BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

FRANK BAKER, Appellant, vs. WASHINGTON STATE PATROL, Respondent.	CASE NO. R-DEMO-05-001 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, MARSHA TADANO LONG, Vice-Chair, and LARRY GOODMAN, Member. The hearing was held on May 2, 2006, at the Personnel Appeals Board in Olympia, Washington.

1.2 **Appearances.** Appellant Frank Baker did not appear and no representative appeared on his behalf. Elizabeth Delay Brown, Assistant Attorney General, represented Respondent Washington State Patrol (WSP).

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of demotion for neglect of duty and unsatisfactory performance as a result of Appellant's failure to process and/or comply with Airworthiness Directives or manufacturer's Service Bulletins; Federal Aviation Administration (FAA) Mandatory Equipment List revisions; Federal Communications Commission (FCC) aircraft radio license renewals as required by FAA regulations, FCC Regulations and the WSP Aviation Section Operations Manual, and written position expectations.

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II. PRELIMINARY MATTERS

2.1 At the outset of the hearing, Respondent moved for dismissal of the appeal for two reasons. First, Respondent alleged that Appellant failed to pursue his appeal because he did not appear at the hearing. Respondent also alleged that Appellant failed to participate in the pre-hearing process and asked that the appeal be dismissed pursuant to WAC 357-52-095. Respondent explained that when Board staff called Appellant at 10 a.m. on April 25, 2006, the time scheduled for the pre-hearing conference, Appellant requested that the conference be moved to 3:00 p.m. When Board staff called Appellant at 3:00 p.m. per his request, Appellant indicated that he did not wish to speak at that time and that he would contact Board staff the following day.

2.2 Respondent argued that Appellant showed no interest in pursuing his appeal. Respondent also argued Appellant failed to participate in the pre-hearing conference. Respondent asserted that the appeal should be dismissed.

2.3 The Board took the motion under advisement and proceeded with the hearing on the merits of the appeal. The Board now denies the motion and issues the following:

III. FINDINGS OF FACT

3.1 Appellant Frank Baker was a permanent employee for Respondent Washington State Patrol. Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder, Title 357 WAC. Appellant filed a timely appeal with the Personnel Resources Board on September 12, 2005.

3.2 By letter dated July 28, 2005, Captain G. Curt Hattell, Special Operations Division, notified Appellant of his demotion for failure to process and/or comply with Airworthiness Directives (ADs) or manufacturer's Service Bulletins (SBs); FAA Mandatory Equipment List

(MEL) revisions; FCC aircraft radio license renewals as required by FAA regulations, FCC Regulations and the WSP Aviation Section Operations Manual, and written expectations contained in an Interoffice Communication (IOC) dated November 14, 2003. Appellant's demotion was effective August 15, 2005.

3.3 Appellant began employment with WSP as the Aviation Maintenance Manager on November 2, 2003. Two weeks after he began employment, on November 14, 2003, Appellant was provided with a list of expectations for his position. The first expectation listed stated, in part:

> Scheduling and completion of "scheduled aircraft maintenance".
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> - Ensure completion of scheduled aircraft maintenance as per the computer schedule.
> - Ensure all ADs, SBs, and other FAA and manufacturers requirements are completed.
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3.4 On June 29, 2004, Appellant's supervisor, Lieutenant Tristen Atkins, gave Appellant a letter of counseling regarding maintenance of pool vehicles based at the Olympia Aviation Section's office. In addition, a copy of the November 14, 2003, list of expectations was attached to the counseling letter.

3.5 Subsequent to the July 29, 2004 counseling session, Captain Hattell became aware of allegations that Appellant was not performing his duties. The allegations started with information about missing equipment list documentation and an issue about an FCC radio license that was not properly handled. While a brief preliminary investigation was conducted, a stack of 33 airworthiness directives and safety bulletins were discovered in Appellant's office behind Appellant's desk. The directives and bulletins had not been shared with the maintenance technicians.

