BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JOHN J. JACKSON, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. DISM-99-0016 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 LEANA D. LAMB, Member. The hearing was held in the Harborview Medical Center Personnel Building in Seattle, Washington, on February 1, 2000. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant John J. Jackson was present and was represented by Edward E. Younglove III, Attorney at Law, of Parr and Younglove, P.L.L.C. Respondent University of Washington was represented by Jeffrey W. Davis, Assistant Attorney General.

1.3 **Nature of Appeal.** Appellant was dismissed from his Patient Registration Representative position for admitted violation of policy and for alleged theft of patients' property.

1.4 **Citations Discussed.**

Motion to Set Aside Dismissal: RCW 28B.16.100; RCW 41.06.150; WAC 251-09-025; WAC 251-10-120; WAC 251-11-050; WAC 251-09-025; WAC 356-34-045; Johnson v. Spokane Community College (District 17), HEPB No. 1064, *aff'd* Spokane County Superior Court No. 80-2-

04126-1 (1981); Matt v. Dep't of Transportation, PAB No. D85-34 (1985); Schley v. Dep't of Corrections, PAB No. DISM-97-0049 (1999), *affirmed* Thurston County Superior Court No. 99-2-01001-6 (1999); Foutch v. Dep't of Corrections, PAB No. D84-25 (1985); Ballinger v. Dep't of Social and Health Services, 104 Wn2d 323, 336, 705 P.2d 249 (1985).

Decision: WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992); Aquino v. University of Washington, PAB No. D93-163 (1995).

II. MOTION TO SET ASIDE DISMISSAL

2.1 On January 7, 2000, Appellant filed a Motion to Set Aside Dismissal and for Reinstatement. Respondent filed its response in opposition to Appellant's motion on January 21, 2000. Appellant filed a reply to Respondent's response on January 25, 2000. The Board heard oral argument on Appellant's motion on January 31, 2000, the day prior to the scheduled hearing date. The Board made an oral ruling denying Appellant's motion and proceeded with the hearing as scheduled. At the outset of the hearing on the merits of the appeal, and again during closing argument, Appellant renewed his motion and asked the Board to reconsider its oral ruling. The Board now denies the request to reconsider our decision and confirms its earlier oral ruling as set forth below.

2.2 Appellant requests that the Board set aside the disciplinary sanction because notice of the grounds for dismissal was not provided to him during his regular working hours. Appellant argues that WAC 251-11-050 requires that such notice be served on an employee during his scheduled working hours. Appellant further asserts that the service and notice requirements of the civil

service law are jurisdictional, and failure to strictly comply with those requirements mandates setting the disciplinary action aside and reinstating the Appellant.

2.3 Appellant worked for the University of Washington at Harborview Medical Center. Appellant's regularly scheduled working hours were 11 p.m. to 7:30 a.m., Monday through Friday. According to a certified statement filed with his motion, Appellant was informed near the end of his shift on Monday, March 22, 1999, that a recommendation to dismiss him from employment was under consideration. Appellant was told to return to work the next day at 1 p.m. to attend a predisciplinary meeting. During the predisciplinary meeting, Appellant was placed on administrative leave. On March 24, 1999, a supervisor called Appellant at home and asked him to return to Harborview to receive his termination notice at about 1:30 p.m. that day. Appellant reported at the time and place ordered and was given notice of his dismissal.

2.4 The questions presented by the motion are: (1) whether the University's failure to give written notice of dismissal to an employee during his regularly scheduled working hours is improper notice under the higher education merit system rules, when the notice is given to the employee at such other time as directed by the employee's supervisor; and (2) if service of written notice at such other time is improper, whether the disciplinary sanction must be set aside and the employee reinstated to his/her position.

2.5 For the reasons discussed below, we conclude that proper service of the notice of dismissal was completed when the University changed the Appellant's scheduled working hours for the purpose of serving the notice, the Appellant reported to the workplace at the time directed by his supervisor, and Appellant received written notice of the specified causes, specific charges, and the right to appeal the dismissal action at least fifteen calendar days prior to the effective date of his

dismissal. Because we conclude that service of the notice under these circumstances complied with the higher education merit system rules, we do not reach the question of whether service of the notice outside of an employee's scheduled working hours requires the Board to set aside the dismissal and order reinstatement of the employee.

