BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GLEE WINTER, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. DISM-04-0018 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, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the Department of Social and Health Services, Community Services Division, 1002 North 16th Avenue, Yakima, Washington, on July 12 and 13, 2005.

1.2 **Appearances.** Appellant Glee Winter was present and was represented by Michael Hanbey, Attorney at Law. Kari Hanson, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of suspension followed by dismissal for neglect of duty, gross misconduct and willful violation of agency policy. Respondent alleges that Appellant provided criminal history information of offenders to other offenders and showed offenders how to access the information themselves.

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II. FINDINGS OF FACT

2.1 Appellant Glee Winter was a permanent employee for Respondent Department of Corrections. 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 February 20, 2004.

2.1 At the outset of the hearing, Appellant objected to Respondent's Exhibit R-2, the polygraph report of an offender. Appellant moved to exclude the results of polygraph examination, arguing that the Board should not allow the results of the polygraph to substitute the Board's judgment regarding the credibility of the offender who, although subpoenaed, would not appear to testify at hearing. Appellant further argued that there was no indication of the questions posed during the polygraph examination or an explanation of the kind of polygraph conducted and the experience and knowledge of the individual conducting the test.

2.3 Respondent argued that the polygraph results were an important part of the appointing authority's determination of the offender's credibility. Respondent argued, therefore, that if the Board did not admit the polygraph results themselves, the Board should allow the appointing authority to testify regarding the weight he gave the polygraph results in determining the level of discipline imposed against Appellant.

2.4 This Board has previously addressed the issue of the admissibility of polygraph evidence. In keeping with prior decisions (see Cabotage v. Dep't. of Corrections, PAB No. DISM-97-0021, Rondeau v. Dep't. of Corrections, PAB No. DISM-00-0048), the Board granted Appellant's motion

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to exclude the polygraph report. The Board further ruled that the appointing authority could testify regarding the weight he gave to the polygraph results in determining the offender's credibility.

2.5 Appellant began her employment with the Department of Corrections in July 1998. Appellant has the following history of corrective actions:

- A March 25, 2002, memo addressing the inappropriateness of an incident where Appellant slapped an inmate's arm in a joking manner.
- A letter of reprimand dated October 28, 2002, for disregarding a directive that she not share personal information with offenders and for non-compliance with the department's ethics policy.
- A memo of concern dated January 17, 2003, for failing to follow her chain of command.
- A letter of reprimand dated March 11, 2003, for making a comment of a sexual nature to a co-worker, in violation of DOC Policy 850.625.
- A memo of concern dated April 11, 2003, for allowing a hospital staff member to relieve her so she could go on a smoke break.

2.6 In addition, Appellant was verbally counseled by her supervisor on five different occasions regarding her role and responsibility as a correctional officer and pointed out specific inappropriate behavior, which included disclosing personal information to offenders and spending too much time with certain offenders.

2.7 The issue here is whether Appellant disclosed criminal information and explained the process of how to access and read the "Escorted Leave" program to offenders on September 6, 2003. The Escorted Leave program is a software program which contains confidential offender criminal history. At the time of the incident alleged here, the Escorted Leave files were typically accessed by officers escorting offenders in and outside of the institution. The information contained in the Escorted Leave files included an offender's name, a photo, personal identifying information, and the criminal history of the offender.

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2.8 Per DOC Policy Directive 460.150, offender information must be handled in a confidential manner. DOC Policy Directive 800.010 prohibits employees from disclosing confidential information to any unauthorized person or use of confidential information for personal benefit or benefit to another. DOC Policy Directive 280.925 prohibits offenders from accessing any departmental electronic data other than through systems specifically designated solely for offenders. DOC Policy 801.005 prohibits employee relationships with offenders and Policy 800.010 requires employees to conduct their duties in an ethical manner.

2.9 Appellant was aware of the above policies and of her responsibility to abide by those policies.

2.10 Sometime during the second week of September 2003, Offender Brown filed a grievance expressing his concern that confidential offender information about his crime was being released by a correctional officer to other offenders. The offender felt that his safety was in jeopardy. Kathleen Dowdy, Correctional Housing Unit Manager and grievance coordinator, handled the grievance for the offender, who was unable to identify the correctional officer or any other specific information. Consequently, Ms. Dowdy was unable to take any action or process the grievance. However, in mid September, an Offender named Fritz informed Ms. Dowdy that he was told the nature of the crime for which Offender Brown had been incarcerated. Offender Fritz stated to Ms. Dowdy that the offender who told him this information was named Berney, and he identified Appellant as the officer who provided the information to Offender Berney. Offender Fritz was close to his release and indicated he did not want to become involved in any incident that would impact his release time. He also expressed concern that Offender Brown would be hurt as a result of his crime (a sex offense) being released within the institution.

