, and a plan of action to address any concerns with the client. While the Rainier
29 School physicians had been performing the assessments and documenting them, the information

1 they recorded was not complete and did not necessarily include all the information that a health
2 provider might need to access quickly in an emergency situation.

3
4 3.9 Dr. Christian Dahl is the Clinical Director at Rainier School. He is responsible for the
5 medical staff at Rainier School, including the physicians. Dr. Dahl took a team approach to
6 addressing the concerns about documentation of the annual health care assessments. The
7 physicians met numerous times to discuss how each of them documented assessments and how
8 assessments were documented by other facilities. As a result of the discussions, a format for
9 documenting annual health care assessments was drafted. The format was reviewed and revised
10 several times. In January 2003, Rainier School began using the new format.
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12
13 3.10 Appellant participated in the meetings and had an opportunity to provide input into the
14 format. The new format provided a standardized appearance, a consistent layout of information
15 and a more comprehensive picture of a client's care and condition.
16

17 3.11 Appellant admits that he did not wish to use the new format. He felt that the format he
18 chose to use contained the same information as the Rainier School format. Appellant used his
19 format at other facilities in which he practiced and felt that it sufficiently met the requirements of
20 the format adopted by Rainier School.
21

22
23 3.12 In his February 15, 2002, to February 15, 2003, performance evaluation, Appellant was
24 instructed to follow the Rainier School format for health care assessments. During the
25 performance evaluation conference with Dr. Dahl, Appellant indicated that he was unwilling to
26 follow Rainier School's format. Subsequently, Dr. Dahl continued to counsel Appellant about
27 the necessity of using the format.
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1 3.13 By memorandum dated February 15, 2005, Superintendent Crowley directed Appellant to
2 comply with the Rainier School standards, including following the format for annual health care
3 assessments. Mr. Crowley warned Appellant that failure to follow the directive could result in
4 corrective or disciplinary action, up to and including dismissal.

5
6 3.14 On or about March 10, 2005, Dr. Dahl instructed Appellant to correct several health care
7 assessments that he had not completed in compliance with the Rainier School format. In
8 response, Appellant left a voice message for Dr. Dahl indicating that he would not rewrite the
9 annual health care assessment forms. Appellant also told Dr. Dahl not to speak to him but to
10 communicate to him in writing only. Dr. Dahl responded to Appellant by memorandum stating
11 that Appellant was expected to correct the health care assessments and that the nature of the
12 work at Rainier School precluded him from communicating with Appellant in writing only.
13

14
15 3.15 On April 12, 2005, Mr. Crowley issued Appellant a memorandum notifying him that
16 continued non-compliance with directives would be considered insubordination.
17

18
19 3.16 On April 15, 2005, Dr. Dahl and Sharon Buss, Human Resource Manager, met with
20 Appellant to discuss the expectation that Appellant complete the health care assessments using
21 Rainier School's format. During the meeting Dr. Dahl directed Appellant to rewrite fourteen
22 assessments using the required format. Appellant again stated that he would not rewrite the
23 assessments.
24

25 3.17 By memorandum dated April 19, 2005, Dr. Dahl confirmed the April 15, 2005, directives
26 to Appellant. He reiterated to Appellant that he was to rewrite assessments by April 29, 2005.
27 Appellant was directed to provide the rewritten assessments to Dr. Dahl for review.
28
29

1 3.18 On April 22, 2005, Appellant filed a harassment claim against Dr. Dahl and Mr. Crowley.
2 As a result, by memorandum dated April 25, 2005, Regional Administrator anita delight directed
3 Appellant to report to Acting Assistant Superintendent Dale Thompson. Ms. delight informed
4 Appellant that the directives given to him by Dr. Dahl in the April 19, 2005, memorandum were
5 still in effect. Ms. delight confirmed the directive that Appellant was to complete rewriting the
6 annual health care assessments by Friday, April 29, 2005.
7

8
9 3.19 Mr. Thompson delivered Ms. delight's memorandum to Appellant on April 25, 2005.
10 Appellant told Mr. Thompson that he would not complete the assessments in the Rainier School
11 format as directed. As of the close of business on April 29, 2005, Appellant had not rewritten
12 the assessments.
13

14 3.20 As a result, on May 10, 2005, Mr. Thompson, acting as Appellant's supervisor, initiated a
15 Conduct Investigation Report (CIR) alleging that Appellant failed to follow a supervisory
16 directive to complete annual health care assessment documents in the Rainier School format by
17 April 29, 2005.
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19
20 3.21 Appellant responded to the CIR on May 11, 2005. In his response, Appellant
21 acknowledged that he had not followed the Rainier School format and indicated that he had no
22 intention of ever following it. Appellant explained that he thought his format was superior to
23 what Dr. Dahl had asked him to do and that as a physician, he felt that he had the right to act
24 according to his own best judgment. Appellant further indicated that he thought that Dr. Dahl
25 was incompetent, that he could not take orders from Dr. Dahl, and that he would not submit his
26 assessments for approval by Dr. Dahl.
27

28
29 3.22 On June 9, 2005, as part of the CIR process, Appellant met with Terry Madsen,
Superintendent of Lakeland Village, Mr. Thompson and Ms. Buss to discuss the CIR. During

1 the meeting, Appellant admitted that he failed to rewrite the annual health care assessment forms
2 as directed.

