BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

KARI ROKSTAD, Appellant, v. DEPARTMENT OF ECOLOGY, Respondent.	Case No. DSEP-03-0012 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, GERALD L. MORGEN, Vice Chair. The hearing was held at the office of the Personnel Appeals Board, in Olympia, Washington, on September 24, 2004. WALTER T. HUBBARD, Chair, and BUSSE NUTLEY, Member, reviewed the record and participated in this decision.

1.2 **Appearances.** Appellant Kari Rokstad did not appear and no representative appeared on her behalf. Stewart Johnston, Assistant Attorney General, represented Respondent Department of Ecology.

1.3 **Nature of Appeal.** This is an appeal from a disability separation.

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II. FINDINGS OF FACT

2.1 Appellant Kari Rokstad was an Environmentalist Specialist 4 and permanent employee for Respondent Department of Ecology. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC.

2.2 By letter dated October 13, 2003, Linda Hoffman, Interim Director, notified Appellant that she was being separated from employment due to disability. The effective date of Appellant's disability separation was December 15, 2003. Ms. Hoffman testified that after receiving medical documentation from Appellant's physician regarding her medical condition and limitations, the department assessed Appellant's ability to perform the essential functions her position. Ms. Hoffman testified, however, that the department was unsuccessful in locating any viable options and Appellant's separation due to disability became necessary after the department exhausted all the possible options to accommodate Appellant's medical condition.

2.3 On November 12, 2003, Appellant filed a timely appeal with the Personnel Appeals Board.

2.4 By notice dated May 26, 2004, Appellant was notified that her appeal was scheduled for a September 24, 2004, hearing.

2.5 On September 24, 2004, the hearing convened. However, Appellant did not appear and no representative appeared on her behalf.

III. CONCLUSIONS OF LAW

3.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

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3.2 At a hearing on appeal of a disability separation, the appointing authority has the burden of supporting the action that was initiated. WAC 358-30-170. Respondent has the burden of proving that Appellant was unable to perform the duties of the position as specified in the letter of separation and that reasonable accommodation cannot be provided. Smith v. Employment Security Dept., PAB No. S92-002 (1992).

3.3 WAC 356-35-010(1) provides, in part, that an appointing authority "may initiate a disability separation of a permanent employee only when reasonable accommodations cannot be provided. . ."

3.4 Respondent has met its burden of proof that Appellant could not perform the essential duties of her position and that reasonable accommodation could not be provided. Therefore, the disability separation of Kari Rokstad should be affirmed, and her appeal denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Kari Rokstad is denied.

DATED this _____ day of _____, 2004.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen Vice Chair

_____

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Busse Nutley, Member

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