BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MARION TOWNSEND, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. SUSP 05-0027 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 February 27, 2006, 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 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 for Summary Judgment and attached exhibits, filed February 3, 2006.

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II. BACKGROUND AND FACTS

2.1 Appellant Marion Townsend was employed as a Medical Assistant in the Endoscopy Unit at Harborview Medical Center, which is operated by the University of Washington. Her primary duties were to assist nurses and other health care professionals in the examination, treatment, monitoring and delivery of direct patient care of patients undergoing endoscopic procedures. Appellant received a letter of reprimand on September 30, 2002 and additional counseling on October 14, 2003 and August 11, 2004. A Performance Action Plan was also provided to Appellant at those times to assist her in meeting her performances goals.

2.2 On February 10, 2005, Appellant was instructed by Registered Nurse Ruth Ames to obtain an immediate set of vital signs on a patient who had just undergone a liver biopsy. Appellant did not comply with Ms. Ames' instructions nor did she tell Ms. Ames that she had not obtained the vital signs. Obtaining vital signs is essential in monitoring a biopsy patient for a potentially life-threatening complication.

2.3 On February 18, 2005, nurse Margaret Peyovich asked Appellant to obtain warm blankets for a patient being stabilized for transfer to the Intensive Care Unit. Appellant did not obtain the blankets and instead questioned the nurse's professional judgment. Ms. Peyovich then obtained the blankets for the patient. In another incident the same day involving the same patient, Appellant argued with yet another nurse, Glynda O'Bryan, who asked for assistance in repositioning the patient's legs. Appellant failed to provide Ms. O'Bryan with the requested assistance.

2.4 On February 24, 2005, Appellant questioned the medical judgment of Dr. Stephan Rulyak, who was attending to a patient whose blood oxygen saturation level had dropped significantly. Appellant then attached an oximeter probe to the patient after Dr. Rulyak ordered her not to apply it

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to the patient. Dr. Rulyak ultimately had to order the Appellant out of the patient's room to prevent further confusion.

2.5 On March 10, Appellant engaged in a disagreement with nurse Tom Oates about suctioning equipment, and refused to accept Mr. Oates' evaluation that it was operating correctly. During the argument, Appellant leaned onto the patient, pulling on the patient's intravenous lines and causing the patient to yell out in pain and sit up in bed.

2.6 Appellant also had an argument with nurse Glynda O'Bryan in front of patients, and countermanded an order nurse Bevin Edwards had given to a nursing student.

2.7 By letter dated May 6, 2005, Chief Operating Officer Johnese Spisso informed Appellant of her suspension for four days, effective May 10, 2005. Ms. Spisso charged Appellant with failure to take direction from licensed staff, insubordination, neglect of duty, and inappropriate communication.

2.8 Appellant filed a timely appeal with the Personnel Appeals Board on June 3, 2005.

2.9 Appellant was served Requests for Admissions by Respondent. She did not respond to them, even though Respondent granted her three extensions of time.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that all Requests for Admissions served on Appellant are deemed admitted, since Appellant did not respond to them. Respondent argues that Appellant failed to take direction from clinical staff, committed insubordination, neglected her duties to staff and to patients, and used inappropriate communications with her coworkers. Therefore, Respondent

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argues that Appellant's suspension was appropriate and that summary judgment dismissing the suspension appeal is appropriate.

3.2 Appellant did not provide a response to the Motion for Summary Judgment.

IV. DISCUSSION

4.1 The issues here are whether Appellant's actions warranted a four-day suspension.

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 Requests for Admissions are deemed admitted when not responded to within thirty days or within any shorter or longer period established by the Board, or when the responses do not fairly meet the substance of the requested admission. CR 36; Melby v. Hawkins Pontiac, Inc., 13 Wn. App. 745, 537 P.2d 807 (1975). Since Appellant did not respond to them by the extended deadline agreed to by the Respondent, all the Requests for Admissions are deemed admitted.

4.5 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.

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Dept. of Social & Health Svces., PAB No. D94-025 (1995). Not following an order concerning one's conduct is insubordination. Chung v. University of Washington, PAB No. D94-079 (1995).

4.6 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).

4.7 Mistreatment or abuse of a coworker is established by evidence that the appellant wrongfully or unreasonably treated another by word or deed. Johnson v. Lower Columbia College, PAB No. D93-077 (1994). Discourteous language to another constitutes mistreatment or abuse of a coworker. Alexander v. Dept. of Transportation, PAB No. D89-058 (1989).

4.8 The issue before the Board is whether Appellant's actions warrant a four-day suspension. We are able to make this determination based on the uncontroverted facts presented here that were the basis for Appellant's suspension.

4.9 Appellant has not responded to this motion, and she 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 Harborview Medical Center as the basis for her suspension. Appellant's acts constitute insubordination, neglect of duty and inappropriate communications with her coworkers, which we view as a form of mistreatment or abuse of a coworker.

4.10 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

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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).

4.11 The sanction of suspension here, under the facts and circumstances, is appropriate to deter others from similar misconduct. Appellant's actions put a significant burden on others to do her job, and a severe burden on patients, whose care was negatively affected. Her argumentative response to her coworkers strained their relationship unnecessarily. Therefore, Respondent's Summary Judgment Motion 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 Summary Judgment Motion is granted, and the appeal of Marion Townsend is denied.

DATED this _____ day of February, 2006.

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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