BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ELLEN POPE, Appellant, v. DEPARTMENT OF LICENSING, Respondent.	Case No. DISM-04-0071 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Member. The hearing was held at the Department of Labor and Industries, 315 Fifth Avenue South, Suite 200, Seattle, Washington, on May 17 and 18, 2005. BUSSE NUTLEY, Vice Chair, listened to the recorded proceedings, reviewed the file and exhibits and participated in this decision.

1.2 **Appearances.** Appellant Ellen Pope appeared *pro se*. Morgan Damerow, Assistant Attorney General, represented Respondent Department of Licensing.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of suspension followed by dismissal for the causes of neglect of duty, insubordination and willful violation of agency policy. Respondent alleged Appellant treated customers in an unprofessional, rude and discourteous manner.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

II. FINDINGS OF FACT

2.1 Appellant Ellen Pope was a permanent employee for Respondent Department of Licensing. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on July 12, 2004.

2.2 Appellant was a Licensing Services Representative 2 responsible for providing information to the public regarding driver and/or vehicle licenses, titles, registrations, tags, conducting written examinations and drivers tests to determine an applicant's ability to operate a vehicle, and issuing original, renewal and duplicate driver licenses. Appellant's duties required that she interact and communicate with members of the public on a daily basis. Respondent has adopted policies and regulations that require employees to treat all customers and members of the public with respect and courtesy and to conduct their duties in a "completely impartial, fair and courteous manner" and to "refrain from any conduct unbecoming a member" of the Department of Licensing. Appellant acknowledges that she was aware of and had received training regarding these policies.

2.3 Appellant has a history of receiving oral counseling, written reprimands and formal disciplinary actions, including:

- A January 13, 2004, letter of reprimand for inappropriate behavior with her supervisor, during which Appellant acted in a loud, abrupt and confrontation manner.
- An August 20, 2003, corrective memo following complaints from customers and other employees about Appellant's inappropriate conduct while working at the counter and setting forth the department's expectations regarding customer service.
- A March 29, 2001, reduction in salary for neglect of duty and insubordination as a result of Appellant's rude and unprofessional behavior with a customer, police officer, co-worker and her supervisor.
- A March 24, 2000, letter of reprimand for inappropriate behavior with a customer.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

- A February 8, 2000, letter of reprimand for attendance and tardiness issues.
- A July 20, 1998, letter of reprimand addressing Appellant's rude and inappropriate behavior in the workplace.

2.4 In addition, four of Appellant's performance evaluations addressed her inappropriate behavior with customers and co-workers and addressed the need for Appellant to develop better customer service skills, and to handle customers with courtesy.

2.5 Despite the directives and guidance provided to Appellant regarding her customer service skills, the Department of Licensing received eight complaints from members of the public regarding their interactions with Appellant between January 2004 and April 2004. The complainants indicated Appellant's manner of communicating with them was rude, gruff, angry, and aggressive. After reviewing the evidence and testimony, we find as follows:

> On January 28, 2004, teenager Stephanie Crowder was taking her first driver test and was waiting in her vehicle in the drive test parking area. Sharon Crowder was accompanying her daughter Stephanie and was waiting in the car also. Appellant yelled at Sharon Crowder to "get out" and "shut the door" of the car. Sharon and Stephanie Crowder described Appellant's demeanor as aggressive, rude and disrespectful.
>
> On January 30, 2004, Appellant was conducting a driver test for teenager Sara Pizzichimi, who was accompanied by her mother, Pamela Pizzichimi. Sara and Pamela Pizzichimi were waiting in the drive test parking area when Appellant approached them in a hurried manner, yelled at Sara, "I need your paperwork!" and yelled to Pamela, "I cannot conduct this test with you in the car!" Pamela Pizzichimi described her experience as "upsetting" and "traumatizing" and she "felt scared" to leave her daughter alone with Appellant. Sara Pizzichimi described Appellant as "having a lot of hatred" and she was also upset from her interaction with Appellant.
>
> On March 10, 2004, Tamara Neuman accompanied her teenage daughter, Kara, to take her driver's license test. Appellant was the examiner. During the driving exam, Kara misunderstood some of Appellant's instructions, and Appellant sarcastically asked her, "Do you understand English?" and "Are you retarded?" When the test was completed and Kara returned to her mother, she was upset and in tears.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

> On March 17, 2004, teenager Abby Tybur was in the vehicle drive test parking area when Appellant approached and asked for her insurance information. Appellant indicated the insurance information was invalid and when Ms. Tybur got on her cell phone to call her father about the insurance, Appellant told her she was in a hurry and was not going to wait because it was raining. After Ms. Tybur returned inside the licensing building to confirm with Appellant that the insurance information was correct, Appellant asked her, in front of other customers, "How do I know you're not lying?" Ms. Tybur described Appellant as belittling and angry. Ms. Tybur became upset to the point of tears.

2.6 Denise Movius, Assistant Director of the Driver Services Division, was Appellant's appointing authority when the discipline was imposed. Prior to determining whether misconduct occurred, Ms. Movius reviewed the written complaints from customers and information from a meeting held with Appellant on May 26, 2004, to discuss the allegations. During the meeting, Appellant did not deny certain allegations or she indicated that she could not recall certain events. Appellant indicated the complaining customers were individuals who had failed their driver exams and were angry.

2.7 Ms. Movius was not persuaded by Appellant's response to the charges and she concluded Appellant engaged in a pattern of failing to treat customers with courtesy and professionalism. Ms. Movius concluded that Appellant's negative behavior had a negative impact on the agency's attempts to improve its image and interfered with the department's mission to provide quality services to the public.

2.8 In determining the level of discipline, Ms. Movius considered a 17-page response Appellant provided to her as well as Appellant's length of service with the department. Ms. Movius found that the incidents here were not isolated, but rather reflected a pattern of unprofessional behavior that despite previous corrective and disciplinary action, remained unchanged. Ms. Movius concluded that termination was appropriate.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that during a four-month period, Appellant received a record number of customer complaints as a result of her rude, discourteous and unprofessional behavior. Respondent argues that the complaining customers testified credibly regarding their negative experiences with Appellant and under the circumstances, including Appellant's demonstrated pattern of inappropriate and negative behavior, termination was appropriate and should be upheld.

3.2 Appellant asserts that other licensing services representatives demonstrated much worse behavior but were not held to the same standard to which she was held. Appellant asserts she was "blacklisted" while in training and her reputation followed her throughout her career with the Department of Licensing. Appellant asserts that she is direct and speaks with an accent and that she needs to raise her voice so others can hear her because the licensing office is noisy. Therefore, Appellant contends that others may perceive her as rude. Appellant also asserts that the only people who complained are those that fail their driver exams.

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

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

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 Respondent met its burden of proof that Appellant neglected her duty and violated agency policy when she failed to treat customers in an appropriate, courteous and professional manner. Appellant had a duty to work cooperatively with agency customers and her continued inappropriate and negative behavior was contrary to agency policies and procedures and had a negative impact on the agency.

4.6 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).

4.7 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness 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).

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.8 Ms. Movius provided convincing testimony that as a public agency, the Department of Licensing expects all employees to provide a high level of quality customer service and to conduct themselves in appropriate, tactful and professional manner when dealing with the public. The Department of Licensing made repeated attempts to provide Appellant with guidance and direction to improve her level of customer service; however, Appellant failed to demonstrate any improvement. Based on the facts and circumstances of this case, we conclude that termination is the appropriate sanction and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Ellen Pope is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504