BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MATTHEW SEAGRAVES, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. DISM-03-0025 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; GERALD L. MORGEN, Vice Chair; and BUSSE NUTLEY, Member. The hearing was held in the Conference Room at the Harborview Medical Center in Seattle, Washington, on February 5 and 6, 2004.

1.2 **Appearances.** Appellant Matthew Seagraves was present and was represented by Christopher Coker, Attorney at Law, of Parr, Younglove, Lyman & Coker, P.L.L.C. Jeffrey Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, malfeasance, gross misconduct, mistreatment or abuse of members of the public, excessive use of force, and falsifying a report. Respondent alleges that Appellant used excessive force by throwing a handcuffed patient to the ground causing her to land on her face, and failed to be truthful in his subsequent report of the incident.

Personnel Appeals Board
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II. FINDINGS OF FACT

2.1 Appellant was a permanent employee for Respondent University of Washington. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on March 14, 2003.

2.2 At the time of his dismissal, Appellant was a Campus Security Officer at the Harborview Medical Center, and was responsible for the safety of staff, patients, and visitors. Appellant performed general duty security work, protected life and property, enforced laws, policies and ordinances, maintained order, and prevented and investigated crimes. Appellant had no history of prior formal disciplinary action.

2.3 By letter dated March 11, 2003, Johnese Spisso, Chief Operating Officer, informed Appellant of his dismissal effective March 26, 2003. Ms. Spisso charged Appellant with neglect of duty, malfeasance, gross misconduct, mistreatment or abuse of members of the public, excessive use of force, and falsifying a report. Respondent alleged that Appellant used excessive force by throwing a handcuffed patient to the ground causing her to land on her face, and failed to be truthful in his subsequent report of the incident.

2.4 On November 1, 2002, a man brought a woman of small stature to Harborview Medical Center. The woman appeared to be intoxicated, and reported that she was hearing voices. In addition, she stated she wanted to hurt someone so she would be arrested and taken to jail.

2.5 Appellant denied that he used excessive force and denied that he threw the patient to the ground. Appellant testified the patient kicked him in the groin while he was holding her arm, and he instinctively reacted by jerking backwards, hunching forward, and pivoting his body to deflect

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

the blow. Appellant claimed his reactionary movements and the pain of being kicked caused him to lose his balance and go down to the ground, taking the patient down along with him. Appellant admitted that he failed to write a clear report when he documented the incident.

2.6 In making a determination of the allegations, we carefully weighed the testimony of the witnesses and reviewed the documentary evidence, exhibits, and videotape in this case. There are no witnesses who saw the full incident or who were able to corroborate Appellant's version of the events. Nurse Jacque Callis and Leah Rubottom saw the woman kick backwards towards Appellant, but neither was able to confirm whether the kick actually made contact with Appellant's groin. The security camera videotape provided by Harborview Medical Center is not a continuous depiction of events because delayed images on film are captured in a time lapse fashion. The videotape fails to show that the woman kicked Appellant or the manner in which he took her to the ground.

2.7 We find discrepancies in Appellant's testimony and his statements in the Workplace Violence Report and the Use of Force Report. In the Workplace Violence Report, Appellant stated he hunched forward after being kicked and pulled the woman with him, placing her on the ground for officer safety. In the Use of Force Report, Appellant stated the woman lost her balance when he hunched over from being kicked and she fell to the ground hitting her lip.

2.8 The videotape clearly shows the woman under total control of Appellant as evidenced by both his hands on her handcuffs and his knee in her back.

2.9 As a result, we do not find Appellant credible or his version of the events believable. We find that Appellant more likely than not used excessive force while intentionally taking the patient to the ground.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.10 While waiting to be admitted as a patient, the woman punched Officer James Smith in the face. Officer Smith and Officer Robert Lewis immediately moved the woman up against the nearest wall to gain control and restrain her. Appellant arrived on the scene and assisted in handcuffing the woman.

2.11 Appellant and Officer Smith escorted the woman to the Emergency Department so she could be evaluated and admitted to the Crisis Triage Unit, which is the unit specifically for "behavioral crisis" cases. Officer Smith left the area, and Appellant and the woman waited for assistance from one of the nurses.

2.12 While Appellant stood behind the woman, Nurse Jacque Callis approached and attempted to talk to her. The woman was uncooperative and verbally abusive, and she suddenly kicked her foot violently backwards toward Appellant in a "horse kick." Appellant took the woman to the ground, and she landed face-first causing injury to her lip and jaw.

2.13 On November 5, 2002, Sergeant Tyler Redding and Sergeant Craig Harvey conducted an investigation and submitted a report to Warren Walls, Director of the Department of Public Safety, recommending that Appellant be terminated.

2.14 By memorandum dated December 3, 2002, Mr. Walls recommended to Ms. Spisso that Appellant be dismissed. Mr. Walls' recommendation was based on his review of the investigation conducted by Sergeant Redding and Sergeant Harvey. Mr. Walls referred to the Rules of Conduct for Officers, which states that officers are to make every reasonable effort to avoid the use of physical force. Mr. Walls concluded that, "In this situation, with the individual already restrained with handcuffs behind her back and under [Appellant's] control, it was entirely improper and inappropriate for [Appellant] to throw this individual into the air and onto the ground."

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.15 By letter dated March 11, 2003, Ms. Spisso informed Appellant of his termination effective March 26, 2003.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant threw the woman to the ground causing her to land face first, unable to protect her face because her hands were handcuffed behind her back. Respondent asserts Appellant had a responsibility to use the least amount of force possible while controlling or restraining the woman. Respondent contends Appellant submitted a false and misleading report of the incident. Respondent argues Appellant did not at any time lose his balance and was in control the entire time. Respondent asserts that Appellant did not exhibit any signs on the videotape that he had been kicked in the groin. Respondent asks the Board to uphold Appellant's termination for untruthfulness and use of excessive force.

3.2 Appellant argues that he was professional in how he handled the woman and did not throw her to the ground. Appellant asserts the woman kicked him in the groin, and he subsequently took her to the ground for officer safety. Appellant contends the investigation conducted by Sergeant Harvey and Sergeant Redding was flawed because he was not interviewed, and they did not interview all the witnesses. Appellant argues that Respondent relied on the videotape; however, it does not show whether Appellant was kicked in the groin or how he took the woman to the ground. Appellant asserts his termination was completely unwarranted and asks the Board to grant his appeal.

IV. CONCLUSIONS OF LAW

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

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

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 251-12-240(1); 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 Malfeasance is the commission of an unlawful act, the act of doing what one ought not to do, or the performance of an act that ought not to be done, that affects, interrupts, or interferes with the performance of official duty. Parramore v Dep't of Social & Health Services, PAB No. D94-135 (1995).

4.5 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). Flagrant misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

4.6 Respondent has met its burden of proof that Appellant's misconduct constitutes neglect of duty, malfeasance, and rises to the level of gross misconduct. Appellant failed to make every reasonable effort to avoid the use of physical force while performing the duties of his position as a Campus Security Officer. Appellant's lack of judgment and use of excessive force interfered with Harborview Medical Center's ability to provide a safe environment for patients. Appellant also

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

failed to be truthful in all oral, written and electronic communications, reports and other correspondence.

4.7 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).

4.8 Respondent has established that the disciplinary action of dismissal was not too severe and was appropriate under the circumstances presented here. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Matthew Seagraves is denied.

DATED this _____ day of _____, 2004.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Gerald L. Morgen, Vice Chair

_____
Busse Nutley, Member

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