BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JOSHUA GOAKEY, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. DISM-05-0001 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; BUSSE NUTLEY, Vice Chair; and GERALD L. MORGEN, Member. The hearing was held at the Department of Social and Health Services, 201 West First Street, Mount Olympus Conference Room, Port Angeles, Washington, on September 28 and 29, 2005.

1.2 **Appearances.** Appellant Joshua Goakey was present and was represented by Michael Hanbey, Attorney at Law. Rachelle Wills, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of suspension followed by dismissal for neglect of duty and willful violation of agency policy. Respondent alleged Appellant submitted two leave slips with forged signatures and falsely stated to a superior that he did not have the carbon version of one of the leave slips when directed to produce the slip.

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II. FINDINGS OF FACT

2.1 Appellant Joshua Goakey was a permanent employee 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 January 4, 2005.

2.2 Appellant began his employment with the Department of Corrections at the Clallam Bay Correction Center (CBCC) in March 2002. Prior to the event that led to this appeal, Appellant's employment history contained no formal or informal disciplinary action.

2.3 At CBCC, employees obtaining pre-approved leave are required to use state-issued leave request forms in triplicate. The signed leave form is then forwarded to the Roster Office for approval. Claudia Sanchez, Roster Manager, and her staff then verify that a relief staff person is available to cover the shift during the employee's absence. Typically, roster approved annual leave is submitted to the Roster Officer more than two weeks in advance of the leave date.

2.4 Ms. Sanchez provided testimony regarding the process she follows when authorizing leave. After verifying that relief is available, Ms. Sanchez signs each of the three leave slips pages. In addition, she marks each leave slip page on the upper right hand corner with a different code to indicate where that slip gets routed. On the first page, which has the employee's original signature, she writes "EAR" and that page gets forwarded to the payroll department. On the second page she writes "EMP" and returns that carbon slip to the employee for his or her records. On the third carbon slip she writes "roster" and forwards it to the Duty Office. In addition, Ms. Sanchez maintains a master leave calendar documenting all employee approved leave and forwards a roster to the Duty Office.

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2.5 On May 15, 2004, Appellant was scheduled to work from 10 p.m. to 6 a.m. (first shift). On May 15 Appellant failed to appear for work. Lieutenant Anthony Boe checked the employee roster, which did not reflect that Appellant had pre-approved leave. Because Appellant had not called in, Lt. Boe attempted to reach Appellant; however, he was unable to locate Appellant. As a result, Lt. Boe documented Appellant as "no call, no show" (NC/NS). Appellant was also scheduled to work that same shift on May 16; however, Appellant again did not report to work. After attempting to contact Appellant at home, Lt. Boe documented Appellant as a "NC/NS." Lt. Boe reported Appellant's NC/NS to the Roster Office.

2.6 On May 17, Appellant reported to work and indicated to Lt. Boe that he was on "roster approved annual leave," on May 15 and 16. Lt. Boe requested and received a photo copy of a leave form from Appellant that indicated Appellant had received authorization for leave from 10 p.m. on May 15 through 6 a.m. on May 17, 2004. Lt. Boe concluded the omission on the employee roster was an error made by the Roster Office. Lt. Boe then placed a copy of the leave slip in the roster book, and he forward a copy to Ms. Sanchez, requesting that she change Appellant's absence for the May 15-17 "roster annual" approved leave.

2.7 After Ms. Sanchez received a copy of the leave slip, she suspected the signature was not hers. In addition, she observed the copy was not marked with the letters "EMP" on the upper right hand side. As a result, Ms. Sanchez contacted the Payroll Office to obtain the slip with Appellant's original signature. The Payroll Office, however, did not have a slip with an original signature.

2.8 Consequently, Ms. Sanchez asked for the carbon leave slip from Appellant to verify the authenticity of her signature. Captain Edwin Reese directed Shift Lieutenant Thomas DeLong to obtain the slip from Appellant. Lt. DeLong asked Appellant for the leave slip, and Appellant

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provided him with a photo copy. However, Captain Reese asked Lt. DeLong to obtain the carbon slip rather than a copy.

2.9 Lt. DeLong told Appellant that he needed to produce the carbon copy of his leave request. Appellant indicated that he did not have the slip with him. Lt. DeLong made it clear to Appellant he was being given an order to provide the leave slip as soon a possible. On May 24, at 12:05 p.m., Appellant left the following message in response to Captain Reese's directive:

> Yeah, this is Officer Goakey. For some reason, the Captain wanted my copy of a leave slip. I sent him a photocopy and that wasn't good enough, so if he would like to see that leave slip, he can come to graveyard and look at it while it's in the presence of my hands. That is my copy and he can look at it, but they're not gonna get it because they'll probably lose it like they lost the rest of the copies. So if he's got a problem he can call me. Thanks. Bye.

2.10 On May 26, 2004, Appellant was held over to work on the second shift. Although he did not leave the institution, he was able to produce the carbon version of the leave slip despite having told Lt. DeLong that he did not have it with him. Appellant provided the slip to Captain Edward Reetz.