2.6 WAC 251-11-050 authorizes dismissal of employees for just cause. The rule, in full, provides:

> Appointing authorities may dismiss a permanent employee for just cause as specified in WAC 251-11-030. The employee shall be provided written notice of the specified cause(s), specific charges, and the right to appeal the dismissal action to the personnel appeals board. The notice shall be furnished at least fifteen calendar days prior to the effective date of the action (unless the dismissal action is to be effective as provided in WAC 251-11-070) and shall be furnished directly to the employee during his/her scheduled working hours, or if this is not possible because of the absence of the employee during his/her regularly scheduled working hours, mailed by certified letter to the employee's last known address. If the notification is furnished directly to the employee, the day it is furnished shall be counted as a day of notice. If the notification is mailed, the notice shall be considered received the same day as it is postmarked and the notice period shall be computed as provided in WAC 251-04-100.

2.7 Appellant relies heavily on Johnson v. Spokane Community College (District 17), HEPB No. 1064, *aff'd* Spokane County Superior Court No. 80-2-04126-1 (1981), and to a lesser extent on Matt v. Dep't of Transportation, PAB No. D85-34 (1985), in support of his argument that Respondent's failure to strictly comply with the procedural requirement of the rule mandates setting the disciplinary action aside and reinstating Appellant.

2.8 In Johnson, the Higher Education Personnel Board (HEPB) interpreted the notice required by former WAC 251-10-120. That rule stated, in part:

> The notice…shall be furnished directly to the employee during working hours, or if this is not possible because of the absence of the employee on his/her regularly

> scheduled working day, mailed by certified letter to the employee's last known address.

2.9 The HEPB decided that the rule required service of a dismissal notice during the employee's regularly scheduled working hours. The HEPB found

> that the rule is designed to provide for personal service of the written dismissal notice on the employee at his/her work station. Outside of the employee's regularly scheduled working hours, however, an employee is not present at his/her work station and not available for such personal service. Under the Board's [HEPB's] present rules, moreover, an employer has no authority to require an employee to report to work for the sole purpose of receiving a dismissal notice. Accordingly, the language in WAC 251-10-120 stating that a dismissal notice "shall be furnished directly to the employee <u>during working hours</u>" refers to the regularly scheduled working hours of the employee.

<u>Johnson</u>, (emphasis in original). The HEPB decision was affirmed on appeal by the Spokane County Superior Court.

2.10 The HEPB conclusion that an employer has no authority to require an employee to report to work for the sole purpose of receiving a dismissal notice does not square with this Board's reading of current rules. WAC 251-09-025 provides, in relevant part:

> Changes to a scheduled work period employee's assigned hours may be made under the following condition(s):
>
> > (1) For temporary changes of work hours within the assigned week:
> >
> > (a) By providing two calendar days notice to the employee. (The day notification is given constitutes a day of notice); or
> >
> > (b) Because of emergency conditions; or
> >
> > (c) When the change is requested by the employee and approved by the employing official; or
> >
> > (d) For operational convenience (instances where the conditions above do not exist), in which case the employee shall have the right to work his/her

regularly assigned schedule in addition to the modified schedule (in accordance with the provisions of WAC 251-09-030)

2.11 We are persuaded by Respondent's argument that Appellant's scheduled work hours were changed when he was called by his supervisor to report to Harborview to receive the written notice of dismissal. Under WAC 251-09-025(1)(d), a temporary change of an employee's work hours may be made for operational convenience. Respondent ordered Appellant to report to his work location (Harborview) during daytime business hours instead of during his *regularly* scheduled shift between the hours of 11:00 p.m. and 7:30 a.m. Common sense and experience suggests that a meeting during daytime business hours to personally serve an employee with a disciplinary notice is operationally more convenient than meeting with an employee in the middle of the night. An employee whose scheduled work hours are changed for operational convenience has the right to work his/her regularly assigned schedule in addition to the modified schedule. Respondent should have more clearly communicated this schedule change to Appellant and should have ensured that he was paid for the additional hours. But Respondent's actions to change Appellant's schedule and personally serve him with the notice of dismissal were not contrary to the schedule change rule (WAC 251-09-025) or the notice rule (WAC 251-11-050). Therefore, we are not required to set aside the disciplinary action and will proceed to decide the appeal after a full hearing on the merits.