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2.11 On September 20, 2003, Offender Rhodes voluntarily told Ms. Dowdy that Appellant had disclosed the nature of Offender Brown's crime to him and another offender named Berney. Offender Rhodes also claimed that Appellant gave them step-by-step instructions on how to use the computer located in a break room and how to access the information themselves. Offender Rhodes claimed that he became involved as he was passing the break room and Appellant called him in. Offender Berney, who was already in the break room, asked Appellant to look up Offender Brown's crime record on the computer, and Appellant complied. Offender Rhodes also indicated that at his request, Appellant looked up his file on the computer, as well as the file for an offender named Verbeck.

2.12 On October 3, 2003, Ms. Dowdy initiated an Employee Conduct Report against Appellant alleging that Appellant disclosed confidential offender information to other offenders and showed the offenders how to access and read the Escort Leave program information.

2.13 Dan Van Ogle, Correctional Unit Supervisor, conducted the investigation. During the interview with Mr. Van Ogle, Offender Rhodes again provided detailed information of how Appellant showed him and Offender Berney how to access the Escorted Leave files, and he provided detailed steps on to navigate through the various computer files in order to access the escorted leave files. When Mr. Van Ogle interviewed Offender Fritz, the offender provided a similar statement to that which he had provided to Ms. Dowdy.

2.14 When interviewed by Mr. Van Ogle, Appellant admitted she accessed the Escorted Leave program and reviewed the files of several offenders, including Verbeck and Brown. Appellant indicated she looked up the files of these offenders because she became "curious" after offender

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Berney approached her in the break room and asked her to open the file on Offender Brown so he could see Brown's crime. Appellant denied, however, that any inmates were present when she accessed the Escorted Leave files on the computer or that she released any offender crime information to other offenders.

2.15 Ms. Dowdy testified that in her experience working in the corrections field, which included five years at Ahtanum View Corrections Center, she found offender Rhodes to be a reliable source of information. In reaching this conclusion, Ms. Dowdy analyzed whether there was an underlying motive for Offender Rhodes to fabricate the allegation against Appellant. To determine whether the offender had an underlying motive to be untruthful, Ms Dowdy considered where he is in his sentence, his adjustment to living in the institution, and her past experiences with him. In addition, Ms. Dowdy also took steps to corroborate the information he provided. She learned that the steps Offender Rhodes provided to access the Escorted Leave program were accurate when she followed them herself and successfully navigated through the software even though she had never accessed it previously. In addition, Ms. Dowdy corroborated that Appellant was on duty and was logged on to the computer located in the break room on September 6, 2003, the date Offender Rhodes identified.

2.16 Mr. Van Ogle also testified that he found Offender Rhodes to be credible based on Rhodes' ability to explain how Appellant navigated the computer, named the offender names whose files were accessed, and his willingness to undergo a polygraph examination.

2.17 In her testimony before us, Appellant stated that on September 6, she was working as B/C/D floor officer. The B/C/D floor break room also doubled as an office where inmate behavior logs, inmate kites, and other inmate paperwork was located. A telephone and computer for staff use only was located in the break room. Appellant testified that at approximately 8 a.m., she was logged into

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the computer in the break room checking her e-mail when Offenders Berney and Rhodes entered. Appellant testified that Offender Berney stated to her, "Hey Winter, look up Brown's crime," and she responded that he was "out of his mind" and to "get out of my office." Appellant admits that she looked up the escort leave files of several offenders during count time. The offenders Appellant recalls looking up were Reid, Reed, Brown, Verbeck, and Rhodes. Appellant denied ever supplying criminal history information about any offender to other offenders during her tenure at AVCC, and she denies providing the process for accessing the escorted leave files with any offenders.

2.18 A printout screen of the last four Word documents that were accessed under Appellant's user account showed the following files were accessed:

Accomplishments2001
Brown
Rhodes
Verbeck

(Inmate first names and DOC numbers have been omitted for purposes of this order).

