BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DORRAND WILBURN, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. DISM-04-0096 ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

1.1 **Consideration of Motion.** This appeal came before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and BUSSE NUTLEY, Member, on April 25, 2005, for consideration of written argument on Respondent's Motion for Summary Judgment.

1.2 **Representation.** Jeffrey W. Davis, Assistant Attorney General, represented Respondent University of Washington. Appellant was not represented.

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including Respondent's Motion to Dismiss and attached exhibits, filed April 4, 2005. Although served with Respondent's Motion, Appellant did not file a response to this Motion.

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II. BACKGROUND AND FACTS

2.1 Appellant Dorrand Wilburn was employed as a Custodian in the Environmental Services Department at the University of Washington Medical Center, which is operated by the University of Washington. Appellant was employed in the Department from February 8, 2002, to his termination effective September 2, 2004.

2.2 In 1988 Appellant was convicted of Assault and False Reporting in Seattle Municipal Court. These convictions were affirmed in King County Superior Court on June 28, 1988.

2.3 Appellant was again convicted of Assault in Seattle Municipal Court on May 13, 1998, and sentenced on June 18, 1998.

2.4 Appellant completed a Conviction/Criminal History Information form on September 5, 2001, as part of his application for employment with the University of Washington. Appellant signed the form under penalty of perjury, certifying that the information he provided was "true, correct and complete." Above his signature was a statement that read in part, "I understand that if I am hired, I can be discharged for any misrepresentation or omission in the above-stated information."

2.5 Appellant completed another Conviction/Criminal History Information form on February 11, 2002, three days after he started employment with the University of Washington. Like the first form, Appellant signed the form under penalty of perjury, certifying that the information he provided was "true, correct and complete." Above his signature was a statement that again read in part "I understand that if I am hired, I can be discharged for any misrepresentation or omission in the above-stated information."

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2.6 Appellant checked "No" on each form to the question that asked whether he had ever been convicted of Simple or 4th degree Assault, and checked "No" to the question that asked if he had been convicted within the past ten years of any crime not already listed on the form. These answers were false in light of Appellant's Assault convictions in 1988 and 1998, the second of which was also much less than ten years old.

2.7 The Child and Adult Abuse Law (CAAL) allows organizations providing services to children, developmentally disabled persons and vulnerable adults the opportunity to obtain background checks on employees and volunteers. RCW 43.43.830 – 43.43.842. Individuals with Simple Assault convictions cannot be hired for three years after a conviction, and employers may use an Assault conviction older than three years as a basis for not hiring an individual who will have unsupervised access to vulnerable adults or to children. Custodians at the University of Washington Medical Center have unsupervised access to vulnerable adults.

2.8 By letter dated August 31, 2004, Associate Administrator Preston Simmons dismissed Appellant for good cause effective September 2, 2004. Mr. Simmons charged Appellant with falsification of employment documentation and on-going disruption of the work environment through intimidation of a fellow employee.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant's provision of false and misleading answers on his application for employment deprived the University of the opportunity to question him about his assault convictions and determine whether he was an appropriate person to work with patients, particularly with patients protected by the Child and Adult Abuse Law. Respondent also argues that Appellant's falsehoods violated the trust between employer and employee, and left the

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University unable to trust Appellant's veracity. Therefore, Respondent argues that dismissal is appropriate and that summary judgment dismissing the appeal is appropriate.

3.2 Appellant did not provide a response to the Motion to Dismiss.

IV. DISCUSSION

4.1 The issues here are whether Appellant's misconduct warranted termination from his employment, and whether Appellant's appeal should be dismissed based on his failure to provide true and accurate information about his prior criminal convictions.

4.2 Summary Judgment may be rendered where there is no genuine issue as to any material fact and the appeal should be decided or dismissed as a matter of law. WAC 358-30-060(1). All facts and reasonable inferences therefrom are to be determined in favor of the nonmoving party. See Hall v. University of Washington, PAB No. 3863-V2 (1995).

4.3 In order to preclude summary judgment, the non-moving party must set forth specific facts by affidavit or otherwise show a genuine dispute of material fact. A material fact is one upon which the outcome of the litigation depends. Hudeman v. Foley, 73 Wn.2d 880, 886, 441 P.2d 532 (1968).

4.4 The primary issue before the Board is whether Appellant's action in providing false answers about his criminal record on his employment application warrants dismissal. We are able to make this determination based on the uncontroverted facts presented here.

4.5 Appellant has failed to set forth any specific facts that show a genuine dispute of material fact exists. Therefore, there are no questions of material fact that Appellant engaged in the conduct alleged by the department.

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4.6 Appellant's false answers to the questions on the Conviction/Criminal History Information forms violated the specific requirements of the Child and Adult Abuse Law requiring employees with unsupervised access to children and vulnerable adults to provide truthful answers about prior criminal convictions. Appellant's answers thus also deprived the University of important information it needed to make an informed decision on whether to hire the Appellant for a position where he would have unsupervised access to children and vulnerable adults.

4.7 Appellant's false answers to the questions on the Conviction/Criminal History Information forms violated the inherent relationship of trust between Appellant and Respondent.

4.8 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).

4.9 Given the seriousness of Appellant's falsification of his criminal record, done "under penalty of perjury," we conclude that dismissal is not too severe a sanction.

4.10 The appeal should be denied and Appellant's dismissal from employment affirmed.

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

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is granted, and the appeal of Dorrand Wilburn is denied.

DATED this _____ day of April, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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