BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DARRELL R. HENN JR., Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	PAB Case No. DISM-03-0015 Thurston County Cause No. 04-2-01522-4 ORDER OF THE PERSONNEL APPEALS BOARD FOLLOWING REMAND FROM SUPERIOR COURT

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Appeals Board, BUSSE NUTLEY, Vice Chair; and GERALD L. MORGEN, Member, on remand from the Thurston County Superior Court in Henn v. Dep't. of Social and Health Services, Thurston County Cause No. 04-2-01522-4.

1.2 **Representatives.** Ross White, Attorney at Law, represents Appellant Darrell R. Henn Jr. Donna J. Stambaugh, Assistant Attorney General, represents Respondent Department of Social and Health Services .

II. BACKGROUND AND PROCEDURAL HISTORY

2.1 By letter dated January 17, 2003, Ken Kraft, Regional Administrator for the Division of Children and Family Services, notified Appellant of his dismissal from his position as a Social Worker 3, effective February 6, 2003. Mr. Kraft charged Appellant with neglect of duty, gross

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misconduct and willful violation of agency policy. Mr. Kraft alleged Appellant failed to ensure the safety and health of children by conducting incomplete investigations of alleged child abuse and neglect.

2.2 On January 21 and 22, 2004, and on May 4 and 5, 2004, the Personnel Appeals Board conducted a hearing on the merits of the appeal.

2.3 On June 29, 2004, the Board issued its Findings of Fact, Conclusions of Law and Order of the Board. In its Order, this Board found that Respondent carried its burden of proving the allegations that Appellant failed to properly investigate cases of child abuse, thereby, failing to ensure the safety of the children. The Board found that Appellant failed to disclose Child E's sexual abuse disclosure to another social worker, which resulted in the alleged perpetrator receiving overnight visits with his children; failed to obtain a police report regarding the assault conviction of Child E's father; failed to share accurate information regarding that conviction with the AAG's; subsequently approved the child's placement with her father despite having incomplete information; and failed to conduct a face-to-face visit with Child G. and conduct a thorough investigation on his case and failed to prepare a safety assessment or plan for Child F. The Board concluded that Appellant neglected his duty, failed to perform his duties in compliance with DSHS policies and that his misconduct constituted gross misconduct. The board affirmed Appellant's termination and denied his appeal.

2.4 On July 27, 2004, Appellant appealed the Board's decision to the Thurston County Superior Court.

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2.5 On April 12, 2005, the Court entered its Order on Appeal and remanded the matter to the Board. In a Letter of Opinion dated March 17, 2005, Judge Paula Casey wrote:

> Petitioner's failure to recognize the importance of a child's sexual abuse allegations and inform others, Petitioner's failure to fully investigate a placement parent's Assault 2 conviction causing incorrect information to be provided to others, Petitioner's failure to have timely face-to-face meetings with children as required by written policy and otherwise fully investigate complaints constitutes unacceptable conduct in clear violation of Petitioner's duties in his employment."

Judge Casey further stated:

> . . . Even recognizing the agency's important mission to keep the safety and well-being of children paramount and the multiple violations of duty involved, I do not find that Petitioner's failures amount to "gross misconduct" or "flagrant behavior."
>
> Accordingly, each of the Board's findings of gross misconduct is reversed. The Board already has declined to give weight to the employer's testimony that the acts were deliberate and a basis of the decision to terminate. Now, I believe it is appropriate to remand this matter to the Board for a determination of whether the discipline of discharge is appropriate punishment under these circumstances.

2.6 On April 5, 2005, the Board's Acting Executive Secretary notified the parties that the Board would consider Judge Casey's remand as directed unless the parties indicated any necessity to submit further material. The parties submitted nothing further.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

3.1 Appellant Darrell R. Henn Jr. was a permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

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3.2 As remanded from the Court, the only issue before this Board is to "determine whether the discipline of discharge is appropriate punishment given that the finding of gross misconduct is not upheld"

3.3 Appellant began his employment with the Department of Social and Health Services on April 2, 1996. Appellant has no prior corrective or disciplinary actions in his record.

3.4 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. An action does not necessarily fail if one cause is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

3.5 We have reviewed our prior conclusion that Appellant displayed a pattern of disregard for DSHS's policies, practices and procedures and failed in his responsibility to exercise due professional care in the performance of his social work duties. Under the circumstances presented, and in light of the charge of gross misconduct being reversed, we find that our earlier determination to affirm Appellant's dismissal is still appropriate. Appellant's failure to perform his duties with the primary objective of protecting vulnerable children was egregious and termination will deter other social workers from disregarding the department's requirements regarding child abuse and neglect investigations.

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3.6 Therefore, the appeal of Darrell R. Henn Jr. should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Darrell Henn Jr. is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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