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4 3.23 As a result of Appellant's admitted failure to comply with the repeated directives, a pre-
5 disciplinary meeting was conducted on June 9, 2005.
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8 3.24 Prior to determining the level of discipline to impose, Mr. Crowley considered
9 Appellant's employment history at Rainier School, the information Appellant provided at the
10 pre-disciplinary meeting, and Appellant's history of repeated refusals to use the Rainier School
11 format for annual health care assessments. Mr. Crowley determined that Appellant's refusal to
12 follow supervisory directives constituted insubordination and that his refusal to use the Rainier
13 School format for annual health care assessments put clients at risk and created liability for the
14 school. Mr. Crowley found that Appellant had been given many opportunities to comply with
15 the directive to use the Rainier School format, but he continued to refuse to do so. Because
16 Appellant repeatedly refused to follow this supervisory directive, Mr. Crowley concluded that he
17 could no longer trust Appellant to follow other supervisory directives. Therefore, Mr. Crowley
18 determined that dismissal was the appropriate disciplinary sanction.
19
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21 **IV. ARGUMENTS OF THE PARTIES**

22 4.1 Respondent asserts that Rainier School needed to improve the quality of health care
23 documentation. One way they went about doing this was to improve efforts to integrate
24 information and understand the interrelationships of patients' disorders by utilizing a
25 standardized format for annual health care assessments. Respondent contends that the Rainier
26 School standardized format was crucial in ensuring that critical client information was
27 documented in an easily accessible format. Respondent contends that Appellant repeatedly
28 refused to use the Rainier School standardized format and willfully disregarded his supervisors'
29 directives. Respondent asserts that Appellant's behavior put vulnerable clients at risk and

1 created a liability for Rainier School. Respondent contends that Rainier School could not
2 tolerate Appellant's willful disregard of his responsibility to comply with Rainier School
3 standards. Respondent argues that dismissal was the appropriate sanction.
4

5 4.2 Appellant argues that Respondent's actions were in retaliation for a whistleblower
6 complaint he filed. Appellant also argues that Respondent's actions constituted discrimination.
7 Appellant admits that he refused to use the Rainier School format but he asserts that the format
8 he chose to use contained the same information. Appellant suggests that Rainier School staff
9 could have rewritten his assessments and put the information into the format preferred by Rainier
10 School. Appellant feels that he has the right to use his professional judgment in determining
11 how to document the annual health care assessments and that he should not be forced to use the
12 standardized format approved by Rainier School. Appellant also argues that Respondent failed
13 to initiate the incident report into his refusal to use the standardized format within fifteen days of
14 his first refusal as required by DSHS Policy 545.
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16

17 **V. CONCLUSIONS OF LAW**

18 5.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.
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21 5.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
22 the charges upon which the action was initiated by proving by a preponderance of the credible
23 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
24 sanction was appropriate under the facts and circumstances. WAC 357-52-110.
25

26 5.3 As provided in RCW 49.60.120, allegations of discrimination are within the jurisdiction of
27 the Washington State Human Rights Commission, not the Personnel Resources Board.
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1 5.4 Pursuant to Chapter 42.40 RCW, allegations of retaliation toward a whistleblower are within
2 the jurisdiction of the Washington State Human Rights Commission, not the Personnel Resources
3 Board.

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5 5.5 The narrow issue properly before the Board is whether Appellant failed to comply with
6 supervisory directives when he refused to use the Rainier School format for documenting annual
7 health care assessments and if so, whether the disciplinary sanction of dismissal was appropriate.
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10 5.6 We disagree with Appellant's argument that his dismissal should be overturned because
11 Respondent failed to initiate the incident report within fifteen days of his first refusal as required
12 by DSHS Policy 545. The evidence clearly establishes that Appellant engaged in ongoing
13 misconduct when he refused to use the Rainier School format. He was given a written directive
14 on April 19, 2005, and again on April 25, 2005, with a clear due date of April 29, 2005, for
15 submitting the rewritten assessments. When Appellant failed to comply with the directives by on
16 April 29, 2005, the CIR was initiated. The CIR was initiated on May 11, 2005, fourteen days
17 after Appellant failed to comply with the written directives. Therefore, the CIR was timely and
18 Respondent did not violate Policy 545.
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21 5.7 Respondent has met its burden of proof that Appellant failed to comply with supervisory
22 directives. As a Physician employed by DSHS at Rainier School, Appellant has a responsibility
23 to comply with Rainier School standards. Appellant's behavior was willful, showed a blatant
24 disregard of Rainier School standards and expectations, and clearly constituted misconduct.
25

26 5.8 Under the proven facts and circumstances and in consideration of the repeated nature of
27 Appellant's admitted behavior and his willful refusal to comply with supervisory directives,
28 dismissal is appropriate. The appeal should be denied.
29

1 **VI. ORDER**

2 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Mohinder Cheema is denied.

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4 DATED this ____ day of _____, 2006.

5 WASHINGTON PERSONNEL RESOURCES BOARD

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8 _____
LAURA J. ANDERSON, Chair

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10 _____
LARRY GOODMAN, Member