

1 BEFORE THE PERSONNEL APPEALS BOARD

2 STATE OF WASHINGTON

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| 3 | JOHN ANGVIK, |) | |
| 4 | Appellant, |) | Case No. DISM-01-0023 |
| 5 | v. |) | FINDINGS OF FACT, CONCLUSIONS OF |
| 6 | |) | LAW AND ORDER OF THE BOARD |
| 7 | UNIVERSITY OF WASHINGTON, |) | |
| 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 on February
12 5, 2002, in the South Campus Center at the University of Washington in Seattle, Washington.

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14 1.2 **Appearances.** Appellant was present and was represented by Edward E. Younglove,
15 Attorney at Law of Parr and Younglove, P.L.L.C. Jeffrey W. Davis, Assistant Attorney General,
16 represented Respondent University of Washington.

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18 1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for Appellant
19 allegedly making a threat of violence, failing to follow policies and procedures, being
20 insubordinate, and being continually tardy for work.

21 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084
22 (1983); Chung v. University of Washington, PAB No. D94-079 (1995); Countryman v. Dep't of
23 Social and Health Services, PAB No. D94-025 (1995); WAC 251-11-030; Burgess v. University of
24 Washington, PAB No. D93-151 (1994).

1 **II. FINDINGS OF FACT**

2 2.1 Appellant John Angvik was a Custodian and a permanent employee for Respondent
3 University of Washington (UW) at Harborview Medical Center (HMC). Appellant and Respondent
4 are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and
5 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on March 20, 2001.

6 2.2 Appellant began employment with Respondent in 1979. From the beginning of his
7 employment, Appellant had attendance problems. From April 26, 1999, through November 21,
8 2000, Appellant's work history contains numerous letters of counseling and reprimand, a reduction
9 in salary, and a 15-day suspension. Each of these actions dealt with issues of absenteeism and/or
10 tardiness.

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12 2.3 Appellant was a shop steward for the Washington Federation of State Employees. In this
13 role, Appellant would bring staff's concerns to management's attention. Some of the issues
14 Appellant and other shop stewards raised concerned HMC's hiring practices, staff's perception that
15 certain minorities were engaging in "job brokering," and staff's lack of confidence in Robert Carroll,
16 Director of Environmental Services.

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18 2.4 By memorandum dated March 9, 2001, Mr. Carroll, recommended to Johnese Spizzo, Chief
19 Operating Officer (COO) of HMC, that Appellant be dismissed for making a threat of violence,
20 failing to follow policies and procedures, insubordination, and continuing tardiness.

21 *Tardiness:*

22 2.5 It is undisputed that on December 20, 2000, Appellant was .75 hours late for work and on
23 January 17, 2001, he was 1.25 hours late for work. Subsequent to being tardy, Appellant requested
24 the use of vacation leave for his tardiness. His requests were denied.

1 2.6 HMC Policy 3003.2 requires vacation leave requests to be approved in advance of the
2 effective dates unless used for emergency childcare. The policy includes the procedure for
3 requesting leave. The supervisor or the director may deny the request for the reasons set forth in the
4 procedure.

5 *Threat of Violence:*

6 2.7 On February 5, 2001, at approximately 11:40 a.m., Rustina Zaratkiewicz, the mother of
7 Appellant's children, called HMC and told Carol Houston, Administrative Specialist, that Appellant
8 had "not been himself lately," that he was threatening to report his concerns about HMC practices to
9 the Federal Bureau of Investigations, and that she did not think Appellant would come to HMC with
10 a gun but he was licensed to carry a gun. At approximately 4:15 p.m., Ms. Huston reported her
11 conversation with Ms. Zaratkiewicz to Mr. Carroll.

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13 2.8 Ms. Zaratkiewicz had a history of criminal convictions, untruthfulness, mental illness, and
14 making false allegations about Appellant to HMC. Nonetheless, Ms. Zaratkiewicz acted on
15 Appellant's behalf as his representative during the July 2000 pre-disciplinary process that resulted
16 in Appellant's reduction in salary for excessive absenteeism, tardiness and insubordination. Mr.
17 Carroll was not aware of Ms. Zaratkiewicz' history.

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19 2.9 From January 19, 2001, until May 31, 2001, Bruce Ewing-Chow, Environmental Services
20 Consultant, was under contract with HMC to train environmental services staff in the seven steps of
21 cleaning. Environmental services staff was instructed to cooperate with Mr. Chow. Appellant felt
22 comfortable discussing his concerns about HMC procedures and other issues with Mr. Chow.
23 Based on his observations of Appellant in the work place, Mr. Chow felt that Appellant was
24 unhappy, had something on his mind, and may have been angry.

1 2.10 At approximately 2:30 p.m. on February 5, 2001, while in the environmental services day
2 shift supervisor's office, Appellant and John Gainer, another member of the environmental services
3 staff, had a conversation with Mr. Chow about a television program.

4 2.11 After Mr. Gainer left the office, Appellant and Mr. Chow continued to talk. Appellant's
5 primary duties at HMC were in conjunction with moving furniture. Appellant and Mr. Chow talked
6 about HMC's policies and procedures for effectuating furniture moves. Appellant then shared his
7 concerns about HMC's prior practice of using prisoners for research purposes and his concerns
8 about the safety and welfare of HMC patients and employees. Appellant also stated that he should
9 receive more money for doing his assigned work and expressed his concerns over HMC's hiring
10 practices. The conversation turned to the subject of work place violence. Mr. Chow asked
11 Appellant his opinion of work place violence and Appellant replied that he was surprised that
12 someone hadn't come into the hospital and shot people. Mr. Chow asked Appellant if he meant like
13 the Postal Service incidents and Appellant confirmed that was his meaning.
14

15 2.12 At approximately 5:00 p.m., Mr. Chow went to Mr. Carroll's office and reported his
16 conversation with Appellant. Mr. Carroll told Mr. Chow about the telephone call from Ms.
17 Zaratkiewicz. Mr. Chow and Mr. Carroll were concerned about what they perceived to be a threat
18 of violence. Mr. Carroll was especially concerned because he felt that during the preceding weeks,
19 Appellant had appeared to be more agitated than in the past. In addition, Mr. Carroll was concerned
20 for his personal safety because he believed Appellant disliked him because he is homosexual.

