BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MARGARET WIMMER, Appellant, v. DEPARTMENT OF RETIREMENT SYSTEMS, Respondent.	Case No. SUSP-02-0065 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, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on February 18, 2004. GERALD L. MORGEN, Vice Chair listened to the recorded proceedings, reviewed the file and exhibits and participated in this decision.

1.2 **Appearances.** Appellant Margaret Wimmer was present and was represented by Edward Earl Younglove III, Attorney at Law, of Parr, Younglove, Lyman & Coker, P.L.L.C. Kari Hanson, Assistant Attorney General, represented Respondent Department of Retirement Systems.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a five-day suspension of a Washington Management Service employee. Respondent alleges that Appellant failed to provide an acceptable level of customer service.

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II. FINDINGS OF FACT

2.1 Appellant Margaret Wimmer is a permanent employee for Respondent Department of Retirement Services (DRS). 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 December 19, 2002.

2.2 Appellant began her employment with DRS in October 1989, and she previously worked at the Department of Labor and Industries. Appellant was a Public Employees Retirement System Program Administrator. Following a reorganization in 1996, Appellant became the Teachers Retirement System (TRS) Program Administrator. As a TRS Program Administrator, Appellant managed a unit of 20 employees responsible for providing customer service to retirees and calculating their retirement benefits. Appellant also participated in departmental policy discussions, conducted legal and fiscal note analyses, and she issued administrative rulings in appeals filed by retirees who disagreed with their calculated retirement benefits. Appellant understood that one of the primary goals of the DRS is to provide prompt and timely responses to customers.

2.3 On June 28, 2002, Appellant's supervisor, Lucille Christenson, Assistant Director of the Retirement Services Division, completed Appellant's performance evaluation for the period of May 2001 through June 2002. Ms. Christensen provided Appellant with feedback regarding what she perceived to be Appellant's, "difficulty taking responsibility for things that happen in her program and the in (sic) activities for which she is responsible." One of the expectations set forth by Ms. Christensen was that Appellant "perform her duties at the WMS Band level, a very high level of judgment, accountability and management."

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2.4 Appellant has no history of formal disciplinary action; however, she received the following corrective actions[1]:

- On July 31, 2002, Appellant's supervisor, Lucille Christenson, Assistant Director of the Retirement Services Division, issued a letter of reprimand to Appellant, citing "inappropriate actions associated with the formation of the project team implement the RSA training plan."
- On August 16, 2002, Ms. Christenson issued Appellant a second letter of reprimand, citing Appellant's failure to provide her with accurate information to make an informed decision on a training request and for failing to follow through on a plan addressing an employee's absences.

Events resulting Appellant's one-week suspension

2.5 In 2000, Mr. H., a retiree in the Teachers' Retirement System, consulted with a DRS retirement services planner to discuss his plan to return to public sector employment and how his return to work would impact his retirement benefits. There is no dispute that Mr. H. was misinformed that his retirement would increase by approximately $800 per month if he returned to work and later "re-retired." Consequently, Mr. H. returned to service in July 2000 and re-retired in July 2001.

2.6 In the summer of 2002, DRS conducted an audit of Charles H.'s retirement benefits. On June 11, 2002, Vickie Worgum, Retirement Services Supervisor, emailed Appellant, her supervisor, regarding Mr. H.'s retirement benefits. Specifically, Ms. Worgum asked Appellant to seek an opinion from legal staff regarding Mr. H.'s retirement calculation and asking for an interpretation of the rule addressing the re-calculation of retirement benefits when a retiree returned to work and then "re-retired" at a later date.

[1] During the course of the hearing, the Board took under advisement whether to admit Respondent's Exhibits R-1, attachments I and J, letters of reprimand issued to Appellant, and Appellant's Exhibits A-15 and A-16, Appellant's responses to the letters of reprimand. The Board subsequently admitted all four documents.

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2.7 On July 3, 2002, Ms. Worgum advised Mr. H. that he had been overpaid retirement benefits, that his overpayment would be waived, and that a recalculation resulted in reduction of his monthly retirement benefits. By letter dated July 12, 2002, Charles H. responded to Ms. Worgum and expressed his frustration with the incorrect information he initially received regarding his retirement benefits, and Ms. Worgum's finding that his retirement benefits were being reduced.

2.8 On July 23, 2002, Ms. Worgum responded to Mr. H.'s letter and informed him that he had the right to appeal her decision by sending a letter to Appellant outlining why he felt "aggrieved" by her decision and asking that the decision be reversed. Ms. Worgum also indicated that she had forwarded Mr. H.'s letter directly to Appellant, who would respond to him within 10 working days.

2.9 Appellant was aware of the circumstances surrounding Mr. H's retirement benefit, and she was actively working to resolve the issue. On July 19, 2002, Appellant submitted an "information systems work request" outlining the difficulties with Mr. H.'s retirement benefit calculations and indicating that the current DRS system required a modification "in the estimate, calculation and recalculation processes and letters for all Plan 2 and 3 systems."

2.10 On August 1, 2002, Mr. H. wrote to Appellant indicating he was formally appealing the decision made by Ms. Worgum, and he again expressed his frustration and dissatisfaction that DRS staff had provided him with erroneous information regarding his retirement benefits.

2.11 Mr. H.'s retirement calculation was unique and complex, and she sought feedback from the department's legal manager as well as other administrators and experts in retirement benefits calculations. Appellant was aware that she clearly could not resolve and respond to Mr. H.'s within 10 days. However, Appellant did not contact Mr. H. to inform him that resolution of his case would take longer than 10 days.

