

1 BEFORE THE PERSONNEL APPEALS BOARD

2 STATE OF WASHINGTON

3 PAUL JACKSON,)

4 Appellant,)

) Case No. SUSP-01-0020

5 v.)

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

6 DEPARTMENT OF SOCIAL AND HEALTH)
7 SERVICES,)

8 Respondent.)
_____)

9 I. INTRODUCTION

10 1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER
11 T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the office
12 of the Personnel Appeals Board in Olympia, Washington, on May 1, 2002. RENÉ EWING,
13 Member, did not participate in the hearing or in the decision in this matter.

14
15 1.2 **Appearances.** Appellant was not present and no representative appeared on his behalf.
16 Colin Jackson, Assistant Attorney General, represented Respondent Department of Social and
17 Health Services.

18
19 1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of a 10-day suspension
20 for neglect of duty, gross misconduct and willful violation of published employing agency rules or
21 regulations. Respondent alleged that Appellant emotionally and verbally abused a resident.

22 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084
23 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v.
24 School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services,
25 PAB No. D93-053 (1994).
26

II. FINDINGS OF FACT

1
2 2.1 Appellant Paul Jackson is a Residential Rehabilitation Counselor (RRC) 2 and permanent
3 employee of Respondent Department of Social and Health Services (DSHS) at the Special
4 Commitment Center (SCC). Appellant and Respondent are subject to Chapters 41.06 and 41.64
5 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely
6 appeal on May 30, 2001.

7
8 2.2 The SCC is a civil commitment program for violent sexual offenders who have a high risk
9 of re-offending. The program is designed for residents with mental abnormalities and a history of
10 having committed one or more sexual crimes. The SCC's mission is to care, control and treat
11 difficult sexual offenders for their eventual release. Residents of the SCC are occasionally abusive
12 toward staff. Staff receives training in the proper way to respond to verbal abuse, threats and
13 harassment from residents. In addition, staff is made aware when they are employed with the SCC
14 that they must be able to deal with verbal abuse, threats to themselves and their families, and other
15 forms of harassment from residents; that the residents have behavioral, psychiatric, social, medical
16 and correctional problems; and that the residents may exhibit bizarre and aggressive behavior.

17 2.3 Appellant began employment at the SCC in November 1998. Prior to the incident giving
18 rise to this appeal, Appellant had no history of formal disciplinary action, however, he had received
19 a written counseling memo and a memo of concern. In addition, Appellant's performance
20 evaluation noted that Appellant's interactions with residents needed to be collaborative and
21 persuasive rather than direct and confrontational. Appellant received extensive training specific to
22 professional behavior and handling residents with mental health issues.

23
24 2.4 By letter dated May 18, 2001, Mark Seling, Superintendent, informed Appellant of his 10-
25 day suspension for neglect of duty, gross misconduct and willful violation of the published
26 employing agency or Department of Personnel rules or regulations. Superintendent Seling alleged

1 that on March 3, 2001, Appellant used demeaning remarks, profanities, derogatory nicknames,
2 inappropriate shouting, finger pointing and threats of physical harm during an interaction with
3 resident James P.

4 2.5 On March 3, 2001, Appellant and RRC 2 Anthony Cavalier were working the A-expansion
5 of the SCC. James P. was a resident of the A-expansion. At approximately 8:30 a.m., James asked
6 Mr. Cavalier what had happened to his breakfast because it was not on the cabinet where James
7 expected it to be. When Mr. Cavalier told James that he did not know where James' breakfast was,
8 James looked in the trashcan and found that the remains of his breakfast had been thrown away.
9 James said, "I'll handle this" and walked into the dayroom where Appellant was sitting.

10
11 2.6 James confronted Appellant and asked, "Why are you eating my food?" Mr. Cavalier then
12 heard yelling and turned on the closed circuit television monitor. He saw Appellant point his finger
13 in James' face and say, "Don't you ever call me punk thief. I'll fuck you up. Fuck you." James
14 responded, "Try it punk. Thief. Fuck you, you stole my food."

15
16 2.7 Mr. Cavalier went into the dayroom and as Appellant and James continued to argue, Mr.
17 Cavalier stepped between them and told James to leave the area. Mr. Cavalier then escorted James
18 to his room.

19 2.8 Mr. Cavalier called the supervisor, RRC 3 Marge Southard, and informed her of the
20 incident. Ms. Southard spoke with Appellant and reassigned him from the A-expansion to the
21 Lower A-POD. As Appellant was leaving the area, he and James loudly exchanged comments such
22 as, "fuck you," "punk," "thief," and "food stealer."

23
24 2.9 On March 4, 2001, Ms. Southard completed an Incident Report (IR). The IR was referred to
25 Allison Brady, SCC Investigator, who reviewed the IR and attached witness statements and
26 interviewed Mr. Cavalier, James, and RRC 2 James Wilson from the night shift. Residential

1 Rehabilitation Manager Alan McLaughlin interviewed Appellant. Mr. McLaughlin summarized the
2 results of the IR investigation and forwarded the information to Superintendent Seling.

3 2.10 Following Superintendent Seling's direction, on March 13, 2001, RRC 3 Tabitha Yockey,
4 initiated a Conduct Investigation Report (CIR). Mr. McLaughlin investigated the CIR. On March
5 30, 2001, Mr. McLaughlin completed his investigation and forwarded the results to Superintendent
6 Seling.

7
8 2.11 Superintendent Seling reviewed all the investigation information, including Appellant's
9 written response, and met with Appellant before determining that misconduct had occurred.
10 Superintendent Seling concluded that Appellant neglected his duty to provide a safe, therapeutic
11 environment for James and to model appropriate professional behavior. Superintendent Seling
12 determined that Appellant was aware of DSHS policies, yet he willfully violated the policy on
13 resident abuse and his actions adversely impacted the SCC's ability to care, control and treat James.
14 Superintendent Seling was concerned that Appellant did not express remorse for his actions or
15 acknowledge any wrong doing, but instead tried to rationalize his behavior by alleging that James
16 had provoked his response. Although Appellant had received informal discipline regarding his
17 interactions with residents, Superintendent Seling determined that a 10-day suspension was the
18 appropriate disciplinary sanction to impose because this was Appellant's first formal discipline.

19 2.12 DSHS Policy 8.02 addresses client abuse and states, in relevant part:
20

21 Abuse means any act of physical or mental mistreatment or injury which harms or
22 threatens a person through action or inaction by another individual.

23 Malice or Maliciously means an evil intent, wish or design to vex, annoy, or injure
24 another person. Such malice may be inferred from an act done in willful disregard of
25 the rights of another, or an act wrongfully done without just cause or excuse, or an
26 act or omission of duty betraying a willful disregard of social duty.

Negligent Treatment means an act or omission which evinces a serious disregard of
consequences of such magnitude as to constitute a clear and present danger to the
patient's health, welfare, and safety.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

4.4 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).

4.5 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).

4.6 Under the totality of the undisputed facts and circumstances, Respondent has met its burden of proving that Appellant neglected his duty, violated agency policy and that his actions rose to the level of gross misconduct. In addition, Respondent has proven that the disciplinary sanction of a 10-day suspension is appropriate. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Paul Jackson is denied.

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Walter T. Hubbard, Chair

Gerald L. Morgen, Vice Chair