2.12 Johnson does not compel the result sought by Appellant. The HEPB and the reviewing court did not address the effect of a schedule change authorized by WAC 251-09-025 on the requirement to personally serve notice of dismissal during an employee's scheduled working hours under current WAC 251-11-050. Subsequent to the Johnson decision, the HEPB amended WAC 251-10-120 on three occasions and finally repealed the rule in 1988 when it adopted WAC 251-11-050. WSR 88-22-057 (Order 174), filed 11/1/88. The HEPB made a significant change in the language of the rule when it changed the requirement to serve the employee "during his/her

working hours” to “during his/her *scheduled* working hours." Further, the rule authorizes service by certified mail when personal service is not possible because an employee is absent "during his/her *regularly scheduled* working hours." The HEPB could have amended the rule to require service during an employee's regularly scheduled working hours. Rather, a distinction exists in the rule between "scheduled working hours" and "regularly scheduled working hours".

2.13 The Higher Education Personnel Board was responsible for the promulgation and interpretation of higher education personnel rules under RCW 28B.16.100 until July 1, 1993. In 1983, the Legislature repealed the HEPB enabling laws, transferred rulemaking authority to the Washington Personnel Resources Board and gave the Personnel Appeals Board jurisdiction for appeals. Chapter 281, Laws of 1993. This change was at the front edge of a broader effort to streamline and consolidate the state civil service system. A primary aim of these reforms is to have consistent rules for both higher education and general government, and one appellate body to decide appeals arising from both personnel systems.

2.14 Appellant's motion presents the Personnel Appeals Board with its first occasion to review the notice required under WAC 251-11-050 in light of previous Board decisions cited by both parties in support of their respective arguments. By citing decisions involving general government agencies and employees, the parties implicitly recognize that the lines distinguishing higher education from general government are becoming blurred. This Board has jurisdiction to decide appeals of all employees under the jurisdiction of the Washington Personnel Resources Board. RCW 41.64.090. Yet, separate rules continue to exist for general government employees (Title 356 WAC) and higher education employees (Title 251 WAC). The Personnel Resources Board (PRB) adopted WAC 251-11-050 in current form under the authority of RCW 41.06.150. WSR 98-19-035, § 251-11-050, filed 9/10/98, effective 10/12/98.

2.15 The rule requiring service of the written notice of dismissal to employees in general government agencies was adopted in current form in 1988. The language is similar, but not identical to, the former higher education rule. WAC 356-34-045, in part, provides:

> The written notice to the employee…shall be furnished directly to the employee during employee's working hours. If this is not possible because the employee works in a branch office or remote location or is absent on the employee's regularly scheduled work day, a certified letter may be mailed to the employee's last known address.

2.16 The decisions cited that interpret this rule primarily address the circumstances under which service by certified mail complies with the notice rule. In Matt v. Dep't of Transportation, PAB No. D85-34 (1985), the employee was served by certified mail even though his supervisor met with the employee at a location away from the workplace while the employee was on administrative leave. At the off-site meeting, the supervisor orally informed the employee that he was being dismissed but did not furnish a copy of the written notice. The written notice was sent to the employee by certified mail. The hearings examiner, affirmed by the Board, found that the employee was not absent for the purposes of the rule, and that service by certified mail was not authorized. Appellant argues that because he was likewise on administrative leave, the Respondent was obligated to serve notice directly to him during his working hours. Appellant was not served by certified mail. We concluded above that Respondent did serve notice directly to Appellant during his scheduled working hours, which did not occur in Matt.

