BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

LORA JONES, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	)	Case No. SUSP-04-0017 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, BUSSE NUTLEY, Vice Chair. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on February 16, 2005. GERALD L. MORGEN, Member, listened to the recorded proceedings, reviewed the file and exhibits and participated in this decision.

1.2 **Representation.** Greg Rhodes of Parr, Younglove, Lyman & Coker, P.L.L.C., represented Appellant Lora Jones. Emily Calkins, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** Appellant was suspended for a total of 15 days for neglect of duty, insubordination, gross misconduct and willful violation of agency policy. Respondent alleged that Appellant was at her residence during part of her scheduled work shifts.

II. FINDINGS OF FACT

2.1 Appellant Lora Jones is 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. Appellant filed a timely appeal with the Personnel Appeals Board on March 20, 2004.

2.2 Appellant was hired as a Social Worker 3 at Aging and Disability Services Administration, Home and Community Services (HCS) on March 16, 2000. As a Social Worker 3, Appellant's duties include working both in and out of the office with clients in vulnerable situations. Appellant is a nonscheduled work week employee. Appellant has no prior history of formal disciplinary action.

2.3 By letter dated March 18, 2004, Rick Bacon, Home and Community Services Division, notified Appellant she was suspended for fifteen days, effective March 22, 2004, and continuing through March 26, 2004. Mr. Bacon charged Appellant with neglect of duty, insubordination, gross misconduct, and willful violation of the published employing agency or department of personnel rules or regulations. He alleged that between approximately July 2003 and November 2003 at unspecified dates and times, Appellant was at her residence during part of her scheduled work shift. Mr. Bacon alleged that Appellant was at home contrary to supervisory directives previously issued to her.

2.4 Appellant admits that during the timeframe in question, there were workdays when she returned home rather than return to the office during her work shift. Appellant testified, however, that while at home, she completed casework, such a preparing narratives from day home visits, checking her work voicemail and returning phone calls.

2.5 Appellant also testified that she was never told directly not to work at home. However, the following evidence and testimony contradicts that Appellant was unaware that she was not authorized to be at home during her hours performing work, unless she had prior supervisory approval:

- Kate Kukas, Appellant's former supervisor, credibly testified that she talked to Appellant about her work hours and the requirement that she be in the office or in the field visiting clients between the hours of 8 a.m. and 5 p.m. (Appellant's hours were later changed to 7 a.m. to 4 p.m.)
- In March 2003, Supervisor David Beacham provided all his staff, including Appellant, with a memorandum of social worker expectations. In addition, Mr. Beacham personally met with each staff member to review the expectations. During his meeting with Appellant, Mr. Beacham reviewed the expectations, including the responsibility that Appellant account for her working hours and whereabouts and notify him of any adjustment in her hours for approval.
- On June 19, 2003, Mr. Beacham issued a memo to all staff, including Appellant, directing staff to contact him, intake or reception if a staff member would not be returning to the office after completing a field visit.
- On October 29, 2003, Appellant indicated she was completing her travel voucher at home and Mr. Beacham reminded Appellant that her vouchers needed to be completed at work.

2.6 The department has adopted Personnel Policy 590, which requires an employee to enter into a formal teleworking agreement with his or her supervisor or the appointing authority. Appellant did not request, nor did she have, an approved teleworking agreement.

2.7 Rick Bacon, Assistant Director for Home and Community Services, was Appellant's appointing authority when the discipline was imposed. In determining whether Appellant engaged in misconduct, Mr. Bacon reviewed the Conduct Investigation Report, which was issued as a result of an allegation that Appellant had been leaving work early and going home without supervisory authorization. Mr. Bacon also reviewed the investigative results and written report of the Washington State Patrol (WSP).

2.8 Mr. Bacon concluded that Appellant engaged in misconduct when she went home frequently before her workday ended. Mr. Bacon reviewed Appellant's work history, which contained no prior corrective or disciplinary action and included positive performance reviews. However, he found that Appellant's misconduct was serious enough to warrant a strong disciplinary sanction. Mr. Bacon concluded that Appellant's actions were insubordinate, given the numerous supervisory directives she was provided, and violated DSHS Administrative Policy No. 6.04, Standards of Ethical Conduct for Employees, which requires employees to perform their duties in a manner that promotes trust, faith, and confidence. Mr. Bacon concluded that a 15-day suspension was the sanction necessary to send Appellant the message that her behavior was unacceptable.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that the undisputed evidence supports that Appellant was home without supervisory approval. Respondent argues that Appellant was directed not to work from home. Respondent asserts that in spite of these prior directives, Appellant went home during working hours. Respondent argues that Appellant's misconduct constitutes neglect of duty, insubordination, gross misconduct, and willful violation of the published employing agency, and that the suspension is appropriate.

3.2 Appellant admits she was at home working on the dates in question, but she denies her behavior violated any rules or directives. Appellant contends that her work routine was to report to the office in the morning, make field visits later in the day and, when it was most efficient, to return home to perform work. Appellant asserts that she always performed work duties when she was home and she always worked a full eight hour shift or longer. Appellant denies that she was doing anything unacceptable and she denies that she deliberately disregarded her supervisor's directives.

Appellant argues that she was a highly efficient employee and she denies she neglected her duties by going home and working.

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).

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 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).

4.5 The evidence supports that between July 2003 and November 2003 Appellant was at home during part of her scheduled work shift. Appellant also failed to comply with lawful directives from her supervisor that she return to her work station upon completing field visits or, if unable to return, to contact her supervisor. Respondent has met its burden of proving by a preponderance of the evidence Appellant was at her residence during part of her scheduled work shift and her failure to

comply with her supervisor's directives constitutes insubordination. However, Respondent has failed to prove that Appellant neglected any duty related to her social worker position.

4.6 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).

4.7 Respondent has failed to establish that Appellant's misconduct adversely impacted DSHS' ability to carry out its functions; therefore, the charge of gross misconduct is not substantiated.

4.8 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).

4.9 Respondent has met its burden of proof that Appellant violated DSHS Administrative Policy No. 6.04, Standards of Ethical Conduct for Employees, by failing to conduct herself in a manner that promotes trust, faith, and confidence.

4.10 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).

4.11 Appellant spent work time at her residence despite being informed that she was not to be at home during work hours. Appellant's actions were not reasonable based on supervisory directives. Therefore, we concluded a 15-day suspension was not too severe and was appropriate under the circumstances presented here. The appeal of Lora Jones should be denied.

Having reviewed the file and record in this matter and being fully advised in the premises, the Board enters the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Lora Jones 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