BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ADAM GLANZ, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. RED-98-0016 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, on February 17, 2000, in the Hearings Conference Room at Western State Hospital, Steilacoom, Washington. GERALD L. MORGEN, Vice Chair, reviewed the file, exhibits and the taped proceedings and participated in the decision in this matter. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Adam Glanz was present and was represented by Anita Hunter, Attorney at Law, of Parr & Younglove, P.L.L.C. Respondent Department of Social and Health Services was represented by Janetta Sheehan, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a two-month reduction in salary for neglect of duty, inefficiency, gross misconduct and willful violation of published

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employing agency or Department of Personnel rules or regulations. Respondent alleges that Appellant failed to respond to three dispatch requests for assistance and failed to document the calls.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Aquino v. University of Washington, PAB No. D93-163 (1995).

II. FINDINGS OF FACT

2.1 Appellant Adam Glanz is a Security Guard 2 and permanent employee for Respondent Department of Social and Health Services. 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 March 10, 1998.

2.2 By letter dated February 6, 1998, Dr. Jerry L. Dennis, Chief Executive Officer at Western State Hospital, informed Appellant of his reduction in salary, effective March 1, 1998 through April 30, 1998. Dr. Dennis charged Appellant with neglect of duty, inefficiency, gross misconduct and willful violation of published employing agency or Department of Personnel rules or regulations. Dr. Dennis alleged that Appellant failed to respond to three separate requests for assistance and to document the calls.

2.3 Appellant began his employment with the department in 1985. As a Security Guard 2, Appellant is a lead officer responsible for patrolling and inspecting in and around buildings,

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answering calls for emergency and routine assistance, dispatching mobile units, and completing patrol logs. Appellant's performance evaluations from 1989 to 1998 indicate that Appellant primarily met or exceeded the normal requirements of his position in all performance dimensions.

2.4 Appellant has no history of formal disciplinary action, however, he received a letter of reprimand dated December 19, 1996, which directed him to cooperate with and follow the directions of hospital shift coordinators and other medical/clinical hospital authorities.

2.5 On the late evening of September 16, 1997, Neil Kirkpatrick, a Psychiatric Childcare Counselor at the Child Study and Treatment Center (CSTC), was on duty when an incident occurred which resulted in a broken wrist to a patient. After security arrived, a safety report was completed and filed with the Security Department. In addition, Mr. Kirkpatrick was instructed by a program director at the CSTC to complete a detailed statement of the incident as an addendum to the safety report. Mr. Kirkpatrick was directed to file the report with the Security Department before leaving for the day.

2.6 Mr. Kirkpatrick completed the report on the early morning of September 17. At approximately 4:22 a.m. Mr. Kirkpatrick called the Western State Hospital switchboard to request that a security officer pick up his report.

2.7 Gerald Koch, PBX Security Communications Operator, was on duty on September 17 when he received the call from Mr. Kirkpatrick. As a part of his routine duties, Mr. Koch kept a written log of all calls made to the hospital switchboard or of calls made by him. Mr. Koch documented that at 4:22 a.m., Mr. Kirkpatrick called requesting that security contact him regarding an assault at Ketron, a cottage at the CSTC. Appellant and one other security guard were on duty at that time.

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2.8 Mr. Koch dispatched the call to unit #12. Appellant was identified as unit #12. Mr. Koch conveyed to unit #12 the message from Mr. Kirkpatrick along with his telephone extension.

2.9 When Mr. Kirkpatrick received a return call from security, he stated that he had been instructed to complete a detailed report regarding the earlier incident and that he had been told not to leave the hospital grounds without turning in the report. Mr. Kirkpatrick requested that security pick up the report.

2.10 Appellant admits that at approximately 4:30 a.m. on September 17, he spoke to Mr. Kirkpatrick about the need to pick up a report and that he informed Mr. Kirkpatrick that he would send somebody over.

2.11 The ensuing events are disputed by Appellant. Appellant denies that he received two subsequent calls from the hospital switchboard regarding Mr. Kirkpatrick's request. However, Respondent provided credible testimony from Mr. Kirkpatrick regarding his version of the events. In addition, Mr. Kirkpatrick's testimony is corroborated by Mr. Koch's entries into the PBX phone log. Therefore, we find that Appellant's story is not credible and make the following findings.

2.12 At 5:25 a.m., Mr. Koch received a second call from Mr. Kirkpatrick asking that security contact him about an assault at Ketron. Mr. Koch again dispatched the call to unit #12.

2.13 Shortly thereafter, Mr. Kirkpatrick received a return call from security. Although Appellant had not identified himself during the earlier call, Mr. Kirkpatrick testified that it was the same male voice who responded to his 4:22 a.m. call. Therefore, we find that it was more likely than not that Appellant responded to Mr. Kirkpatrick's second request for assistance. During the phone conversation, Appellant informed Mr. Kirkpatrick that a report had been filed earlier that day. Mr.

