BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

BOYD GRIFFIN, Appellant, v. EVERETT COMMUNITY COLLEGE, Respondent.	Case No. DISM-02-0093 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, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held in the Olympus Board Room at the Everett Community College in Everett, Washington, on October 21 and 22, 2003. BUSSE NUTLEY, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Boyd Griffin was present and was represented by Christopher Coker, Attorney at Law, of Parr, Younglove, Lyman & Coker, P.L.L.C. Cheryl Bateman, Assistant Attorney General, represented Respondent Everett Community College.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for insubordination, and harassment and abuse of co-workers. Respondent alleges that Appellant engaged in inappropriate and excessive displays of anger that created a hostile work environment and caused co-workers to be concerned for their safety.

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II. FINDINGS OF FACT

2.1 Appellant was a permanent employee for Respondent Everett Community College. 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 November 21, 2002.

2.2 At the time of his dismissal, Appellant was a Program Coordinator with Everett Community College (EvCC). Appellant began working at EvCC as a temporary employee in October 1999, and became a permanent Office Assistant II in March 2000. In 2001, Appellant's position was reallocated to the Program Coordinator classification.

2.3 Appellant had no history of prior formal disciplinary action; however, his personnel file included the following:

- A September 27, 2000 written statement by co-worker Mary Castro, after hearing a loud verbal exchange between Appellant and co-worker Mona Halcomb, because Ms. Halcomb forgot to relay a telephone message.
- A November 9, 2000 written statement by Ms. Halcomb following a disagreement with Appellant about office lighting.
- A January 4, 2002 memo from Phyllis Bagwell, Appellant's supervisor, to Human Resources documenting Appellant's aggressive response after she reminded him to stop playing solitaire on the office computers.
- A January 31, 2002 memo from Ms. Bagwell to Human Resources documenting Appellant's use of profanity and aggressive behavior in her office.
- A February 23, 2002 memo from Ms. Bagwell to Human Resources reporting that she felt afraid of Appellant due to his aggressive and hostile reaction after she asked him what he was working on.

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- An April 25, 2002 EvCC Campus Security Incident Report following a disturbance between Appellant and Ms. Bagwell. Appellant admitted to the security guard that he yelled at Ms. Bagwell during a meeting with her, after she refused his request for immediate union representation. Ms. Bagwell reported she was frightened because Appellant had become "out of control."

- An April 30, 2002 memo from Liz Olson, Vice President of Human Resources, regarding the April 25, 2002 Incident Report. Ms. Olson warned Appellant that any further mistreatment or abuse of fellow workers would be cause for discipline.

- A document of work expectations, signed by Appellant on May 20, 2002, informing Appellant that his supervision had been transferred to Bill Sperling, Dean of Learning Services. The work expectations included the following, "You are expected to act in a professional manner with all faculty, staff, and students. This includes complying with requests from faculty and staff that are related to your job duties. Any negative outburst in the public areas of the office or mistreatment of any faculty, staff, or administrators will result in the initiation of a discipline action."

- A June 11, 2002 e-mail from Mr. Sperling to Ms. Olson. The e-mail documented a meeting between Appellant and Mr. Sperling regarding Appellant's concerns that someone was tampering with work on his desk.

- A June 27, 2002 written statement by co-worker Esther Moss complaining of Appellant's behavior towards her.

2.4 On July 17, 2002, Appellant called EvCC Campus Security following an altercation with Ms. Bagwell. Appellant entered Ms. Bagwell's office to inquire about an assignment he was working on. Appellant raised his voice and became belligerent after Ms. Bagwell informed him she was too busy at the time to answer his questions. Ms. Bagwell directed Appellant to leave her office, and he refused. The EvCC Campus Security Incident Report, signed by George Olson, Director of Security, stated that, "The actions by [Appellant] lend themselves to potential violence … that must be addressed."

2.5 On July 22, 2002, Appellant sent a campus-wide e-mail asking for ideas for an upcoming meeting. The e- mail included the statement, "I will look at all suggestions … (but be nice – you

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know that I am violent and off the wall.) I will share my medication with the person who sends in the best idea. (Hee Hee.)"

2.6 On that same day, Liz Olson, Vice President of Human Resources, asked Appellant to explain his e-mail, because some people on campus had informed her it alarmed them. Appellant responded he had intended to be humorous and apologized for causing anyone alarm.

2.7 On July 23, 2002, a Notice of Unsatisfactory Work, signed by Mr. Sperling and dated July 19, 2002, was hand-delivered to Appellant. The Notice of Unsatisfactory Work resulted from Campus Security being called on July 17, 2002, after the dispute between Appellant and Ms. Bagwell. The notice addressed Appellant's mistreatment/abuse of co-workers and his insubordination, and referenced examples of similar behavior as documented in his personnel file. A copy of Appellant's July 22, 2002 campus-wide e-mail was attached to the Notice of Unsatisfactory Work. Mr. Sperling reminded Appellant that he had been issued previous work expectations, and stated that:

> It is required that you refrain from any further abusive behavior toward or any mistreatment of co-workers. This notice is accompanied by a revised, and extended set of work expectations that will provide you with clearer guidance on behavioral expectations. It is required that you adhere to your supervisor's work instructions concerning work assignments and the above mentioned work expectations.
>
> Failure to comply with these work instructions will be considered insubordination, and/or further mistreatment/abuse of fellow workers, subject to discipline under WAC 251, Chapter 11.

2.8 The extended set of work expectations that accompanied the Notice of Unsatisfactory Work included the following:

Communicate effectively with co-workers, student and members of the public.

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- Address people with respect – no sarcasm, rudeness, heckling, demeaning comments, or swearing.
- Keep humor appropriate – joking with people that you don't know well can easily end in offending them.
- Listen actively to client's needs, use patience and courtesy while serving clients.
- Remain aware of body language and tone of voice, keep them calming/neutral.