2.17 In a more recent decision, the Board found that service by certified mail was proper when an employee was administratively assigned to work at home. Schley v. Dep't of Corrections, PAB No. DISM-97-0049 (1999), *affirmed* Thurston County Superior Court No. 99-2-01001-6 (1999). In Schley, a correctional officer was served notice of dismissal by certified mail while on home

assignment. In the present case, Appellant was not served by certified mail. He was directly furnished with the written notice of dismissal. Respondent overstates the Board's decision in Schley to advocate for a standard of "substantial compliance" with the merit system rules. The Board found that service by certified mail was proper in the narrow circumstances presented in Schley.

2.18 Certified mail was also found to be proper notice in Foutch v. Dep't of Corrections, PAB No. D84-25 (1985), when the employee was on approved annual leave on the date that the notice was mailed. In Foutch, the hearings examiner determined that service by mail can be used when an employee is not present for work on a regularly scheduled work day, regardless of the reason for the absence. In the present case, Appellant was personally served with the notice of dismissal so Foutch provides little guidance.

2.19 The Board would caution employing agencies and higher education institutions against relying on such broad latitude for resorting to service by mail. In Ballinger v. Dep't of Social and Health Services, 104 Wn2d 323, 336, 705 P.2d 249 (1985), the Court found that the notice rule "reflects an administrative preference of providing personal notice of termination to an employee while the employee is at work." In Ballinger, the Court held that an employee who "insubordinately refuses to work" was constructively "absent" for the purposes of the notice rule and upheld the Personnel Board's determination that service of a disciplinary letter by certified mail was valid.

2.20 When an employee is served by certified mail, this Board must examine the particular circumstances of the employee's absence to determine whether service by mail is authorized under WAC 251-11-050 or WAC 356-34-045. When an employee receives personal service of a disciplinary notice, the Board must determine whether service was completed "during his/her scheduled working hours" under WAC 251-11-050 or "during employee's working hours" under

WAC 356-34-045. Personal service under either rule must occur at the place of employment at a time when the employee is required to be present. Whether service is accomplished during the employee's scheduled working hours is a question of fact that the Board determines based on the circumstances of each case.

2.21 This approach to determining whether an employee received proper notice does not mean that the Board embraces a "substantial compliance" test. Rather, the most consistent aspect of the decisions cited by both parties is that the Board determines whether notice was provided as required by the applicable rule based on the facts. Strict compliance with the rule is required and the rule is clear and unambiguous. Under the facts present here, Appellant was directly furnished with written notice of dismissal during his scheduled working hours in compliance with WAC 251-11-050.

III. FINDINGS OF FACT

3.1 Appellant John J. Jackson was a Patient Registration Representative (PRR) and a permanent employee of Respondent University of Washington (UW) at Harborview Medical Center (HMC). 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 31, 1999.

3.2 By letter dated March 24, 1999, Tomi Hadfield, Chief Operating Officer for HMC, notified Appellant of his dismissal effective at the end of his shift of April 9, 1999. Ms. Hadfield charged Appellant with gross misconduct, and/or willful violation of published policy and procedures, mishandling and misappropriation of patients' property, and/or theft. Specifically, Ms. Hadfield alleged that Appellant (1) willfully violated established policy and procedures by removing valuables from the Admitting Department safe and (2) stealing patients' valuables.

3.3 When a patient is admitted into the Emergency Department (ED), HMC policy requires staff to follow a two-person process for checking in and releasing patient valuables. The patient's valuables are placed in a patient's valuables envelope (envelope), the envelopes are sealed, ED staff records the items in a log book and then secures the items in a safe. Periodically, the envelopes are transferred to and secured in the safe located in the Admitting Department.

3.4 When the envelopes are transferred, a security officer and an ED staff member remove the envelopes from the ED safe and cosign the ED log book. The envelopes are then transported to Admitting by the security officer and the staff person. In Admitting, the staff member receiving the envelopes completes the Admitting log book and security staff co-signs the book to confirm that the delivery has been placed in the Admitting safe. Policy also requires a two-person process for removal of the valuables from the Admitting safe. The policy does not allow Admitting staff to enter the Admitting safe area alone.

3.5 Appellant began employment at HMC in January 1996. On August 3, 1997, he was promoted to a PRR position in the Admitting Department. Appellant worked from 11 p.m. to 7:30 a.m., Monday through Friday. He was responsible for the collection, safekeeping and release of patient valuables during this time. On January 31, 1999, Appellant began work at 7 p.m. to provide coverage for an ill co-worker.

