BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

KAREN WILLIAMS, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. DISM-02-0077 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; GERALD L. MORGEN, Vice Chair; and BUSSE NUTLEY, Member. The hearing was held in the Conference Room at the University of Washington's South Campus Center in Seattle, Washington, on July 22, 2003.

1.2 **Appearances.** Appellant Karen Williams was present and was represented by Christopher Coker, Attorney at Law, of Parr, Younglove, Lyman & Coker P.L.L.C. Jeffrey Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for abandonment of position. Respondent alleged that Appellant failed to report to work or to contact Respondent from December 11, 2001 until her dismissal on September 4, 2002.

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1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); WAC 356-34-060.

II. FINDINGS OF FACT

2.1 Appellant was a permanent employee for Respondent University of Washington. 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 September 30, 2002.

2.2 At the time of her dismissal, Appellant was a Mental Health Specialist II with the Harborview Medical Center's Department of Patient Care Services. Appellant began her employment with Harborview Medical Center (HMC) in 1998.

2.3 By letter dated August 16, 2002, Johnese Spisso, Chief Operating Officer, informed Appellant of her dismissal effective September 4, 2002. Ms. Spisso alleged that Appellant abandoned her position. Following an incident at work that resulted in a grievance process, Appellant had not reported to work or made contact since a mediation session on December 11, 2001.

2.4 Appellant had not been the subject of any prior formal disciplinary action; however, she received a letter of counsel on December 4, 2000 and a letter of reprimand on December 12, 2000 from Darcy Jaffe, Nurse Manager, addressing problems with her attendance.

2.5 During the night shift of September 24, 2000, an event occurred that caused an interaction between Appellant and her co-workers. The co-workers reported to Ms. Jaffe that Appellant had been insubordinate, which Appellant denied.

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2.6 Ms. Jaffe, after listening to the different versions of what happened on September 24, 2000, was unable to make a determination. Appellant reported to Ms. Jaffe that the night shift was a hostile working environment for her. Therefore, Ms. Jaffe reassigned Appellant to the day shift for a period of six weeks.

2.7 On December 18, 2000, Appellant provided a doctor's statement that she had a medical condition requiring her to work nights and restricting her from working days. Since Appellant felt her previous assignment was a hostile environment, and there were no other night or evening shift positions available, Appellant began approved medical leave that same day. Appellant did not submit a written request for medical leave. HMC did not provide a letter to confirm Appellant's medical leave, and no agreement was reached nor direction given as to an approximate length of time for the medical leave. Further, no expectations were discussed for continued contact between the parties during Appellant's absence. Appellant asked Ms. Jaffe if she should call in every three days or so, and Ms. Jaffe said she was not aware of such a requirement.

2.8 On January 19, 2001, a meeting was held to begin the grievance process and included Ms. Jaffe, two representatives from the Human Resources Office, Appellant, and Appellant's representative. Ms. Jaffe reported that she would have liked to return Appellant to her previous night shift but was unable to do so because Appellant had identified it as a hostile work environment. Ms. Jaffe asked Appellant if she would like to be placed in a different position at a different job classification, and Appellant responded, "yes."

2.9 On February 2, 2001, a Step 2 grievance meeting was held and Appellant was offered a night shift position as a Hospital Assistant. Although the position was at the Hospital Assistant

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classification, HMC made the offer for Appellant to remain at her Mental Health Specialist II salary.

2.10 On February 26, 2001, Meg Kerrigan, Assistant Administrator, sent Appellant a letter to confirm the Hospital Assistant position offer. Ms. Kerrigan stated in her letter:

> It has been over a week since I verbally offered you this position. If you do not indicate your acceptance by March 5, I will assume that you are not interested and we will make it available to others. I will also assume that if you do not take this position that you have chosen to terminate your employment at HMC at this time. You would certainly be welcome to apply for positions in the future.

2.11 Appellant declined the position and continued with the grievance process. On July 10, 2001, Appellant completed an application for employment with HMC; however there were no positions available. On September 23, 2001, Appellant began working for another employer (Community Psychiatric Clinic).

2.12 On December 11, 2001, a mediation session was held. Appellant requested settlement in the amount of $100,000.00, which the University of Washington declined. Since Appellant did not file a request for arbitration within 30 days of the mediation, the grievance process ended.

2.13 Since the December 11, 2001 mediation, Appellant had not contacted HMC or made any attempt to return to work. In May 2002, Ms. Jaffe tried unsuccessfully several times to contact Appellant by phone. On May 10, 2002, Ms. Jaffe sent Appellant a certified letter and requested that Appellant contact her by May 14, 2002. Appellant did not respond to the letter.

2.14 On May 31, 2002, Ms. Jaffe sent a letter to Appellant advising her that she intended to recommend dismissal due to abandonment of position. Ms. Jaffe notified Appellant that she had

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scheduled a pre-determination meeting for 10:00 a.m. on June 6, 2002 to give Appellant an opportunity to provide any information she wished prior to a final decision regarding continued employment.

2.15 On the morning of June 6, 2002, Appellant called HMC's Human Resources Office between 9:00 a.m. and 10:00 a.m. and left a message. Appellant did not appear for the scheduled meeting. Lynn Thompson, Human Resource Consultant, made numerous attempts to return Appellant's call. Although Appellant left another voice mail message for Ms. Thompson on June 12, 2002, Ms. Thompson was unable to reach Appellant between June 6, 2002 and June 14, 2002.