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2.12 On August 31, 2002 Appellant and Ms. Christenson met to discuss Mr. H's case. Ms. Christenson told Appellant not to delay responding to Mr. H., and she instructed Appellant to issue a decision with the information available.

2.13 On September 3, 2002, DRS received a letter of complaint dated August 30, 2002, from Mr. H. complaining to John Charles, DRS Director. Mr. H. complained about Appellant's failure to respond to his appeal, and he also wrote, "... all I have received from your office have (sic) been wrong information, been ignored, and my retirement check was reduced. ..."

2.14 Appellant was unaware of Mr. H.'s letter of complaint, and on September 3 she drafted a decision about Mr. H.'s appeal. This response was mailed to Mr. H. on September 4.

2.15 On September 11, 2002, Mr. Charles sent Ms. Christenson a memo informing her of his decision to have Deputy Director Maureen Westfall review the handling and processing of Mr. H.'s retirement. Ms. Christenson subsequently asked Appellant to provide a response to the complaint, and on September 18, Appellant wrote that the reason for her delay was that she was seeking clarity on the rules and believed she should review his account carefully prior to responding to Mr. Hall.

2.16 John F. Charles, Director of the Department of Retirement Services, was Appellant's appointing authority when the discipline was imposed. On October 24, 2002, Mr. Charles notified Appellant that he was considering taking formal disciplinary action against her for failing to respond to Mr. H. case in accordance with the department's established expectations.

2.17 On November 6, Mr. Charles met with Appellant. Appellant recognized that she could have called Mr. Hall to advise him that she was working to resolve his case, but explained that in her

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judgment, she believed it was better to carefully research Mr. H's case and provide him with a correct and definitive answer. Since Mr. H. had previously received incorrect information from the department, she was carefully researching the issue prior to responding to him. Mr. Charles acknowledged that Mr. H.'s case could not be resolved within 10 days; however, he concluded that Appellant had a duty and responsibility, in keeping with the agency's mission to provide responsive customer service, to call Mr. H. and keep him informed of the status of his case.

2.18 In determining the level of discipline, Mr. Charles considered Appellant's length of service, her employment record, and the nature of Appellant's failure to contact Mr. H. and advise him she was researching his case, especially when considering Mr. H.'s dissatisfaction with the department. By letter dated December 2, 2002, Mr. Charles informed Appellant of her five-day suspension, effective December 9, 2003 through December 13, 2002.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant had a responsibility to communicate with Mr. H. regarding the status of his retirement benefit. Respondent contends that Ms. Worgum's letter specifically stated that Appellant would respond to Mr. H within 10 working days, but that Appellant failed to respond to Mr. H's complaint in a timely manner. Respondent further asserts Appellant refused to accept responsibility for her lack of judgment by focusing on the complexity of the issue rather than her poor customer service. Respondent contends that as a senior level manger, Appellant has a duty to model good customer service, demonstrate adequate responsiveness, and take ownership for her mistakes.

3.2 Appellant argues she has a long history of excellent customer service and understands the importance of timely responses. Appellant contends the agency's automatic tracking system verified she provided timely responses to inquiries 96 percent of the time, which exceeded the

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agency's 90 percent expectation. Appellant asserts that Mr. H.'s unique and complex situation required additional consideration as well as advisement from the legal department. Appellant argues that because Mr. H. was extremely frustrated and had previously received erroneous information from DRS, she believed it was important to provide a correct rather than a quick answer. Appellant argues that after Ms. Christianson advised her on August 31 to contact Mr. H., despite the unresolved issues surrounding his retirement benefit, she promptly drafted a letter to Mr. H., and mailed it two working days later.

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 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).

4.4 The facts of this case are not in dispute. The issue is whether Appellant's failure to contact Mr. H in a timely manner warrants a one-week suspension. As a Washington Management Service employee and in her role as Teachers Retirement System Program Administrator, Appellant is held to a very high standard of performance. Appellant understood the department had a high level of

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expectation regarding the customer service provided to its retirement members. Appellant also knew that her subordinate, Ms. Worgum, had promised Mr. H that Appellant would respond to his appeal within 10 days.

4.5 The record is clear that Appellant was working conscientiously to provide Mr. H. with the correct response to his appeal. She issued a response to Mr. H. within 30 days, and that response was mailed to Mr. H. before his complaint was received by Mr. Charles. Nonetheless, Appellant was aware that Mr. H. was frustrated and extremely unhappy with the misinformation the department previously provided him and the financial impact of that misinformation to his retirement check. As an administrator with overall responsibility for customer satisfaction, she should have taken a proactive step to acknowledge receipt of Mr. H's appeal and to inform him that her review would take longer than the 10 days promised by Ms. Worgum. Therefore, we conclude that Appellant failed to exercise the level of judgment expected of a manager in her position when she failed to contact Mr. H. about the status of his appeal within the timeframe promised by Ms. Worgum.

4.6 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. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

4.7 In assessing the level of discipline, we have considered Appellant's long history with the department and the absence of any former disciplinary actions in her employment record. Although Appellant failed to employ good judgment by failing to contact Mr. H within ten days as promised in Ms. Worgum's letter, we conclude that a one-week suspension is much too severe. Nonetheless,

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some discipline is warranted. Therefore, we conclude that a two-day suspension is appropriate under the facts and circumstances.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Margaret Wimmer is modified to a two-day suspension.

DATED this _____ day of _____, 2004.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Gerald L. Morgen, Vice Chair

_____
Busse Nutley, Member

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