3.6 On January 30 and 31, 1999, 13 envelopes were collected and logged into the Emergency Department (ED). At approximately 8:20 p.m. on January 31, 1999, ED PRR Lori Hall-Barton and Campus Security Officer Sherman Reed transferred the envelopes from the ED to the Admitting Department.

3.7 Admitting PRR Erica Kelly assisted Ms. Hall-Barton and Officer Reed with the transfer of the 13 envelopes. Ms. Kelly logged the items on the Admitting log and Ms. Hall-Barton placed the items in the safe.

3.8 The envelope for patient F was among those transferred from ED to Admitting on January 31. The tracking form for patient F bore the notation of "$536.00." Because this notation was not in keeping the tracking form protocol, Ms. Kelly discussed with Appellant what to do about it. Appellant told her to blackout the notation on both copies of the form, which Ms. Kelly did.

3.9 After the tracking forms and logging sheets were completed and the envelopes were secured in the Admitting safe, Ms. Kelly asked Appellant to sign the tracking forms as a witness to the transfer. Appellant did not sign the forms and Ms. Kelly placed them in an "in" basket on a desk in the Admitting area. While Appellant disagrees that he had knowledge of the tracking forms, we do not find his testimony credible because he unquestionably had possession of the forms during the events that followed.

3.10 For security reasons, the Admitting safe area was monitored by a video surveillance camera. Admitting staff was aware of the video monitoring. The video from February 1, 1999, beginning at approximately 12:34 a.m., shows Appellant entering the room in Admitting that houses the safe. Appellant is carrying tracking forms, including the form for patient F which contained the notation blacked out earlier by Ms. Kelly. After unlocking the safe, Appellant checks the stack of forms and eventually removes several envelopes. Appellant then moves out of the range of the camera to a desk in the same room. At approximately 12:38 a.m., Appellant exits the safe room with several valuables envelopes in his hands.

3.11 Within a minute of leaving the safe room, Appellant reenters the room with one of the envelopes and at least one tracking form in his hand. Appellant approaches the safe, but does not unlock the lock. He then reaches down to one of the drawers, but because the safe is locked, the drawer does not open. Appellant then walks to the desk area outside of the range of the camera. Next, the video shows Appellant facing the camera and showing that he did not have any objects in his hands. Appellant then exits the room.

3.12 About one hour later, Appellant again enters the room and goes to the desk area outside of the range of the camera. After about ten seconds, he again faces that camera, shows his empty hands and leaves the room.

3.13 Appellant testified that he was retrieving the envelopes at the request of a nurse from one of the Intensive Care Units of the hospital and at the request of "an Oriental couple." We do not find Appellant's testimony credible. No evidence or testimony corroborated Appellant's testimony and subsequent investigations by management failed to find any nurse who requested a valuables envelope from Admitting during this time and failed to locate any patient discharged between midnight and 7 a.m. on February 1, 1999. Furthermore, the credible evidence establishes that patient F, whose tracking form had been blacked out by Ms. Kelly, was a Caucasian male who was discharged from the hospital on February 5, 1999.

3.14 On February 2, 1999, Admitting received a request for retrieval of an envelope for patient C. Admitting PRR Rhoda Garcia was unable to locate either the tracking form or the envelope for patient C. Gloria Jean Mills, the Admitting supervisor, was out of town on February 2, so Ms. Garcia reported the situation to Candice Kramlich the ED supervisor. Ms. Kramlich and Ms. Garcia attempted to locate the envelope. While trying to locate the missing envelope, they

inventoried the Admitting safe and reviewed property logs from both ED and Admitting. They determined that four envelopes, the tracking forms from the January 31 ED transfer and a page from the Admitting log for January 31 were missing. The missing log page contained the entries for eight of the envelopes ED had secured on January 31, 1999. The four missing envelopes would have been logged on the missing log sheet.

3.15 The following day, another inventory was conducted by Ms. Kramlich and PRR Marji Parmenter. This inventory confirmed that a total of six envelopes were missing and that four of these envelopes were among the thirteen received from ED on January 31.

