BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

KRISTINE WATERS, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. DEMO-02-0023 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 BUSSE NUTLEY, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on April 18, 2003. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Kristine Waters did not appear and no representative appeared on her behalf. Adrienne Harris, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of demotion for neglect of duty, insubordination, and gross misconduct. Respondent alleges that Appellant failed to notify the agency of overpayments she received while on maternity leave and failed to submit leave request slips as directed by her supervisors.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Harper v. WSU, PAB No. RULE-00-0040 (2002); Aquino v. University of Washington, PAB No. D93-163 (1995).

II. FINDINGS OF FACT

2.1 Appellant was a Secretary Senior and permanent employee in the Grievance Unit, Office of Correctional Programs, for Respondent Department of Corrections. 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 31, 2002.

2.2 By letter dated July 29, 2002, Anne Fiala, Assistant Deputy Secretary, informed Appellant of her demotion from Secretary Senior to Office Assistant Senior effective August 12, 2002. Ms. Fiala charged Appellant with neglect of duty, insubordination, and gross misconduct. Ms. Fiala alleged that from September 2001 through February 2002, Appellant failed to notify the agency of overpayments she received during her maternity leave. Ms. Fiala also alleged that Appellant failed to submit leave request slips to prevent overpayments during her maternity leave as directed on four separate occasions by her supervisors.

2.3 Appellant was orally counseled and received the following written reprimands:

- Memo dated September 29, 2000 regarding Appellant's violations of confidential information.
- Memo dated December 18, 2000 regarding Appellant's violation of confidentiality.
- Letter of reprimand dated January 30, 2002 for failure to follow agency policy on reporting contact with offenders under agency supervision.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

- Letter of reprimand dated March 14, 2002 for failure to report contact with an offender under the supervision of the agency.

2.4 During July and August 2001, in separate discussions, Appellant spoke to Kris Hanson, Payroll Supervisor and Jeanette Sills, Human Resource Consultant to notify them that she would be out of the office on maternity leave from August 19, 2001 through February 18, 2002. Ms. Hanson and Ms. Sills both advised Appellant to notify her supervisor, Dean Mason, immediately about her maternity leave plans to obtain approval and authorization.

2.5 Ms. Hanson and Ms. Sills also advised Appellant that since she did not have adequate accrued leave to be on paid leave status during her entire maternity leave, she would need to fill out leave slips for one day of paid leave each month to maintain her benefits.

2.6 In addition, Ms. Hanson and Ms. Sills advised Appellant that it was very important for her to fill out leave slips to claim leave without pay for the remainder of each pay period to prevent an overpayment being issued in error. As a former timekeeper, Appellant was aware that her paychecks would continue to be issued if she did not complete leave slips for leave without pay.

2.7 Appellant assured the Payroll Office that she would fill out the necessary leave slips for her maternity leave as instructed. Appellant informed Ranae Cooper, the new timekeeper in her office, that she was receiving assistance from the Payroll Office regarding her leave without pay.

2.8 Appellant also reported to Mr. Mason that she was working with Ms. Cooper to fill out the appropriate leave slips for her maternity leave.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.9 On August 15, 2001, Appellant turned in leave slips for 80 hours of annual leave plus her personal holiday for the time period of August 19, 2001 through September 7, 2001. Appellant also filled out leave slips to claim one day of paid leave each month for the remainder of her maternity leave to maintain her benefits. However, she did not complete the leave without pay request slips as instructed for the remaining hours in each pay period.

2.10 On August 19, 2001, Appellant began her maternity leave as planned. In September 2001, Ms. Cooper unsuccessfully attempted to contact Appellant when she discovered that Appellant's hours were not being calculated correctly. Ms. Cooper left voice mail messages for Appellant, but was unable to contact her.

2.11 On December 4, 2001, Appellant requested shared leave to stay home with one of her sons. Appellant was receiving paychecks because she had not submitted the leave with pay slips. However, Appellant told Mr. Mason that she needed shared leave because she was not receiving paychecks and needed the money.

