BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

BRAD GUENTHER, Appellant, v. WASHINGTON STATE UNIVERSITY, Respondent.	Case No. RED-05-0017 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, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the Washington State University, French Administration Building, Human Resources Conference Room, Pullman, Washington, on October 20, 2005.

1.2 **Appearances.** Appellant Brad Guenther appeared *pro se*. Donna Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a reduction in salary for neglect of duty, insubordination and willful violation of policies. Respondent alleges that Appellant deleted a computer file and refused a supervisory directive.

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II. FINDINGS OF FACT

2.1 Appellant Brad Guenther is a permanent employee for Respondent Washington State University (WSU). 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 April 15, 2005.

2.2 Appellant has been a Steam Engineer in the Facilities Operations Department for six years and has been employed by WSU (University) for more than 23 years. As a Steam Engineer, Appellant oversees the operations of the University Steam Plant.

2.3 In September 2004, the Steam Plant began utilizing the Share Point program, a Microsoft product. As a result, the Steam Plant eliminated hand written logs and began using Sharepoint to record events that occurred during a shift and to publish things such as University policies and announcements. In addition, management kept administrative records stored in an "admin file." Each Steam Plan employee was provided with a logon name and secret password and a two-hour training was provided to staff; however, Appellant did not attend the formal training. Steam Plant employees were also encouraged to "play" with the new program and were assured they could not harm the program in any way.

2.4 One of the Sharepoint features includes alerts to the site administrator indicating that an item or site has been added, edited or deleted, the time and date, and the user who made the change. Michael Nearing is the WSU Steam Plant Manager. On January 2, 2005, Mr. Nearing was reviewing his e-mail and found a Sharepoint alert indicating that a file had been deleted by Appellant at 1:52 a.m. on December 31, 2004. On December 31, Appellant and his assistant, Bill

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Wargo, were the only two employees working the graveyard shift. There was no indication, however, that Mr. Wargo was in any way responsible for the deletion.

2.5 Dennis Bowaker, Information Systems Manager, accessed the activity history for the Administrator site and confirmed that Appellant was logged on to a computer in the Steam Plan at 1:52 a.m. on December 31, and that during his logon, the link to the administration files site had been deleted. However, none of the administrative files themselves had been deleted. According to Mr. Bowaker, Appellant's computer permissions at the time allowed him to make this type of a deletion. Subsequently, Mr. Bowaker restored the link and changed computer security permissions to prevent links from being deleted by staff.

2.6 On January 24, 2005, Mr. Nearing and Ron Innes, Appellant's direct supervisor, conducted a meeting with Appellant to determine why Appellant deleted the link. Appellant told Mr. Nearing that he did not know he had deleted a file, and he denied he deleted anything intentionally. At the conclusion of the meeting, Appellant stated the meeting had given him a headache and that he was leaving. Although Appellant's supervisor, Mr. Innes, had secured shift coverage for time Appellant was scheduled to be in the meeting, he was not certain that the employee held over from the day shift could remain to work the graveyard shift. Therefore, Mr. Nearing instructed Appellant to remain at the facility until he confirmed that someone was available to cover the shift. Appellant responded, "You better get someone in fast, because I am leaving."

2.7 Before Mr. Innes could confirm he had coverage for the shift, Appellant left and went to a lunchroom where he spoke to his union representative for approximately 10 minutes. Appellant then departed work without verifying there was coverage for his shift.

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2.8 Mr. Nearing met with Appellant again on February 18, 2005, to discuss the additional allegation that he left without waiting for verification that someone was available to cover his shift. Appellant again denied he knowingly deleted the link and he denied he left his shift on January 24 because he never assumed his shift to begin with.