3.16 Campus Security Officer Dary Hawkins reviewed the video tapes from the Admitting surveillance cameras for the period from January 31 through February 8. Officer Hawkins determined that during this period, only PRR Jhonne Johnson and Appellant accessed the safe by themselves and that only Appellant removed envelopes from the safe.

3.17 Appellant admits that he violated the HMC policy when he accessed the safe alone.

3.18 Chris Martin is the director of Admitting. Ms. Martin conducted an investigatory meeting with Appellant and considered his explanation of the events depicted on the video tape. After considering Appellant's statements, the events shown on the video tape, and the documents related to the incidents including documents of all discharges made on February 1, 1999, Ms. Martin determined that Appellant's statements were unsubstantiated.

3.19 By memorandum dated March 24, 1999, Ms. Martin informed Ms. Hadfield that a theft of patient valuables envelopes had occurred, that Appellant had been the last person in charge of the

missing tracking forms, and that he was the only person who removed envelopes from the safe without a second person present. Ms. Martin concluded that "[t]he facts that the relevant patient tracking forms, last seen in [Appellant's] possession, and the matching sheet from the Admitting Safe Log all disappeared in the same time period as the patient valuables envelopes strongly suggest that theft of the envelopes was intended." Ms. Martin determined that Appellant's actions were in violation of established policies and procedures and constituted theft. She recommended to Tomi S. Hadfield, Appellant's appointing authority, that Appellant be terminated from employment with HMC.

3.20 By letter dated March 24, 1999, Ms. Hadfield terminated Appellant, effective April 9, 1999.

IV. ARGUMENTS OF THE PARTIES

4.1 Respondent argues that the video tape clearly shows Appellant in possession of some of the missing tracking forms and shows him removing envelopes from the locked safe. Respondent further argues that Appellant's explanation of the events has been inconsistent. Respondent asserts that Appellant concocted a mystery nurse and a mystery Oriental couple to create a cover story for his actions. Respondent argues that Appellant's concoction is further proven by his inability, as little as ten days after the incident, to provide details about these mystery people. Respondent contends that Appellant attempted to cover his actions on the video tape by pretending to access the safe when in fact he did not, and by making an elaborate showing of his empty hands when he entered and then left the safe room. Respondent contends that Appellant had access to the tracking form, access to the Admitting log and access to the safe containing the patients' valuables. Therefore, Respondent contends that Appellant stole property from several HMC patients and that his termination should be affirmed.

4.2 Appellant admits that he violated policy but asserts that his violation of the policy was a result of his desire to assist the nurse and the Oriental couple. Appellant asserts that in this case, termination is not the appropriate disciplinary action for a violation of policy. Appellant argues that theft had been a problem prior to September 1998 and that the video cameras were put in place because of this problem. Appellant contends that he knew his actions in the safe room were being video taped, that he did not try to conceal his actions with the valuables envelopes and that he did not steal patients' valuables. Furthermore, Appellant denies being in possession of the missing tracking forms. Appellant asserts that there were opportunities for others to steal the valuables and contends that there is no proof that he was guilty of theft. Appellant contends that he was a 6 ½ year employee with an excellent work record and that his termination should be overturned.

V. CONCLUSIONS OF LAW

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

5.2 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).

5.3 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).

5.4 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. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

5.5 Respondent has met its burden of proving that Appellant violated policy. Furthermore, Appellant admits that he violated the policy.

5.6 Based on a preponderance of the credible evidence, Respondent has met it burden of proof that more likely than not, Appellant stole patients' valuables. Appellant's actions were recorded on the video tape, he was in possession of valuables envelopes for no plausible reason and his explanation for his actions is not credible.

5.7 Respondent has proven the charges in the disciplinary letter. Under the proven facts and circumstances, termination is the appropriate disciplinary sanction, and the appeal should be denied.

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VI. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of John J. Jackson is denied.

DATED this _____ day of _____ 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Personnel Appeals Board
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Olympia, Washington 98504

Walter T. Hubbard, Chair

Leana D. Lamb, Member

Personnel Appeals Board
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