

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

SUSAN HOGARTH,

Appellant,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

Case No. SUSP-00-0001

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 GERALD L. MORGEN, Vice Chair. The hearing was held on June 21, 2000, in Room 250 of the South Campus Center at the University of Washington in Seattle, Washington. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 Appearances. Appellant was present and appeared *pro se*. Respondent University of Washington was represented by Jeffrey W. Davis, Assistant Attorney General.

1.3 Nature of Appeal. This is an appeal from a disciplinary sanction of a three-day suspension for insubordination, failure to provide health care provider documentation, chronic tardiness and neglect of duty.

1.4 Citations Discussed. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); Burgess v. University of Washington, PAB No. D93-151 (1994); Countryman v. Dep't of Social and Health Services, PAB No. D94-025 (1995); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

II. FINDINGS OF FACT

2.1 Appellant Susan Hogarth is a Central Processing Technician 1 and a permanent employee for Respondent University of Washington at Harborview Medical Center. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 11, 2000.

2.2 By letter November 29, 1999, Tomi Hadfield, Chief Operating Officer at Harborview Medical Center, informed Appellant of her three-day suspension, effective December 14, 15 and 16, 1999, for insubordination, failure to provide health care provider documentation, chronic tardiness and neglect of duty.

2.3 The circumstances of Appellant's misconduct were summarized in a memorandum dated November 21, 1999, from Robert Wisdom, Area Supervisor for the Harborview Medical Center Department of Laboratory Medicine. In the memorandum, Mr. Wisdom recommended that Appellant be suspended from her position.

2.4 Appellant had been counseled orally and in writing on numerous occasions regarding her attendance and punctuality. In July 1997, Appellant was counseled orally and in writing after she abandoned her position and left her duties without notice. In December 1997 and August 1998, she was counseled regarding her poor punctuality.

2.5 In April 1999, Appellant was counseled regarding her frequent absences and tardiness. In addition, she was directed to submit written documentation from her health care provider for each future absence or early departure due to illness.

2.6 On May 26, 1999, Mr. Wisdom met with Appellant regarding her continued poor attendance. The meeting was documented in a June 3, 1999 letter of reprimand. In addition to her

1 continued lack of punctuality, Appellant had not submitted written documentation from her health
2 care provider. Appellant was informed that she was still required to turn in the documentation and
3 that failure to do so would be considered insubordination. In addition, she was warned that unless
4 she improved both her attendance and punctuality and provided the necessary documentation,
5 disciplinary action would be recommended.

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7 2.7 Appellant did not provide her primary care physician or her Ear, Nose and Throat (ENT)
8 doctor with a copy of the June 3, 1999 letter of reprimand. Subsequent to the June 3, 1999 letter of
9 reprimand, Appellant did not provide her employer with medical documentation from her primary
10 care physician for her absences. She admittedly did not request documentation from her ENT.

11 2.8 Appellant continued to miss a substantial amount of work, continued her pattern of
12 excessive tardiness and failed to provide medical documentation for her absences. From August 12,
13 1998 through September 30, 1999 Appellant used 112 hours of sick leave and more than 174 hours
14 of leave without pay (LWOP). Of the 174 hours of LWOP, over 119 were attributable to illness and
15 over 54 were due to her chronic tardiness. Appellant was allowed to make up 15.75 hours of the
16 LWOP due to tardiness. In total, Appellant was absent or tardy on 47 percent of her scheduled
17 work days.

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19 2.9 Respondent was aware of Appellant's health concerns and need for medical care. However,
20 much of Appellant's tardiness was attributable to non-medical reasons, such as car trouble.
21 Appellant's chronic tardiness affected the entire division and caused her co-workers to miss breaks
22 or to stay overtime to cover her work. When staffing was inadequate due to Appellant's
23 unscheduled absences, workplace morale suffered and the department's ability to provide laboratory
24 services was adversely impacted.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that the employer is entitled to have documentation for absences due to medical reasons. Respondent argues that Appellant failed to provide the documentation from her physician for her absences despite repeated requests that she do so. Respondent contends that if Appellant's physician would not provide the documentation, she should have shown him the letter of reprimand and taken the steps necessary to ensure that such documentation was forthcoming. Respondent also argues that Appellant was chronically tardiness. Respondent asserts that Appellant neglected her duty to report to work on time, and by doing so, she burdened her co-workers which negatively impacted the Department's ability to function and resulted in a negative impact on patient care. Respondent contends that in spite of repeated counseling and informal disciplinary action, Appellant failed to show any improvement. Therefore, Respondent asserts that a three-day suspension was appropriate.

3.2 Appellant argues that she was sick and that Respondent did not give consideration to her illness. Appellant further argues that her primary care physician would not give her the medical documentation requested by Respondent. Appellant asserts that her tardiness and absences did not have a negative impact on her co-workers and argues that staffing issues were a management problem. Appellant contends that she did not choose to be sick and that she did not choose to use leave without pay. She asserts that she was unable to report to work and was tardy due to her illness.

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

1 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
2 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
3 Corrections, PAB No. D82-084 (1983).

4 4.3 Excessive tardiness or excessive absenteeism that causes a burden or undue hardship of
5 fellow employees or a reduction in productivity is just cause for discipline in compliance with
6 WAC 251-11-030. Burgess v. University of Washington, PAB No. D93-151 (1994).

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8 4.4 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 4.5 Respondent has met its burden of proving that Appellant was excessively absent and tardy
12 and that her unpredictable absences caused an undue burden on her co-workers which resulted in an
13 adverse impact on the laboratory services provided for patients. Respondent has met its burden of
14 proving that Appellant neglected her duty when she failed to report to work on time.

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16 4.6 Insubordination is the refusal to comply with a lawful order or directive given by a superior
17 and is defined as not submitting to authority, willful disrespect or disobedience. Countryman v.
18 Dep't of Social and Health Services, PAB No. D94-025 (1995).

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20 4.7 Appellant was aware of the directive that she provide medical documentation for her
21 absences due to illness. Respondent has met its burden of proving that Appellant failed to provide
22 the documentation. Furthermore, Appellant provided no evidence to show that she had even
23 attempted to obtain such documentation.

24 4.8 Respondent has met its burden of proving that Appellant engaged in an unacceptable pattern
25 of poor attendance and excessive tardiness and that she failed to provide documentation for her
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1 absences due to illness. Therefore, the disciplinary sanction of a three-day suspension is
2 appropriate, and the appeal should be denied.

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4 **V. ORDER**

5 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Susan Hogarth is denied.

6 DATED this _____ day of _____, 2000.

7 WASHINGTON STATE PERSONNEL APPEALS BOARD

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9 _____
10 Walter T. Hubbard, Chair

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12 Gerald L. Morgen, Vice Chair