3.6 When a safety bulletin or FAA directive came into the Aviation Section, the section secretary would give the documents to Appellant. It was Appellant's responsibility to log and review the documents and then forward the documents to the maintenance technicians for appropriate action. Captain Hattell felt that failure to address the safety bulletins was a serious issue.

3.7 After the stack of airworthiness directives safety bulletins was found behind Appellant's desk, Captain Hattell requested that a full investigation be conducted by the Office of Professional Standards (OPS). Captain Hattell asked that the investigation address the allegations that Appellant failed to process and/or comply with airworthiness directives or manufacturer's service bulletins, FAA mandatory equipment list revisions, and FCC aircraft radio license renewals as required by Federal Aviation Regulations, Federal Communications Commission Regulations, the Aviation Section's Operations Manual, and a written expectations IOC dated November 14, 2003.

3.8 OPS investigated the matter and forwarded the case to Captain Hattell for review. Captain Hattell reviewed the entire OPS report and then formulated his decision.

3.9 On March 30, 2005, Captain Hattell forwarded his Administrative Insight IOC to Acting Captain Sean Hartsock. In the IOC, Captain Hattell stated that he was contemplating demoting Appellant to a Jet Aircraft Technician. Captain Hattell concluded that Appellant had violated WSP rules, that his actions rose to the level of gross misconduct, that he was incompetent, that he neglected his duty, and that his performance was unsatisfactory. Captain Hattell found that Appellant had failed to appropriately process key documents that had the potential to adversely affect the safe and efficient operation of WSP aircraft and failed to fulfill his responsibility to

ensure that such work was completed in a timely manner. Captain Hattell determined that removal from a supervisory position was likely the appropriate level of discipline. Based on the egregiousness of Appellant's behavior, Captain Hattell thought that termination would have been warranted, but he felt that Appellant had some good qualities and that he had a lot of energy, enthusiasm and seemed to want to work for WSP. Captain Hattell was hopeful that Appellant would prove to be a good mechanic and that they could keep him employed in the Aviation Section.

3.10 Prior to determining whether demotion was the appropriate sanction, on April 21, 2005, Captain Hattell conducted a predetermination conference with Appellant and his union representative. During the conference, Appellant raised allegations of harassment and discrimination by Captain Hattell and Lieutenant Tristan Atkins. Captain Hattell took these allegations seriously and forwarded the matter to OPS for investigation.

3.11 OPS concluded that Appellant's allegations of harassment and discrimination were unfounded.

3.12 After the conclusion of OPS's investigation into Appellant's allegations, Captain Hattell reviewed the transcript of Appellant's predetermination conference and submitted a follow-up list of questions to OPS. Captain Hattell wanted to assure that he had all the information necessary to determine whether there were mitigating circumstances for Appellant's misconduct. When no mitigating circumstances were found, Captain Hattell continued with the disciplinary process.

3.13 Captain Hattell concluded that Appellant was aware of the requirements of his position yet failed to meet those expectations and failed to follow the clear directives of his supervisor

and his own training and experience in processing vital documents that had the potential to compromise the safe and efficient operation of WSP aircraft. Captain Hattell also concluded that Appellant failed to take responsibility for his actions and that he was either unwilling or incapable of understanding the level of trust and responsibility required of an Aviation Maintenance Manager. As a result, by letter dated July 28, 2005, Captain Hattell notified Appellant of his demotion.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Resources 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 357-52-110.

4.3 Respondent has met its burden of proof. Appellant violated the trust placed in him as the Aviation Maintenance Manager and failed to fulfill his responsibilities to the agency and the people who worked for him. By not disseminating the ADs and SBs in a timely manner, Appellant placed the lives of pilots and passengers, and the careers of pilots and mechanics in jeopardy. Appellant neglected his duty and failed to fulfill the expectations of his position and clear directives of his supervisor.

4.4 Demotion is appropriate under the proven facts and circumstances and the appeal should be denied.

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VI. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Frank Baker is denied.

DATED this _____ day of _____, 2006.

WASHINGTON PERSONNEL RESOURCES BOARD

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MARSHA TADANO LONG, Vice-Chair

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LARRY GOODMAN, Member