BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MANSOUR FARIDNIA, Appellant, v. EASTERN WASHINGTON UNIVERSITY, Respondent.	Case No. RIF-03-0041 ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

I. INTRODUCTION

1.1 **Consideration of Motion.** This appeal came before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member, on January 10, 2005, for consideration of written argument on Respondent's Motion to Dismiss, which we review as a Motion for Summary Judgment.

1.2 **Representation.** Patricia Thompson, Assistant Attorney General, represented Respondent Eastern Washington University (EWU). Appellant is *pro se* in this matter, and did not respond to this Motion.

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including Respondent's Memorandum in Support of Motion to Dismiss and attached exhibits, filed December 17, 2004. Appellant did not file a response to this Motion.

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II. BACKGROUND AND FACTS

2.1 Appellant was laid off from his position as a Senior Facilities Engineer with Architectural Engineering and Construction at EWU, effective November 6, 2003.

2.2 On December 5, 2003, Appellant filed an appeal of his layoff.

2.3 On September 10, 2004, a Notice of Scheduling was sent from the Board to the parties setting the hearing date for January 20, 2005. The Notice of Scheduling also set the telephone status conference for October 15, 2004, at 9:15 a.m. Although the telephone conference was held at the pre-appointed date and time, Appellant was not available at the phone number provided to the Board, and did not participate in the proceedings.

2.4 On October 15, 2004, the Board issued an order through its Acting Executive Secretary directing that all discovery be completed on or before December 21, 2004.

2.5 On November 16, 2004, Respondent mailed to Appellant Respondent's First Set of Interrogatories Propounded to Appellant and Requests for Production of Documents. Appellant's responses to these requests were due by December 16, 2004. As of December 17, 2004, Appellant had neither responded to the discovery requests, nor contacted Respondent to ask for an extension.

2.6 Respondent filed its Motion to Dismiss on December 10, 2004. Respondent argues that Appellant's appeal should be dismissed because he has failed to participate in the prehearing/status conference, and failed to answer discovery requests. Respondent asserts that the University cannot properly prepare its case without Appellant's full and complete answers to all the discovery requests. Respondent argues that with no response to discovery from Appellant, it has no way of

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knowing what issues are being contested. Respondent argues that Appellant should not be allowed to benefit by not complying with the discovery process, nor by failing to prosecute his appeal by participating in the status/pre-hearing conference. Respondent asserts that no evidence has been presented to show that EWU failed to set forth the correct basis for the lay-off, or that the University failed to the give the correct options in this layoff. Respondent argues that based on the undisputed evidence before the Board, there are no material facts in dispute, and therefore, dismissing the appeal is appropriate.

2.7 Appellant did not provide a response to the Motion to Dismiss.

III. DISCUSSION

3.1 Summary Judgment may be rendered where there is no genuine issue as to any material fact and the appeal should be decided or dismissed as a matter of law. WAC 358-30-060(1). All facts and reasonable inferences therefrom are to be determined in favor of the nonmoving party. See Hall v. University of Washington, PAB No. 3863-V2 (1995).

3.2 In order to preclude summary judgment, the non-moving party must set forth specific facts by affidavit or otherwise show a genuine dispute of material fact. A material fact is one upon which the outcome of the litigation depends. Hudeman v. Foley, 73 Wn.2d 880, 886, 441 P.2d 532 (1968).

3.3 The issue here is whether Appellant's appeal should be dismissed based on his failure to participate in the discovery process and his failure to participate in the status conference.

3.4 WAC 358-30-150 provides for "discovery procedures in a manner consistent with the civil rules." Pursuant to the provisions of CR 37, Respondent moved for dismissal of Appellant's appeal. Normally, a technical violation of discovery rules by a *pro se* appellant would not result in the harsh

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sanction of dismissal. However, in this case, Respondent properly served Appellant with Interrogatories and Requests for Production of Documents, and Appellant has had a reasonable opportunity to provide Respondent with his answers to the discovery requests. Nonetheless, Appellant has refused to provide answers and has failed to state any reason for his failure to do so. Furthermore, Appellant has failed to provide a response to this motion.

3.5 Likewise, taken alone, the failure of an Appellant to participate in a status conference would not typically be a sufficient basis for dismissal of an appeal. However, WAC 358-30-084(c) provides that the Board may dismiss an appeal when an appellant refuses to participate in a pre-hearing conference pursuant to WAC 358-30-026(4), which also sets out that failure to participate may result in dismissal of the appeal or other sanctions. Appellant has not provided any information as to why he declined to participate in the pre-scheduled telephone conference.

3.6 Therefore, we find there are no disputed facts to be resolved or inferences that need to be drawn to decide this issue either. Even when viewing all the facts in the light most favorable to Appellant, there is no question that he has failed to comply with his duty to cooperate with the discovery process, as well as failed to participate in the status conference/pre-hearing telephone call. Therefore, Respondent's Motion to Dismiss should be granted, and the appeal should be denied.

The Board having reviewed the files and records herein, being fully advised in the premises, now enters the following:

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IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is granted, and the appeal of Mansour Faridnia is denied.

DATED this _____ day of February, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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