2.19 Joop DeJonge, Superintendent, was Appellant's appointing authority. Prior to determining whether Appellant engaged in misconduct, Mr. DeJonge approved Offender Rhodes undergoing a polygraph examination. Mr. DeJonge also held a pre-termination meeting with Appellant on January 23, 2004. Appellant again denied the allegations and indicated that she had nothing to add to her written response to the ECR. Mr. DeJonge later received a document Appellant submitted detailing discrepancies in the information provided by the institution's information technologist. Mr. DeJonge relied on the polygraph results to find that Offender Rhodes was credible.

2.20 After weighing the evidence before him, Mr. DeJonge concluded that Appellant engaged in misconduct. In determining the level of discipline, Mr. DeJonge weighed the consequences of

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Appellant's release of confidential information regarding an offender's crime to the inmate population. Mr. DeJonge testified that releasing offender information created a potential for violence within the institution, especially to an offender who committed a sex crime against a child. Mr. DeJonge concluded that termination was the appropriate sanction based on the egregious nature of Appellant's misconduct and her continued failure to maintain appropriate boundaries with offenders.

2.21 By letter dated January 28, 2004, Superintendent DeJonge notified Appellant of her suspension, effective January 29, 2004, followed by immediate dismissal, effective at the end of her shift on February 12, 2004. Superintendent DeJonge charged Appellant with neglect of duty, gross misconduct and willful violation of agency policy. Specifically, Superintendent DeJonge alleged that Appellant provided criminal history information to other offenders, accessed a confidential computer program in the presence of offenders, which contained offender criminal history and crimes, and instructed the offenders on how to access the information.

2.22 Respondent did not present the Board with direct testimony from offender Rhodes or other witnesses to directly support the allegations against Appellant. In this case, however, Respondent presented a preponderance of evidence to support the allegation that Appellant shared confidential offender information with other offenders and provided instructions to the offenders on how to access the information themselves. In reaching this finding, we relied on the testimony from Ms. Dowdy and Mr. Van Ogle that 1) Inmate Rhodes was able to consistently provide step-by-step instructions on how to access the Escort Leave program and his ability to identify the offender files that were accessed in the Escort Leave program, 2) the printout of the offender files last accessed under Appellant's account matched the names provided by Offender Rhodes, and 3) Appellant's admission that she accessed those same files. We have considered Appellant's testimony that no

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inmates were present when she was reviewing the Escort Leave files and her denial that she disclosed offender information or the process for obtaining offender criminal information. However, when weighing the evidence presented with Appellant's history and pattern of failing to employ sound judgment in her interactions with offenders, we find that Appellant, on a more likely than not basis, engaged in the alleged misconduct outlined in the January 28, 2004 termination letter.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that a preponderance of the evidence supports that Appellant disclosed offender confidential information to offenders. Respondent argues that a number of factors supports Offender Rhodes' credibility, including his reputation as an offender who, in the past, gave reliable information to staff, his consistency throughout the investigation and his polygraph results, which concluded he was not being deceitful. Respondent argues that although the evidence here is mostly circumstantial, it is strong enough to support, on a more likely than not basis, that Appellant engaged in the misconduct. Respondent argues that given the egregious nature of theincidents, dismissal was appropriate.

3.2 Appellant admits that she accessed the Escorted Leave program out of curiosity but denies that she conveyed any information from the computer system to any offender. Appellant argues that the computer evidence supports that she accessed the Escorted Leave files, but does not prove that she did so on September 6. Appellant asserts that Respondent presented nothing to corroborate what Offender Rhodes said and asserts that the inmates interviewed should not be believed. Appellant asserts that termination was far too severe for going into a computer screen she should not have been viewing.

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IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

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

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

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). Flagrant misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

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. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

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4.6 Appellant understood the agency's policies regarding confidential information, and she understood her duty to refrain from disclosing confidential information to any unauthorized person. Respondent has met its burden of proving by a preponderance of the credible evidence that Appellant neglected her duty and willfully violated the agency's policies when she provided confidential information about an offender's criminal record to other offenders and when she disclosed to offenders the steps for accessing that information. Respondent has also proven that Appellant's actions compromised the safety of an offender; therefore, Appellant's actions rose to the level of gross misconduct.

4.7 Although it is not appropriate to initiate discipline based on prior formal and informal disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No. D93-163 (1995).

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

4.9 Appellant's misconduct demonstrates a pattern of disregarding the high standards of conduct and compliance with rules, procedures, and the policies required to maintain the integrity, safety, and security of the staff and offenders at Ahtanum View Corrections Complex. Therefore, we

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conclude that dismissal is not too severe a sanction, and the appeal of Glee Winter should be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Glee Winter is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

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