2.12 On December 17, 2001, Appellant arrived at the office to meet with Ms. Fiala on a separate matter. While Appellant was in the office, Ms. Fiala instructed her to immediately fill out leave without pay slips to prevent future overpayments and to correct any salary overpayments that had already occurred. Appellant did not comply with Ms. Fiala's instructions.

2.13 On January 18, 2002, Ms. Fiala met with Appellant again and asked her why she did not fill out her leave without pay slips. Appellant claimed that she had forgotten and had not had time. Ms. Fiala directed Appellant to immediately fill out the leave without pay slips and submit them to Ms. Cooper. Again, Appellant did not comply with Ms. Fiala's directive.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.14 On February 27, 2002, Ms. Fiala met with Appellant a third time. Ms. Fiala notified Appellant that she was being paid a significant amount of salary that she was not entitled to. Appellant told Ms. Fiala that she understood and would fill out the leave without pay slips immediately.

2.15 Appellant received paychecks while out of the office on maternity leave for a period of six months. This resulted in the agency issuing substantial overpayment to Appellant totaling over $13,000.00.

2.16 On April 29, 2002, Ms. Fiala held an administrative hearing to give Appellant an opportunity to respond to the allegations. At the beginning of the hearing, Appellant denied her misconduct. Later in the hearing, Appellant admitted she understood that she should have filled out the leave without pay slips. Appellant also admitted that she was given a number of opportunities to comply with directives by her supervisors and did not do as she was instructed.

2.17 Sometime in May or June 2002, Appellant returned from maternity leave and finally filled out the leave without pay slips.

2.18 To determine whether misconduct occurred, Ms. Fiala reviewed Appellant's Employee Conduct Report and Appellant's responses to the allegations. Ms. Fiala considered the number of times that Appellant was instructed to fill out the leave without pay slips, but failed to follow directives. Ms. Fiala also considered Appellant's admission that she knew she should have filled out the leave slips.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.19 Ms. Fiala determined that Appellant's behavior was unacceptable and she had clearly engaged in misconduct. Ms. Fiala concluded that Appellant neglected her duty, was insubordinate, and had engaged in gross misconduct.

2.20 In determining the level of discipline, Ms. Fiala reviewed Appellant's personnel file and history of oral counselings and letters of reprimand. Ms. Fiala concluded that demotion was the appropriate sanction based on the serious nature of Appellant's misconduct, and that it would prevent recurrence and deter others from similar behavior.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant understood the importance of filling out the leave without pay request slips and knew that her paychecks would continue to be issued. Respondent asserts that Appellant failed to comply with numerous directives from her supervisors to fill out the leave without pay slips. Respondent contends that Appellant failed to notify the agency of the overpayment salary she received during her maternity leave. Respondent asserts that Appellant's misconduct resulted in the agency issuing overpayment to Appellant totaling over $13,000.00. Respondent argues that demotion was the appropriate sanction in this case and requests the Board to affirm that decision.

3.2 Appellant did not provide a defense to the allegations.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto 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).

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 Respondent has met its burden of proving that Appellant neglected her duty when she failed to submit her leave without pay request slips. Further, Appellant also neglected her duty when she failed to report the overpayments she received while on maternity leave.

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. Dep't of Social & Health Services, PAB No. D94-025 (1995).

4.6 Respondent has met its burden of proving that Appellant was insubordinate in August 2001, on December 17, 2001, on January 18, 2002, and on February 27, 2002 when she willfully disregarded repeated directives from her supervisors to complete and submit her leave without pay

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

request slips. Further, the record shows that Appellant admitted that she understood the importance of submitting the leave slips and should have complied with her supervisor's instructions.

4.7 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

4.8 Respondent has met its burden of proving that Appellant's behavior constituted gross misconduct when her failure to submit her leave without pay slips and failure to report the overpayments she received caused the agency to erroneously issue overpayment to Appellant during her six-month maternity leave totaling over $13,000.00.

4.9 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.

4.10 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).

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.11 The facts in this case are undisputed. In light of Appellant's egregious behavior, Respondent has established that the disciplinary sanction of demotion was not too severe and was appropriate under the circumstances presented here. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Kristine Waters is denied.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Busse Nutley, Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504