BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

BRAD GUENTHER, Appellant, v. WASHINGTON STATE UNIVERSITY Respondent.	Case No. SUSP-04-0007 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, BUSSE NUTLEY, Vice Chair. The hearing was held in Conference Room 139 of the French Administration Building at Washington State University, Pullman, Washington, on November 9, 2004. GERALD L. MORGEN, Member, listened to the recorded proceedings, reviewed the file and exhibits and participated in this decision.

1.2 **Appearances.** Appellant Brad Guenther did not appear. Donna Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of suspension for neglect of duty and insubordination. Respondent alleges Appellant failed to follow a supervisory directive, which resulted in an unsafe working environment. Respondent further alleges Appellant

failed to submit a leave request in advance and then made threatening comments regarding future absences, regardless of approval or disapproval by his supervisor.

II. FINDINGS OF FACT

2.1 Appellant Brad Guenther is a Steam Engineer at the College Avenue Steam Plant in Washington State University Facilities Operations. 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 on February 25, 2004.

2.2 By letter dated February 11, 2004, Lawrence E. Davis, Executive Director of Facilities Operations, notified Appellant of his 2-day suspension without pay for conduct that occurred as follows:

- On December 15, 2003, Mike Nearing, Appellant's supervisor, instructed Appellant to review the 200-pound steam system to ensure all valves and components were properly working with boiler # 7 before putting it back into full operation. Appellant failed to follow Mr. Nearing's instructions and, as a result, the # 7 boiler operated in an unstable condition, creating an unsafe work environment.

- On December 18, 2003, Appellant called the Steam Plant at 11:30 p.m. to report his absence from work the following day, December 19, 2003, on his shift scheduled to begin at 7:00 a.m. Appellant had prior knowledge of his scheduled medical appointment yet failed to submit a leave request ahead of time. When asked why he did not provide earlier notice, Appellant responded he was not "obligated" to do so and made threatening comments that he would take future absences with or without approval.

2.3 With regard to prior discipline, Appellant received a separate reprimand from his supervisor earlier in the day on December 15, 2003, for not following proper procedures when working on the # 6 boiler a few days earlier.

2.4 On February 2, 2004, Mr. Davis conducted a pre-disciplinary meeting with Appellant and his representative. Mr. Davis considered Appellant's responses to the charges but determined Appellant's explanations lacked credibility. In the disciplinary letter, Mr. Davis wrote, in part, "[w]ith regard to your actions on December 15, 2003, Mr. Nearing denies that he failed to respond to your radio call and states that he gave you instructions to review the system, since he had not been directly involved in the earlier actions, and did not want to give you bad guidance."

2.5 Mr. Davis also addressed Appellant's actions regarding sick leave and determined that Appellant demonstrated a lack of responsibility and lack of consideration for his supervisor and co-workers by not properly requesting leave in advance.

2.6 In determining the level of discipline, Mr. Davis reviewed Appellant's length of employment, his employment record, and his level of responsibility as a Steam Engineer. Mr. Davis wanted to impress upon Appellant the significance of meeting standards and expectations in the workplace. Although Mr. Davis did not consider Appellant's sick leave request, by itself, serious in nature, he did consider Appellant's disrespectful response to his supervisor to be insubordinate. Therefore, Mr. Davis determined a 2-day suspension without pay was the appropriate sanction.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues Appellant neglected his duty when he failed to follow his supervisor's instructions and failed to carry out his assigned duties in a safe and efficient manner. Respondent contends Appellant's actions created a potentially dangerous situation that put employees at risk and also risked the operations of the steam plant, which the campus depends on to keep facilities properly heated. Respondent further contends Appellant had a duty to notify his department in

advance when he anticipated an absence. Respondent argues Appellant's disregard for his supervisor's directives constitutes insubordination.

3.2 Appellant did not appear at his appeal hearing before this Board.

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).

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

4.5 Respondent has proven by a preponderance of the credible evidence that Appellant neglected his duty when he failed to ensure a boiler was operating in a stable condition, as directed by his supervisor. Respondent has also proven that Appellant neglected his duty to give advance

notice of an appointment of which he had prior knowledge. Furthermore, Respondent has proven Appellant's disregard for supervisory directives constitutes insubordination.

4.6 Therefore, under the proven facts and circumstances, a 2-day suspension is appropriate, and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Brad Guenther is denied.

DATED this _____ day of _____, 2004.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

Personnel Appeals Board
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