2.9 Beginning July 24, 2002, Appellant went on vacation and returned to work on July 30, 2002.

2.10 On July 30, 2002, Liz Olson, Vice President of Human Resources, notified Appellant by memo dated July 29, 2002, that he was being placed on paid administrative leave until further notice effective immediately.

2.11 On September 12, 2002, Ms. Olson and Charlie Earl, President of Everett Community College, informed Appellant by a Pre-disciplinary Notice that they were considering his dismissal. The Pre-disciplinary Notice stated, in part:

> The culminating event occurred on July 22, 2002 when you sent out an e-mail campus-wide … This e-mail served to alarm campus members, and was particularly disturbing in light of the recent security report and reports of safety concerns from co-workers.
>
> In light of the ongoing and serious nature of your workplace behaviors, which has seriously disrupted the work environment of the college, the action being considered is dismissal for just cause.

2.12 On October 4, 2002, a pre-disciplinary hearing was held with Appellant, Ms. Olson, and Mr. Earl to provide Appellant an opportunity to respond to the allegations. Appellant denied he had engaged in abusive, angry, or hostile behavior.

2.13 Mr. Earl and Ms. Olson were not persuaded by Appellant's denials. They concluded that Appellant had engaged in misconduct that exhibited a continuing and escalating pattern of anger

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and hostility, and had caused his co-workers and supervisors to be concerned for their safety. Further, they concluded that Appellant had been insubordinate to Ms. Bagwell by refusing to leave her office as she directed.

2.14 In determining the level of discipline, Ms. Olson and Mr. Earl reviewed Appellant's personnel file. EvCC has an obligation to maintain a safe workplace for its employees free from violence and hostility. Ms. Olson and Mr. Earl determined that Appellant's intimidating and confrontational behavior caused workers to fear for their safety, thereby hindering EvCC's ability to provide a secure work environment. They concluded dismissal was the appropriate sanction due to the egregious and severe level of Appellant's actions.

2.15 By letter dated October 8, 2002, Mr. Earl provided Appellant with fifteen days notice of his termination effective October 23, 2002. Mr. Earl charged Appellant with insubordination, and harassment and abuse of co-workers. Mr. Earl alleged that Appellant engaged in inappropriate and excessive displays of anger that created a hostile work environment and caused co-workers to be concerned for their safety.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant displayed a continuing pattern of belligerent and hostile behavior which ultimately caused his dismissal. Respondent asserts that Appellant's co-workers and supervisor were frightened by his behavior and documented those fears in writing. Respondent contends that Appellant denied any wrongdoing and obviously did not recognize that his behavior was unacceptable. Respondent argues that Appellant was issued a memo in April 2002 and a document of work expectations in May 2002 that warned any further mistreatment of co-workers would result in disciplinary action. Respondent asserts that in spite of these warnings, Appellant sent out a campus-wide e-mail on July 22, 2002 that caused others to be alarmed. Respondent

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contends Appellant's dismissal was the only appropriate way to provide a safe working environment for EvCC.

3.2 Appellant argues that his July 22, 2002 e-mail was an attempt to be humorous and make light of personality conflicts with his co-workers. Appellant asserts EvCC used that e-mail as the excuse to terminate him. Appellant denies that he physically assaulted or verbally threatened anyone. Appellant argues that although he was given the Notice of Unsatisfactory Work the day after he sent the July 22, 2002 e-mail, the Pre-disciplinary Notice states his e-mail was the "culminary event" that caused him to be considered for dismissal. Appellant contends that he could not have violated the Notice of Unsatisfactory Work as he left for vacation the day after it was issued to him, and upon returning from vacation, was placed on administrative leave and then subsequently dismissed. Appellant asserts his dismissal was unwarranted and too severe, and asks the Board to grant his appeal.

IV. CONCLUSIONS OF LAW

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

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 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

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4.3 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).

4.4 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).

4.5 Respondent has proven that Appellant engaged in insubordination, and harassment and abuse of co-workers prior to July 23, 2002. Although Mr. Sperling did not provide Appellant with a Notice of Unsatisfactory Work until July 23, 2002, Appellant had been warned previously to refrain from abusive behavior. The issue here is whether Appellant's action of sending the e-mail of July 22, 2002 warrants dismissal. Appellant argues that his July 22, 2002 e-mail was the culminating event and basis for his dismissal. While the Notice of Unsatisfactory Work does not refer to the e-mail as the basis for disciplinary action, the September 12, 2002 Pre-disciplinary Notice does refer to Appellant's July 22, 2002 e-mail as the culminating event and basis for his dismissal.

4.6 Because Appellant sent his e-mail the day before he received the Notice of Unsatisfactory Work, he engaged in no misconduct subsequent to receiving the Notice of Unsatisfactory Work. Therefore, Respondent has failed to meet its burden of proof that Appellant engaged in misconduct following the receipt of the Notice of Unsatisfactory Work. After considering the totality of the proven facts and circumstances, we conclude that Everett Community College should have given

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the Appellant an opportunity to correct his behavior, and Everett Community College inappropriately dismissed Appellant.

4.7 In this case, we conclude that the appropriate sanction is a suspension based on the totality of Appellant's disciplinary history, combined with his misconduct of having sent the July 22, 2002 e-mail.

4.8 We conclude that a lengthy suspension is sufficient to prevent recurrence and to deter others from similar misconduct. Therefore, the disciplinary sanction should be modified to a suspension effective October 23, 2002 through October 31, 2003.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Boyd Griffin is granted in part and Appellant is suspended effective October 23, 2002 through October 31, 2003.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

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