BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

STAN BETTS, Appellant, v. WASHINGTON STATE PARKS AND RECREATION COMMISSION, Respondent.	Case No. RULE-98-0042 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, and NATHAN S. FORD JR., Vice Chair. The hearing was held in the Personnel Appeals Board hearing room in Olympia, Washington, on April 27, 1999.

1.2 **Appearances.** Appellant Stan Betts was present and represented himself *pro se*. Respondent Washington State Parks and Recreation Commission was represented by Judy Johnson, Director of Human Resources.

1.3 **Nature of Appeal.** This is an appeal of alleged rule violations which occurred prior and subsequent to the termination of Appellant's employment as a temporary employee. Appellant alleged, in part, that Respondent failed to provide him with proper notice of his termination, failed to allow him access to his personnel file, failed to allow him to use accrued compensatory time for family medical leave, and failed to follow agency policies regarding grievances and corrective action. Appellant also alleged that Respondent took actions that adversely affected his liberty interest.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504
(360) 586-1481

1.4 **Citations Discussed.** WAC 358-30-170; RCW 41.06.170; RCW 41.06.450; RCW 41.06.460; RCW 49.46.130; RCW 49.48.010; RCW 49.52.050; WAC 356-14-240; WAC 356-14-265; WAC 356-18-116; WAC 356-30-065; WAC 356-30-100; WAC 356-46-060; Adams v. Wainwright, D.C.Fla., 512 F.Supp 948, 953.

II. FINDINGS OF FACT

2.1 Appellant Stan Betts was an Office Assistant I and a temporary employee for Respondent Washington State Parks and Recreation Commission at Fort Worden State Park. 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 August 26, 1998.

2.2 Appellant provided extensive information with his appeal, however, he did not specifically provide the information required by the Board for rule violation appeals. By letter dated August 27, 1998, the Executive Secretary for the Board asked Appellant for additional information. Appellant provided the additional information on September 8, 1998. Appellant specified that Respondent failed to provide him with proper notice of his termination as required by WAC 356-30-100; failed to provide him with specified charges in writing prior to his termination as required by RCW 41.06.170; and failed to follow RCW 41.06.450 regarding the retention or destruction of information related to employee misconduct. As a remedy to his appeal, Appellant requested restoration of his rights and benefits and/or an order of corrective action directed to the agency.

2.3 During his argument at the hearing before the Board, Appellant expanded his allegations to include violations of WAC 356-30-065 regarding the termination of his temporary appointment;

RCW 41.06.460 and WAC 356-46-060 regarding access to and destruction and retention of information in his personnel file; and RCW 49.52.050, RCW 49.46.130, RCW 49.48.010, WAC 356-14-240, WAC 356-14-265, and WAC 356-18-116 regarding leave records and Respondent's alleged denial of Appellant's use of compensatory time for family medical leave.

2.4 After beginning his employment at Fort Worden State Park, Appellant began having attendance problems, in part because of his need to provide assistance to his elderly mother. By letter dated June 6, 1998, Appellant was warned about his tardiness and informed that his inconsistency in reporting to work on time was unacceptable. (Ex. R-22). Subsequently, at Appellant's request, Respondent adjusted Appellant's work schedule and allowed Appellant to begin work at 11:30 a.m. However, Appellant continued to exhibit attendance problems. (Declaration of Steve Shively).

2.5 During the Summer of 1998, Fort Worden State Park was implementing a new computer reservations system. Appellant and other staff experienced some difficulties in using the new system. Appellant and other staff were allowed to accrue compensatory time for work required beyond their regularly assigned work schedules.

2.6 On July 27, 1998, Appellant was terminated from his temporary appointment. Appellant was informed that his termination was effective immediately. Subsequent to Appellant's termination, Respondent became aware of the requirement that temporary employees be given one-day's notice of termination. After discovering its error, Respondent paid Appellant for the one-day's notice that he should have been given when he was terminated.

2.7 Appellant was terminated for tardiness; incomplete, careless and inaccurate work; avoidance of some of the more stressful work situations; unwillingness to accept constructive criticism and take direction; inability to comprehend errors; and lack of awareness or appreciation for the complexity of the new computer system. (Ex. R-12). Subsequent to Appellant's termination, rumors circulated among some of the staff at Fort Worden State Park that Appellant was terminated for misappropriation of funds. However, these rumors were unfounded.

