BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

CARLA BURRILL, Appellant, vs. CENTRAL WASHINGTON UNIVERSITY, Respondent.	CASE NO. R-SUSP-05-004 ORDER GRANTING RESPONDENT'S MOTION TO DISMISS AND DISMISSING APPEAL

I. INTRODUCTION

1.1 **Consideration of Motion.** This matter came before the Personnel Resources Board, LAURA ANDERSON, Chair, and LARRY GOODMAN, Member, on September 11, 2006, for consideration of written argument on Respondent's Motion to Dismiss.

1.2 **Representation.** Valerie B. Petrie, Assistant Attorney General, represented Respondent Central Washington University. Appellant represented herself *pro se*.

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including:

1. Respondent's Motion to Dismiss with attached declaration and exhibits;
2. Appellant's Response with attachments; and
3. Respondent's Reply with attached declaration and exhibits.

II. BACKGROUND

2.1 Appellant Carla Burrill is employed as a Program Assistant for Central Washington University's Housing and New Student Program. By letter dated November 16, 2005, she was suspended from her position for two days without pay. On December 5, 2005, Appellant filed an appeal of her suspension by letter dated November 17, 2005.

2.2 On May 8, 2006, Respondent sent a letter to Appellant informing her that the two-day suspension imposed had been rescinded and that the suspension was replaced with a letter of reprimand that would be placed in her personnel file. Appellant was reimbursed by Respondent for the two days of pay suspended from her salary. Certified mail receipts establish that Appellant received and signed for the letter rescinding the suspension on May 18, 2006 and the reimbursement check issued on May 10, 2006.

2.3 On August 24, 2006, Respondent sent a letter to Appellant assuring her that the November 16, 2005, letter of suspension was removed from her personnel file as stated in previous correspondence dated May 8, 2006 and July 7, 2006. The letter of reprimand that replaced the letter of suspension remains in Appellant's personnel file.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that RCW 41.06.170 allows for appointing authorities to suspend classified employees. The suspended employee may appeal the suspension to the Personnel Resources Board pursuant to RCW 41.06.170(2) and WAC 356-52-010(1)(a). WAC 357-52-010(1)(a) provides that any permanent employee, subject to the statutory jurisdiction of the Board who is dismissed, suspended, demoted or separated or whose base salary is reduced may appeal to the Board.

Respondent asserts that the two-day suspension which is the subject of Appellant's appeal has been rescinded by Respondent and the two-day suspension in salary was reimbursed to her. Accordingly, Respondent argues that no action exists over which the Board has jurisdiction. Respondent contends that the Board lacks statutory jurisdiction to hear appeals from corrective actions, including letters of reprimand, and argues that the appeal must be dismissed for lack of jurisdiction.

3.2 Appellant agrees that the two-day suspension was rescinded and that her salary was reimbursed. However, she contends that once the suspension was rescinded, all reference to the

matters subject of the suspension should have been removed from her personnel file. Therefore, Appellant asserts that Respondent must also remove from her personnel file all record of the issues contained in the letter of reprimand which replaced the suspension letter.

IV. DISCUSSION

4.1 The Board may decide an appeal by motion if the documents on file, depositions and affidavits show there is no genuine issue as to any material fact and the appeal should be dismissed as a matter of law. WAC 357-52-140. All facts and reasonable inferences therefrom are to be determined in favor of the nonmoving party. For purposes of Respondent's motion to dismiss, we must assume any disputed facts in favor of Appellant. *See*, Hall v. University of Washington, PAB No. 3863-V2 (1995).

4.2 The Board has jurisdiction to hear appeals of "[a]ny employee who is reduced, dismissed, suspended, or demoted, after completing his or her probationary period of service as provided by the rules of the director, or any employee adversely affected by a violation of the state civil service law, chapter 41.06 RCW, or the rules adopted under it. . . ." RCW 41.06.170(2).

4.3 RCW 41.06.170 sets forth the formal disciplinary actions over which the Board has jurisdiction. Neither the RCW nor the Board's rules, specifically, WAC 357-52-010, allow for appeals of corrective actions. As a result, the Board lacks statutory jurisdiction to hear appeals over corrective actions, including letters of reprimand.

4.4 The question here is whether an action occurred over which the Board can exercise jurisdiction and grant a remedy.

4.5 In previous cases involving facts similar to the facts presented here, the Personnel Appeals Board found that there is no remedy available when a disciplinary action has been

rescinded and the appeals have been dismissed. See Miniken v. Dept of Social and Health Service, PAB Case No. D94-165 (1997); Rondeau v. Dept of Corrections, PAB Case No. D94-170 (1997); and Vasquez v Washington State University, PAB Case No DEMO-03-0029 (2004).

4.5 Here, as in the cases before the Personnel Appeals Board, the disciplinary action has been rescinded, Appellant has been made whole, and there is no remedy the Board can grant to this appeal. Therefore, the appeal should be dismissed.

Having reviewed the file and records in this matter and being fully advised in the premises, the Board enters the following:

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is granted, and the appeal of Carla Burrill is dismissed.

DATED this _____ day of _____, 2006.

WASHINGTON PERSONNEL RESOURCES BOARD

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LAURA ANDERSON, Chair

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LARRY GOODMAN, Member