2.9 Lawrence Davis, Executive Director of Facilities Operations, was Appellant's appointing authority when the discipline was imposed. Mr. Davis concluded that Appellant intentionally deleted the link. Mr. Davis believed that Appellant's motive for deleting the link was to delete a file that contained notes kept by Mr. Innes regarding Appellant's performance, which Mr. Innes stored in the "admin" site in Sharepoint. Mr. Davis was not persuaded that Appellant accidentally deleted the link because there were, at minimum, four steps necessary to reach the link he deleted. In addition, Appellant would have had to click "okay" when prompted on whether he really wanted to delete the item. Mr. Davis believed that even though none of the administrative documents were deleted, it was Appellant's deliberate act of attempting to delete the file that warranted disciplinary action.

2.10 Mr. Davis also concluded that Appellant failed to receive proper authorization before going home on January 24. Mr. Davis concluded that Appellant understood the department's obligation to obtain a relief person to cover Appellant's shift prior to allowing Appellant to leave. Mr. Davis did not believe that Appellant's illness was life threatening, and he concluded that leaving the plant without permission was another act of defiance by Appellant.

2.11 In determining the level of discipline, Mr. Davis reviewed Appellant's employment history which contained a two-day suspension for neglect of duty and insubordination. Mr. Davis also considered Appellant's level of responsibility in the Steam Plant as senior person on site, and he concluded that a reduction in pay was appropriate.

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2.12 By letter dated March 15, 2005, Mr. Davis notified Appellant of his decision to reduce Appellant's salary from range 46GK/Y (50/K) to range 46GI/Y (50I) for a period of six months, effective April 16, 2005. Mr. Davis charged Appellant with neglect of duty, insubordination and willful violation of the following University policies: WSU Executive Policy #4, Electronic Publishing and Appropriate Use Policy; RCW 42. 52.160; Use of Persons, Money, or Property for Personal Gain; BPPM 20.35, Use of University Property; and BPPM 20.37, Personal Use of University Resources.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts that the evidence supports that Appellant deleted the link and that it was not likely that the deletion happened accidentally. Respondent further argues that Appellant neglected his duty when he left the worksite contrary to a supervisory directive that he not depart until coverage for his shift was arranged. Respondent contends that the appointing authority's decision to reduce Appellant's salary was appropriate when considering prior formal and informal discipline imposed against Appellant.

3.2 Appellant claims he never had any formal training on computers, that he does not understand computers well, and that he gets easily confused. Appellant asserts that if he deleted a file, it was a mistake and not done deliberately. Appellant further claims that when he left work on January 24, he was under the impression that his shift was covered, and, if he had believed otherwise, he would not have left. Appellant asserts that he has been treated unfairly by the University, that there is no evidence he engaged in misconduct, and he asks the Board to grant his appeal.

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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; WAC 251-12-240(1); 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 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

4.5 Appellant, more likely than not, deleted the link to the "admin" site. However, Respondent presented no evidence that Appellant deliberately deleted the file. Under the circumstances, it is reasonable that Appellant was exploring the new program that management encouraged all employees to explore and that he unintentionally deleted the link. Furthermore, management assured staff they could not "hurt" anything but failed to take the security measures necessary to ensure employees could not harm the integrity of computer programs. Under the circumstances, Respondent has failed to prove that Appellant's act of deleting the "admin link" constituted

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misconduct. Therefore, Respondent has failed to prove neglect of duty and willful violation of agency policy with respect to this charge.

4.6 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).

4.7 Respondent has proven by a preponderance of the credible evidence that Appellant left his work shift without waiting to receive verification from his supervisor that his shift was covered. Appellant was instructed to remain at the facility until coverage was arranged. However, Appellant defied this directive and he departed work without proper permission. Respondent has met its burden of proving that Appellant was insubordinate and neglected his duty to remain at work until released by his superiors.

4.8 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).

4.9 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).

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4.10 When considering the circumstances surrounding the first allegation and Respondent's failure to prove the charge that Appellant deliberately destroyed an administrative file, we conclude a six-month reduction in salary too severe. Therefore, the appeal of Brad Guenther should be modified to a three-month reduction in pay.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Brad Guenther is modified to a three-month reduction in pay.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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