BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CAROL CARVER, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. DSEP-05-0005 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 Office of the Attorney General, 1116 West Riverside, Spokane, Washington, on January 31, 2006. BUSSE NUTLEY, Vice Chair, listened to the recorded proceedings, reviewed the file and exhibits and participated in this decision.

1.2 **Appearances.** Appellant appeared *pro se*. Rachelle Wills, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disability separation.

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II. FINDINGS OF FACT

2.1 Appellant Carol Carver 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 March 17, 2005.

2.2 Appellant began her employment with the Department of Corrections in 1995 as a Correctional Officer. In January 2002, Appellant voluntarily demoted from her Correctional Officer position to a position as an Office Assistant (OA). At the time pertinent here, Appellant was assigned to work in the Airway Heights Corrections Center mailroom scanning and searching inmate mail for contraband, logging incoming money orders into a computer database, reviewing inmate legal mail, and sorting and distributing staff mail. Appellant also had to utilize the department's offender computer tracking system as part of her duties sorting legal mail. The essential functions of the OA position required speed, efficiency, the ability to handle multiple tasks and make independent decisions in a high-paced and demanding corrections environment.

2.3 In 2003, Appellant began to struggle with her work duties, and she was interacting inappropriately with her supervisor and co-workers. Appellant's job duties were significantly reduced to help her complete assigned tasks, and the duties related to inmate money orders were reassigned. However, these measures did not provide the results Appellant's supervisor hoped for and Appellant continued to struggle with her performance.

2.4 As a result of Appellant's alleged poor performance and insubordinate behavior, Maggie Miller-Stout, Superintendent, held an administrative meeting with Appellant. During the meeting,

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Ms. Miller-Stout observed that Appellant was struggling to communicate and was unable to focus on the topics discussed. Rather than proceed with disciplinary action, Ms. Miller-Stout believed it was important to determine whether Appellant's behavior was willful or whether there was another underlying reason for her behavior and performance. Consequently, Ms. Miller-Stout referred Appellant to Dr. Thomas McKnight to undergo an independent psychological examination (IPE). Ms. Miller-Stout asked Dr. McKnight to determine whether Appellant could 1) perform the duties of an Office Assistant in the correctional environment and 2) whether she was fit for duty in a highly structured, and high volume environment.

2.5 Dr. McKnight performed a series of tests during his examination of Appellant on December 9 and 10, 2004. Dr. McKnight ultimately concluded that Appellant's intellectual and problem-solving functions were impaired and she suffered from dementia. In his written report, Dr. McKnight concluded that Appellant was unfit to perform the OA position because she was unable to perform work that demanded on the spot decision making, multitasking, speed and efficiency, especially in an environment where distractions were commonplace. Dr. McKnight referred Appellant for a neurological consultation.

2.6 Ms. Miller-Stout determined that Appellant was unable to perform the essential functions of the OA position, even with the accommodations previously made to assist her. Mary Ann Gillespie, Human Resource Consultant, subsequently performed a reasonable accommodation search. Ms. Gillespie reviewed Appellant's employment history, education, skills and experience, and she examined other positions available. Ms. Gillespie, however, was unable to find alternative positions for Appellant within the Department of Corrections which did not require multi-tasking, performing duties with speed and accuracy or which were distraction free.

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2.7 By letter dated February 28, 2005, Ms. Miller-Stout notified Appellant of her decision to separate Appellant from employment due to disability. Ms. Miller-Stout notified Appellant that she could rescind the action before the effective date of April 29, 2005, if Appellant provided her with a written statement from a licensed psychiatrist or neuro-psychologist stating that Appellant was able to perform the full range of essential functions, with or without accommodation, of the Office Assistant position.

2.8 On March 14, 2005, Appellant submitted a letter to Ms. Miller-Stout asking her to reconsider her disability separation decision and to consider her recent diagnosis of Crohn's Disease. Appellant indicated that her condition was aggravated by stress in the workplace. Appellant asked Ms. Miller-Stout to also take into account her college education and positive work history. Appellant, however, did not provide the department with proper medical documentation showing that she was able to perform the essential duties of her job, with or without accommodation.

2.9 Appellant's separation due to disability became effective April 29, 2005.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts that the appointing authority exercised her discretion to require Appellant to undergo an independent psychological examination, and that those results showed Appellant was unable to perform the duties associated with her position as an Office Assistant. Respondent argues that as a result of the evaluation, the department conducted a search for other positions for which Appellant was qualified and which she could perform with or without accommodation. Respondent asserts, however, that no such position existed.

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Respondent contends that Appellant was advised that the separation could be suspended if she provided a written report from a neuro-psychologist or a psychiatrist indicating that Appellant could perform her work, but that Appellant failed to provide the necessary documentation. Respondent argues that without that information, the department was unable to stop the disability process and the separation should be affirmed.

3.2 Appellant acknowledges that stimuli in the work environment negatively impacted her accuracy, efficiency and ability to complete her assigned work tasks within deadlines. Appellant also acknowledges that the department implemented some workplace accommodations, but asserts that those accommodations did not last and that the work was reassigned back to her.

Appellant asserts that she was treated unfairly, was denied opportunities, and she claims the department did not create any environmental accommodations to ensure that distractions in the workplace were minimized. Appellant also claims that she did not undergo a timely neuropsychological examination because her insurance expired and the department refused to pay for that examination.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

4.2 At a hearing on appeal of a disability separation, the appointing authority has the burden of supporting the action that was initiated. WAC 358-30-170. Respondent has the burden of proving that Appellant was unable to perform the duties of the position as specified in the letter of separation and that reasonable accommodation cannot be provided. Smith v. Employment Security Dept., PAB No. S92-002 (1992).

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4.3 The issue here is whether Respondent complied with the provisions of WAC 356-35-010 when it separated Appellant from her position as an Office Assistant due to her disability. WAC 356-05-120 defines a disability as "[a]n employee's physical and/or mental inability to perform adequately the essential duties of the job class." In this case, Respondent provided credible evidence that Appellant was unable to perform the essential duties of her position. Therefore, Appellant's condition meets the definition of a disability.

4.4 WAC 356-35-010(1) provides, in part, that an appointing authority "may initiate a disability separation of a permanent employee only when reasonable accommodations cannot be provided. . ." Respondent undertook steps to accommodate Appellant; however, there was no position available for which Appellant met the qualifications that did not have elements of stress, distractions and multiple tasks. Although Respondent, in a good faith effort, transferred some of Appellant's duties to other employees, Appellant was still unable to perform the essential duties of her remaining duties as an Office Assistant. Furthermore, Respondent had no obligation to permanently reallocate the essential functions of Appellant's position.

4.5 Respondent has provided credible evidence that based on the job duties of Appellant's position and based on Appellant's mental impairment, she was unable to perform the duties of her position and that she could not work in a corrections environment. A vacancy search for positions for which Appellant qualified yielded no viable results. Therefore, Ms. Miller-Stout reasonably concluded that accommodation could not be provided which would allow Appellant to perform the essential duties of her position.

4.6 Under the facts and circumstances, Respondent has met its burden, and the appeal of Carol Carver should be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Carol Carver is denied.

DATED this _____ day of _____, 2006.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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