BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

RICKY RITTER, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. DISM-04-0088 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; BUSSE NUTLEY, Vice Chair; and GERALD L. MORGEN, Member, on March 7, 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 is not represented, and did not respond to the Motion.

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including Respondent's Motion to Dismiss and attached exhibits, filed February 11, 2005. Appellant did not file a response to this Motion.

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II. BACKGROUND AND FACTS

2.1 Appellant Ricky Ritter was employed as a Maintenance and Construction Coordinator A by the University of Washington until his termination effective July 27, 2004. From February 16, 1988 to March 17, 2003, he held the position of Locksmith.

2.2 The Maintenance and Construction Coordinator A position at the University requires an extraordinary level of integrity, honesty and trustworthiness because of the access the position allows to locks, keys and buildings.

2.3 At some time during the early morning of April 14, 2004, Appellant entered Room 182 in the Intercollegiate Athletics Building. Two storage rooms are accessible from Room 182. Room 182 and each of the two storage rooms were locked prior to Appellant's entry. At approximately 6:25 a.m. Gary McGuire, an employee of the Intercollegiate Athletics Department, entered Room 182 with his key and found both storage rooms open, with lights on in each storage room. Mr. McGuire observed Appellant in one of the storage rooms. Mr. McGuire entered the second storage room and found a coworker of Appellant's, Locksmith Rory Faidley, rummaging through boxes of track shoes. Appellant left without speaking to Mr. McGuire and explaining why he was there.

2.4 When Mr. Haglund, Mr. McGuire's co-worker, arrived at work, Mr. McGuire asked him to see if anything was our of place in the storage rooms. Mr. Haglund found a bag out of place on the floor. In or next to the bag were various sporting goods, which were not in their normal storage areas.

2.5 When questioned by police, Appellant and Mr. Faidley gave different explanations of why they were in the Intercollegiate Athletics Building, naming different door locks they were there to repair. However, there was no work order for any lock in the Intercollegiate Athletics Building.

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There is no evidence that either Appellant or Mr. Faidley had any work-related reason for entering locked Room 182 or either locked storage room.

2.6 Following an investigation, Appellant was terminated effective July 27, 2004, by Associate Vice President Jeraldine McCray for neglect of duty, misuse of University property to gain entry to secured areas without authorization, and attempted theft.

2.7 As a result of the activities of April 14, 2004, Appellant was criminally charged with Burglary by the King County Prosecuting Attorney. In a plea agreement entered on November 10, 2004, Appellant pled guilty to Criminal Trespass in the First Degree in *State v. Ricky Dean Ritter.*

2.8 Appellant filed a timely appeal of his termination with the Personnel Appeals Board on August 18, 2004.

2.9 Respondent filed its Motion to Dismiss on February 11, 2005. Appellant did not respond to that Motion.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant neglected his duty to be honest and trustworthy, that his actions were consistent with a theft that was interrupted by the unexpected arrival of Mr. McGuire, and that his guilty plea to Criminal Trespass committed during working hours and against University property is conclusive evidence justifying his termination from a position which demands an extraordinary level of integrity and trustworthiness. Respondent argues therefore that his dismissal from employment was proper and that summary judgment dismissing the appeal is appropriate.

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

IV. DISCUSSION

4.1 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).

4.2 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).

4.3 The issue here is whether Appellant's appeal should be dismissed based on his neglect of duty, misuse of university property, and attempted theft.

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 offense. The penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to present recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. An action does no necessarily fail if one charge is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

4.5 The facts are undisputed that Appellant committed Criminal Trespass in the First Degree as against Respondent. Based on the uncontroverted facts, Appellant's criminal action warrants dismissal.

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Therefore, Respondent's Motion for Summary Judgment should be granted, and the appeal should be denied.

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

V. ORDER

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

DATED this _____ day of March, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

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