2.11 As these events developed, Lt. Boe recalled an incident which occurred earlier in the year when Appellant failed to report to work and his absence was not documented on the duty roster. In that instance, Lt. Boe contacted Appellant at home, who stated he was on pre-approved leave. Appellant produced a copy of a leave slip upon his return to work. Lt. Boe located the photo copy of the leave slip which was for leave February 14-15, 2004. That slip and the carbon copy of the May 15-17 slip were forwarded to Ms. Sanchez.

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2.12 After Ms. Sanchez examined the slips she concluded the signatures were not hers. In addition, both slips lacked the "EMP" notation and, when the slips were placed on top of each other, the signatures matched and appeared to be traced.

2.13 Sgt. Freidt initiated an Employee Conduct Report against Appellant on June 7, 2004, and Associate Superintendent Steve Sinclair conducted the investigation. As a part of the investigation, Mr. Sinclair examined the leave slips and concluded that Ms. Sanchez's signatures on the slips were shaky and that the signatures on both slips appeared to be copied from the same signature. Mr. Sinclair further concluded that Appellant failed to obtain proper approval for his absences on February 14-15 and May 15-17. Although Appellant contended that he sought and received pre-authorization from the roster manager and that he received leave slips with Ms. Sanchez's signature, Mr. Sinclair's investigation found that the indicators in place which would have supported Appellant's claim that he submitted and received pre-approved leave, such as duplicate copies of leave requests, notations on his copy of the slips, and leave notations made on a master leave calendar, failed to support that Appellant ever received prior authorization to be absent on the days in question. Mr. Sinclair was unable to find any evidence to support Appellant's position.

2.14 The results of Mr. Sinclair's investigation were forwarded to Superintendent Sandra Carter, who was Appellant's appointing authority. After considering the investigation results and Appellant's responses, Superintendent Carter concluded Appellant falsified Ms. Sanchez's signature on the February 14-15 and May 15-17, 2004, leave slips and that he misled Lt. DeLong. When evaluating whether there was a motive for anyone but Appellant to forge the signatures on the leave slips, Superintendent Carter concluded no one else but Appellant stood to benefit from the forgery. Superintendent Carter found Appellant's actions had a negative impact on the institution because his unapproved absences created problems for staff required to cover his shift without prior notice and a cost to the institution in overtime pay. Superintendent Carter concluded he neglected

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his duty and violated the department's code of ethics and Ethics Policy #801.010, which direct employees to act in a manner that demonstrates high ethical standards. Superintendent Carter concluded that Appellant's actions of submitting forged leave slips and misleading a superior warranted dismissal.

2.15 By letter dated December 8, 2004, Superintendent Carter notified Appellant of his suspension, effective immediately, followed by dismissal effective December 23, 2004. Superintendent Carter charged Appellant with neglect of duty and willful violation of agency policy.

2.16 Appellant testified he requested pre-authorized leave for February 14-15 and May 15-17, 2004. Appellant denies he forged the signatures on the slips and denies he had anybody else forge the signatures. Appellant also denies he misled the lieutenant, and he contends the lieutenant asked him for a copy of the leave slip, not the carbon slip itself.

2.17 There is no credible evidence or testimony to support Appellant's contention he submitted leave requests for pre-authorized leave. Considering the systems in place for processing vacation requests, it is unlikely that <u>all</u> of the indicators which would support Appellant's claims would be absent. In this case, there is no evidence that Appellant requested leave in advance for his absences for February 14-15 and May 15-17, 2004. Furthermore, the slips Appellant provided as proof of his pre-authorized leave request also lacked any of the notations used by the Roster Manager and her staff when processing leave. After reviewing the testimony and evidence, we find that a preponderance of the evidence supports that Appellant was absent on days for which he did not have approved leave and that he subsequently submitted falsified leave slips to make it appear he had obtain pre-authorized leave. Additionally, Appellant was dishonest when he told Lt. DeLong

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that he did not have the carbon copy of his May 15-17 leave slip, as evidenced by the voice mail he left for Captain Reese.

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III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts that the unrefuted evidence proved that the leave slips contained false signatures, and that the dates in question were never approved by the roster manager. Respondent further asserts that the credible evidence supports Appellant misled the lieutenant when asked to provide the carbon leave slip. Respondent asserts that Appellant's fraudulent actions to obtain leave constituted a neglect of his duty to be truthful and honest and violated the agency's ethics policy.

3.2 Appellant argues that Respondent's case is based entirely on circumstantial evidence. Appellant asserts he had ample leave available to use and had no motive to be deceitful and jeopardize his career by failing to arrange for leave in advance and then falsifying the leave slips. Appellant asserts that this incident could have resulted from errors made by the roster office or by someone playing a prank on him by forging Ms. Sanchez's signature.

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).

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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 has shown that Appellant had a duty to conduct himself in a professional and ethical manner and to abide by agency policies. Respondent has met its burden of proving Appellant failed to act in a manner consistent with his position as a Correctional Officer when he submitted leave slips with falsified signatures in an attempt to obtain leave which he was not authorized to take. Appellant's actions violated the inherent relationship of trust between Appellant and Respondent. Moreover, Appellant was uncooperative, and he deliberately deceived Lt. DeLong when he denied having the carbon version of his leave slip.

4.6 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. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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4.7 In considering the level of discipline, we conclude that termination is reasonable based upon the seriousness of Appellant's misconduct. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Joshua Goakey is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

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