BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CONRAD BRENNAN, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	)	Case No. SUSP-04-0052 ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

I. INTRODUCTION

1.1 **Consideration of Motion.** This matter came before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; BUSSE NUTLEY, Vice Chair; AND GERALD L. MORGEN, Member, on August 1, 2005, for consideration of Respondent's Motion To Dismiss. This matter was considered on written documents without oral argument.

1.2 **Representation.** Appellant Conrad Brennan did not respond. Donna Stambaugh, Assistant Attorney General, represented Respondent Department of Social and Health Services (DSHS).

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including Respondent's Motion to Dismiss, with attachments, filed July 5, 2005.

II. BACKGROUND AND FACTS

2.1 Appellant Conrad Brennan was suspended without pay for three days from his position as a Mental Health Licensed Practical Nurse at Eastern State Hospital, effective August 25, 2004. Appellant appealed his suspension on September 20, 2004.

2.2 The PAB issued a notice of scheduling the hearing for August 10, 2005. The Board also confirmed that a status conference was scheduled for April 12, 2005. On April 12, the PAB issued a Statement of Results of Pre-Hearing Conference and set a date of July 11, 2005, for completion of discovery.

2.3 On January 4, 2005, counsel for DSHS served Appellant's counsel with Respondent's First Set of Interrogatories Propounded and Requests for Production of Documents. Respondent's counsel attempted to contact Appellant's counsel by phone several times in April and June 2005 regarding the request for discovery. Neither Appellant nor his counsel provided a response to Respondent's discovery request.

2.4 On July 5, 2005, Respondent filed a Motion to Dismiss. Respondent argued that this case should be dismissed as a matter of law, because Appellant failed to answer the department's discovery requests. On July 7, the PAB mailed a notice of scheduling Respondent's Motion to Dismiss. The notice was mailed to Appellant and Appellant's counsel.

2.5 On July 18, 2005, Appellant's counsel filed his Notice of Intent to Withdraw, effective July 18.

2.6 On July 25, 2005, the PAB wrote Appellant that the Board was delaying Respondent's Motion to Dismiss from July 25 to Monday, August 1, 2005, to give him an opportunity to respond to the motion. Appellant was given until 5 p.m. on Friday, July 29, 2005, to file a response to the motion with the PAB and with Respondent's counsel.

2.7 Appellant did not file a response and did not oppose Respondent's motion.

III. DISCUSSION

3.1 The Board may decide an appeal by motion if the documents on file, depositions and affidavits show there is no genuine issue as to any material fact and the appeal should be 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. For purposes of Respondent's motion to dismiss, we must assume any disputed facts in favor of Appellant. Hall v. University of Washington, PAB No. 3863-V2 (1995).

3.2 The issue here is whether the appeal of Conrad Brennan should be dismissed based on his failure to participate in the discovery process.

3.3 WAC 358-30-150 provides for "discovery procedures in a manner consistent with the civil rules." Pursuant to the provisions of CR 37, Respondent moved for dismissal of Appellant's appeal. In this case, Respondent properly served Appellant with interrogatories and requests for production of documents, and Appellant has had ample opportunity to provide Respondent with his answers to the discovery requests. Nevertheless, Appellant has not cooperated or communicated with Respondent. Furthermore, he has failed to file a response to this motion.

3.4 WAC 358-30-082 provides for dismissal of an appeal when "a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding." There are no disputed facts to be resolved or inferences that need to be drawn to decide this motion. Normally, a technical violation of discovery rules by a *pro se* appellant would not result in the harsh sanction of dismissal. However, even when viewing all the facts in the light most favorable to Appellant, there is no question that he failed to comply with his duty to cooperate with the discovery process and he failed to respond to this motion, thereby, he has failed pursue his appeal. Therefore, Respondent's Motion to Dismiss should be granted, and the appeal of Conrad Brennan should be dismissed.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is granted, and the appeal of Conrad Brennan is dismissed.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

Personnel Appeals Board
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Olympia, Washington 98504