2.8 Prior to the termination of his appointment, Appellant did not submit a formal request to Respondent to use his compensatory time to provide assistance to his mother and Respondent did not deny such a request from Appellant.

2.9 Following his termination, Appellant was not compensated for his accrued compensatory time. Respondent corrected this error. By letter dated March 22, 1999, Respondent informed Appellant that the payment that was processed on March 19 included cash payment for 42.3 hours of compensatory time. A previous overpayment for Appellant's personal holiday was deducted from the amount due to Appellant for his compensatory time. (Ex. R-7).

2.10 On August 11, 1998, Appellant filed a grievance of his termination. Respondent processed Appellant's grievance and provided him with a written response. (Exhs. R-12 and R-8). Respondent's Employee Grievance Policy Number 70-10 and Procedure Number 70-10 establish a process for handling grievances for employees covered by the provisions of a collective bargaining agreement. (Exhs. A-1 and A-2).

2.11 Respondent's Corrective Action Policy Number 70-17 and Procedure Number 70-20 set forth the process to be followed by agency managers and supervisors when corrective action is

necessary during and after an employee completes his or her probationary or trial service period. (Exhs. A-3 and A-4).

2.12 Respondent maintains the official personnel files for its employees in the central personnel office located in Olympia. Appellant did not submit a formal request to Respondent to review his official personnel file and Respondent did not deny such a request from Appellant.

III. ARGUMENTS OF THE PARTIES

3.1 Appellant argues that he was terminated without proper notice and that his termination was in violation of the civil service statute and merit system rules. Appellant further argues that he was not allowed to use compensatory time to provide care for his mother, that he was not allowed to review his personnel file, that Respondent failed to follow agency policies in regard to his dismissal and his subsequent grievance, and that Respondent failed to keep records of his work attendance. Appellant contends that the State and Federal constitution provide him due process and protection and that his discharge deprived him of his liberty interest in future employment.

3.2 Respondent argues that Appellant was made whole for the one day's notice requirement for termination of temporary employees and that as a temporary employee, Appellant has no right under the merit system rules and statute to appeal his termination. Respondent further argues that Appellant never formally requested use of compensatory time so that he could provide care for his mother and that Appellant never formally requested access to his official personnel file which is kept in the central personnel office. Respondent contends that as a temporary employee, Appellant was given appropriate due process and that temporary employees are not covered by the grievance or corrective action procedures. Furthermore, Respondent contends that the agency attempted to

assist Appellant with his attendance problem by adjusting his work schedule but that Appellant continued to have difficulties reporting to work on time.

IV. CONCLUSIONS OF LAW

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

4.2 In a hearing on appeal of an alleged rule violation, Appellant has the burden of proof. WAC 358-30-170.

Notice of termination of temporary appointments (alleged violations of RCW 41.06.170, WAC 356-30-065 and WAC 356-30-100).

4.3 The Board has jurisdiction to hear appeals of "[a]ny employee who is reduced, dismissed, suspended, or demoted, after completing his or her probationary period of service as provided by the rules of the board, or any employee adversely affected by a violation of the state civil service law, chapter 41.06 RCW, or the rules adopted under it. . . . The employee shall be furnished with specific charges in writing when a reduction, dismissal, suspension, or demotion action is taken. . . ." RCW 41.06.170(2). This is the statute that enables this Board to hear appeals. In addition, the statute requires an employer to provide notice to a permanent employee who has completed his/her probationary period when a disciplinary action is taken. Appellant was not a permanent employee and he had not completed a probationary period. Appellant has failed to show that Respondent violated the requirements of the statute.

4.4 WAC 356-30-065(8) provides that temporary employees are to be given "one full working day's notice prior to the effective date" of the end of a temporary appointment. The rule further

provides that temporary employees do not have the right of appeal or hearing. Appellant was paid for the one day's notice required by the rule. Because Respondent remedied its error and made Appellant whole, Appellant has failed to prove that he was harmed by this violation. Furthermore, Appellant has no right to an appeal or hearing of the termination of his appointment.

4.5 WAC 356-30-100 states: "A temporary employee may be terminated from temporary service without the right of appeal or hearing after being given one full working day's notice prior to the effective date of the termination." As stated above, Appellant was paid for the one day's notice required by the rule. Because Respondent remedied its error and made Appellant whole, Appellant has failed to prove that he was harmed. Furthermore, Appellant has no right to an appeal or hearing of the termination of his appointment.