2.16 On June 26, 2002, Appellant called Ms. Thompson. Appellant claimed that she had not received the May 31, 2002 letter notifying her of the June 6, 2002 meeting even though the letter had been sent certified mail to the address provided by Appellant and had been signed for on July 5, 2002 by someone other than Appellant. At Appellant's request, Ms. Thompson rescheduled the pre-determination meeting for July 8, 2002, but Appellant did not appear.

2.17 On July 11, 2002, Johnese Spisso, Chief Operating Officer, informed Appellant by certified letter of her dismissal due to abandonment of her position. On July 14, 2002, someone other than Appellant signed for the certified dismissal letter.

2.18 On July 17, 2002, Appellant sent a letter to Ms. Thompson and Ms. Jaffe. Appellant stated that she had not received the two letters notifying her of the scheduled meetings until <u>after</u> the meeting dates. Appellant indicated that she had recently received a letter notifying her of her termination, and she requested another pre-determination hearing be scheduled. Appellant instructed that any future correspondence be sent to her attorney.

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2.19 On August 9, 2002, a pre-determination hearing was held. Appellant discussed the events of September 24, 2000 because that event had been referred to in the certified dismissal letter. Appellant's medical condition was not discussed. Appellant provided no reason as to why she had not attempted to make contact or return to work, and she did not express a desire to return to work.

2.20 On August 12, 2002, Ms. Jaffe sent a memorandum to Ms. Kerrigan recommending that Appellant be separated from her position for abandonment. By letter dated August 16, 2002, Ms. Kerrigan informed Appellant of her dismissal.

II. ARGUMENTS OF THE PARTIES

3.1 Respondent argued that Appellant clearly abandoned her position at HMC. Respondent asserted that since December 11, 2001, Appellant made no attempt to return to work or even indicate that she was interested in returning to work. Respondent contended that Appellant made no attempts to contact HMC and did not respond to HMC's numerous attempts to contact her. Respondent argued that Ms. Kerrigan notified Appellant in her February 26, 2001 letter that she would assume that Appellant had chosen to terminate her employment if she did not accept the Hospital Assistant position offer. Respondent asserted that Appellant must have considered herself terminated after declining the position offer because she completed an application for employment to be rehired at HMC. Respondent contended that Appellant then accepted employment with another employer. Respondent argued that Appellant claimed she did not receive the two certified letters to schedule the pre-determination meetings; however, she must have received the letters because she called HMC's Human Resources Office just before one of the meetings was to begin. Respondent asserted that the certified letters were sent to the address provided by Appellant. Respondent contended that the dismissal of Appellant should be affirmed.

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3.2 Appellant argued this was a situation of failure to communicate and even though HMC blamed her for not communicating, HMC failed to communicate as well. Appellant asserted that she wanted her job back. Appellant contended that she went through the grievance process, filed an appeal, and attended the pre-determination meeting, and that these were not the actions of someone who abandoned their position. Appellant argued that she never refused to work the night shift in her previous position. Appellant asserted that even though HMC offered her a position, it was very different from the job she had been performing. Appellant contended that even though the February 26, 2001 letter from Ms. Kerrigan stated that she would assume Appellant had chosen to terminate her employment if she did not accept the Hospital Assistant position offer, the grievance process continued for approximately another nine months after that. Appellant argued that she did not receive the certified letters and did not sign for them. Appellant asserted that she began working for another employer during the pending resolution with HMC because she needed a job, but she still wanted to return to her position at HMC. Appellant contended that she did not know what to do to resolve the situation and she was waiting for HMC to follow the appropriate steps for resolution. Appellant asks the Board to reinstate her to her original position at HMC.

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 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).

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4.3 Respondent has proven by a preponderance of the credible evidence that Appellant considered the night shift to be a hostile work environment and it was appropriate for HMC to assign her to another shift. Appellant declined HMC's offer of the Hospital Assistant position even though she would remain at her former salary.

4.4 Appellant did not respond to a majority of the attempts by Ms. Jaffe and Ms. Thompson to contact her. Because Appellant called the Human Resources Office the morning of one of the pre-determination meetings, we do not find her claim credible that she did not receive the two letters notifying her of the pre-determination meetings until after the meeting dates. Further, HMC sent the certified letters to the address provided by Appellant and it was Appellant's responsibility to ensure that HMC had her correct address.

4.5 During the August 9, 2002 pre-determination hearing, Appellant provided no reason as to why she had not attempted to make contact or return to work, and she did not express a desire to return to work.

4.6 We are troubled by the fact that HMC did not obtain a written request for medical leave from Appellant, and did not provide a letter to confirm Appellant's medical leave or to indicate whether or not it was actually approved. Further, no agreement was reached as to an approximate length of time for Appellant's medical leave and no expectations were discussed for continued contact between the parties during Appellant's absence.

4.7 Nevertheless, Respondent has met its burden of proving that Appellant failed to make contact to indicate that she was ready to return to work, and she did not attempt to return to work

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from December 11, 2001 until her dismissal. Therefore, we find that Appellant abandoned her position and the sanction of dismissal is appropriate. The appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Karen Williams is denied.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

_____
Busse Nutley, Member

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