21 2.13 Mr. Carroll reported his concerns to John Barbadian. Mr. Barbadian placed Appellant on
22 administrative leave and initiated an investigation. During a February 8, 2001, telephone
23 conversation with Mr. Barbadian, Ms. Zaratkiewicz indicated that Appellant had three guns, she felt
24 that his problems and the issues with HMC consumed him, and she was concerned about what he
25 might do.
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1 2.14 During a February 12, 2001, meeting with Mr. Barbadian and Mr. Carroll, Appellant denied
2 making any threatening comments.

3 2.15 Mr. Carroll did not find Appellant's denial credible. By memorandum dated March 9, 2001,
4 Mr. Carroll recommended that Appellant be dismissed. By letter dated March 12, 2001, Johnese
5 Spizzo notified Appellant of his immediate dismissal, effective March 13, 2001. COO Spizzo
6 stated that the serious nature of Appellant's actions required immediate dismissal to prevent further
7 threatening behavior toward HMC staff.

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9 2.16 Considering the timing of Ms. Zaratkiewicz' telephone call and Appellant's increasing
10 concerns about HMC practices, we find that a preponderance of the credible testimony and
11 evidence establishes that Appellant's comment to Mr. Chow constituted a verbal threat.

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13 2.17 HMC's Workplace Violence Management Plan defines workplace violence as "any verbal
14 assault, threatening behavior or physical assaults in or arising from the workplace." In part, the
15 plan "sets forth the policies and procedures for promoting a safe environment for patients, visitors
16 and staff and enforces a 'zero tolerance' violence policy."

17 **III. ARGUMENTS OF THE PARTIES**

18 3.1 Respondent argues that Appellant had a history of attendance problems, that progressive
19 discipline had no effect on changing Appellant's pattern of behavior, and that Appellant had the
20 attitude that HMC's rules and policies regarding leave did not apply to him. Respondent contends
21 that discipline is appropriate for Appellant's continued pattern of tardiness.

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23 Respondent also argues that Appellant had a reputation for being unhappy, hating certain minority
24 groups, and mistrusting and disliking Mr. Carroll because of his homosexuality. Respondent asserts
25 that even prior to becoming a shop steward, Appellant complained to management and others about
26 certain minorities and HMC's hiring practices. Respondent contends that Appellant's comment to

1 Mr. Chow was a veiled threat of violence, that it was remarkable enough that Mr. Chow felt he
2 needed to report the comment, and that when taken in the context of Ms. Zaratkiewicz's telephone
3 call, her later comments to Mr. Barbadian, and Appellant's obvious escalating aggressiveness and
4 unhappiness at HMC, Appellant's termination was necessary to protect the staff and defenseless
5 patients at HMC from violence. Respondent argues that HMC must treat work place safety
6 seriously and must guard employees' right to a work environment that is not life threatening.
7 Respondent contends that Appellant's behavior constituted a threat of violence and cannot be
8 tolerated. Therefore, Respondent asserts that dismissal is appropriate.

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10 3.2 Appellant acknowledges that he had attendance problems but asserts that he was improving.
11 Appellant asserts that his tardiness was not the basis for his dismissal and is an attempt by
12 Respondent to unfairly color the primary issue before the Board.

13 Appellant argues that he did not make a verbal threat of violence and did not directly threaten Mr.
14 Carroll. Appellant contends that Respondent took his comment, which was made during the course
15 of a conversation about work place violence, out of context. Appellant contends that threatening
16 violence is contrary to his nature and argues that he is a polite, courteous person who gets along
17 with everybody. Appellant asserts that Ms. Zaratkiewicz is not credible, that she is a mental case,
18 that she has tried to make Appellant's life difficult, and that she is motivated to continue her history
19 of making false accusations against Appellant. Appellant contends that he is not guilty of work
20 place violence and that he should not be terminated.

21 **IV. CONCLUSIONS OF LAW**

22 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
23 herein.
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1 4.2 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 4.3 Violation of policy is established by facts showing the existence and publication of the
7 policy, Appellant's knowledge of the policy, his/her failure to comply with the policy and presumes
8 a deliberate act. Chung v. University of Washington, PAB No. D94-079 (1995)
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10 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior
11 and is defined as not submitting to authority, willful disrespect or disobedience. Countryman v.
12 Dep't of Social and Health Services, PAB No. D94-025 (1995).

13 4.5 Excessive tardiness or excessive absenteeism that causes a burden or undue hardship of
14 fellow employees or a reduction in productivity is just cause for discipline in compliance with
15 WAC 251-11-030. Burgess v. University of Washington, PAB No. D93-151 (1994).
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17 4.6 Respondent has met its burden of proof that Appellant neglected his duty, was insubordinate
18 and violated HMC policy when he was tardy for work on December 20, 2000, and January 17,
19 2001.

20 4.7 Respondent has met its burden of proof that Appellant's comment to Mr. Chow constituted a
21 threat of violence and violated institution policy.
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23 4.8 Under the proven facts and circumstances of this case, including Appellant's continuing
24 pattern of tardiness and his threat of violence, dismissal is not too severe. The appeal should be
25 denied.
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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of John Angvik is denied.

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Walter T. Hubbard, Chair

Gerald L. Morgen, Vice Chair