4.6 In addition, Appellant has failed to prove that either RCW 41.06.170, WAC 356-30-056 or WAC 356-30-100 requires employers to give a temporary employee written notification of the termination of the employee's temporary appointment.

Destruction or retention of information and access to an employees' personnel file (alleged violations of RCW 41.06.450, RCW 41.06.460 and WAC 356-46-060).

4.7 RCW 41.06.450 provides for the retention or destruction of information pertaining to an employee's misconduct or alleged misconduct in the employee's personnel file. Appellant has failed to prove that Respondent has maintained inappropriate information in his personnel file.

4.8 RCW 41.06.460 authorizes agencies to destroy information related to an employee's misconduct or alleged misconduct if the agency deems the action is consistent with RCW 41.06.450. Appellant has failed to prove that Respondent violated this statute.

4.9 WAC 356-46-060 (2)(b)(c) and (d) requires agencies to publish policies pertaining to the retention and confidentiality of personnel records. In addition, the rule allows employees or their representatives to review an employee's personnel file, to contest information in the employee's personnel file, and to file a rebuttal of the information in the file. Appellant has failed to prove that Respondent did not have a policy pertaining to personnel records, that he made a formal request to review his personnel file, that he was denied access to his personnel file, or that he was denied an opportunity to file a rebuttal to information contained in his file.

Compensatory time (alleged of violations of RCW 49.52.050, RCW 49.46.130, RCW 49.48.010, WAC 356-14-240, WAC 356-14-265, and WAC 356-18-116).

4.10 The Personnel Appeals Board has jurisdiction over alleged violations of chapter 41.06 RCW and the rules promulgated thereunder. Allegations of violations of the provisions of chapters 49.52, 49.46, and 49.48 RCW are not under the jurisdiction the Personnel Appeals Board. Therefore, Appellant's allegations of violations of RCW 49.51.050, RCW 49.46.130, and RCW 49.48.010 should be dismissed.

4.11 WAC 356-14-240 allows state employees to be compensated in cash or with compensatory time for overtime. Appellant received compensatory time for overtime. Appellant has failed to prove that Respondent violated the provisions of WAC 356-14-240.

4.12 WAC 356-14-265 provides for cash compensation for a state employee's accrued compensatory time. Respondent did not compensate Appellant for his compensatory time at the time of his termination. However, following his termination, Appellant was compensated for his

accrued compensatory time. Appellant has failed to prove that Respondent violated the provisions of WAC 356-14-265.

4.13 WAC 356-18-116 provides for employees to use compensatory time for leave due to unforeseen family care requirements. Appellant has failed to show that he formally requested the use of compensatory time for family care requirements or that such a request was denied. Appellant has failed to prove that Respondent violated the provisions of WAC 356-18-116.

4.14 Appellant also alleges that Respondent took actions that adversely affected his liberty interest. Liberty interest is defined in the *Black's Law Dictionary* as, "[a]n interest recognized as protected by the due process clauses of state and federal constitutions. U.S.C.A Const.Amend. 5,14. Generally included are liberties guaranteed by the first eight amendments of the United States Constitution, as well as interests created when states either legislatively or administratively impose limitations on their discretion to require that a specific standard prevail in decision making. Adams v. Wainwright, D.C.Fla., 512 F.Supp 948, 953." As stated above, the Personnel Appeals Board has jurisdiction over alleged violations of chapter 41.06 RCW and the rules promulgated thereunder. The Board does not have jurisdiction over the state or federal constitution.

4.15 In addition, Appellant alleges that Respondent violated agency policy. Specifically, Appellant stated that Respondent failed to follow agency policies on grievances and corrective action. Once again, the Board has jurisdiction over alleged violations of chapter 41.06 RCW and rules promulgated thereunder. Appellant has failed to prove that Respondent's processing of his grievance was in violation of the statute or the rules.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the alleged violations of RCW 49.51.050, RCW 49.46.130, RCW 49.48.010 and Appellant's liberty interest are dismissed.

IT IS FURTHER ORDERED that the appeal of Stan Betts is denied

DATED this _____ day of _____, 1999.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Nathan S. Ford Jr., Vice Chair

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2828 Capitol Boulevard
Olympia, Washington 98504
(360) 586-1481