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Kirkpatrick responded that he was still required to file a detailed statement as a supplemental document to that report and that he could not leave the hospital grounds until he did so. Appellant again responded that he would be there "in a few minutes."

2.14 At 5:45 a.m., Mr. Koch received a third call from Mr. Kirkpatrick asking for a call from security "as soon as possible." Mr. Koch again dispatched Mr. Kirkpatrick's message to unit #12.

2.15 Mr. Kirkpatrick received a return call and he again explained to Appellant that he needed to file the report and that he was on overtime status while waiting for security to arrive and get the report.

2.16 Security Officer Arthur Moses reported for duty at 5:45 a.m. When he arrived at the Security Department, Appellant informed him that an incident report needed to be picked up at the CSTC.

2.17 Mr. Moses directed Security Officer Antonio Fuoco to retrieve the report. When Mr. Fuoco picked up the report, he noted that Mr. Kirkpatrick was upset. Mr. Kirkpatrick informed Mr. Fuoco that he had been waiting for quite a while for security to pick up the report.

2.18 Appellant was responsible for completing a daily Security Guard Patrol (SGP) Report. Appellant's entries into the SGP Report for September 17 do not reflect that he received a call for assistance from Mr. Kirkpatrick. However, the SGP Report reflects that he performed routine duties, including unlocking the CSTC access gate at approximately 5 a.m. The CSTC gate is a short distance from where Mr. Kirkpatrick waited with his report.

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2.19 Western State Hospital has adopted Standard Operating Procedures (SOP) which outline the duties and responsibilities of a security officer. SOP #6 requires that the lead worker be responsible for the coordination of assignments and requires the security officer to take necessary action to respond to requests and reports from staff. Appellant was aware of this requirement. Although retrieval of the report from Mr. Kirkpatrick was considered a routine matter, Appellant still had a responsibility to respond to Mr. Kirkpatrick's request.

2.20 Dr. Jerry Dennis was Appellant's appointing authority when he imposed Appellant's two-month salary reduction. In determining the level of discipline, Dr. Dennis reviewed Appellant's employment history, the Personnel Conduct Report, the investigative reports and the statements of the witnesses. Dr. Dennis concluded that Appellant had a duty to respond to Mr. Kirkpatrick's request and to document the calls in the SGP Report. Dr. Dennis concluded that Appellant neglected his duty, was inefficient, failed to follow the Security Department's standard operating procedures and policies and that his misconduct rose to a level of gross misconduct. Dr. Dennis determined that a two-month reduction in salary was the appropriate sanction.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that it has met its burden of proving that Appellant had a duty to respond to Mr. Kirkpatrick's request. Respondent argues that Appellant's failure caused Mr. Kirkpatrick to remain at the work site longer than necessary and accrue unnecessary overtime. Respondent argues that Appellant's entries into the SGP Report log reflected that it was a routine evening and that he had ample time to pick up the report. Respondent asserts that Appellant's inaction resulted in additional overtime cost to the CSTC and required other staff to get involved. Respondent asserts that Appellant's misconduct constitutes a neglect of his duty, inefficiency, gross misconduct and willful violation of agency policy.

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3.2 Appellant argues that the allegations are not true, that there is no proof that he was the officer that spoke to Mr. Kirkpatrick on the two other occasions, and that Mr. Kirkpatrick could not identify exactly with whom he spoke. Appellant argues that he spoke with Mr. Kirkpatrick on one occasion and that he was heading from the security office to the CSTC when "something else came up." Appellant asserts that he "just plain forgot" to pick up the report. Appellant argues that other officers could have taken Mr. Koch's dispatch calls. Furthermore, Appellant asserts that he would have only been required to make an entry into the security log if he picked up the report. Appellant contends that he has an excellent work history and that his version of the events is credible.

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 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).

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 Inefficiency is the utilization of time and resources in an unproductive manner, the ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of effective operations as measured by a comparison of production with use of resources, using some

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objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

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).

4.6 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. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

4.7 Although it is not appropriate to initiate discipline based on prior formal and informal disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No. D93-163 (1995).

4.8 Respondent has shown that Appellant received three calls from the hospital switch board, that he spoke to Mr. Kirkpatrick on three different occasions, and that he failed to retrieve the report as required by his position. Although retrieving the report from Mr. Kirkpatrick was a routine matter, Appellant was told by Mr. Kirkpatrick that he could not leave the hospital grounds until the report was in the custody of the Security Department. Appellant's own entries in the SGP Report indicate that it was a routine night and that nothing occurred which would have prevented Appellant from performing the task. Appellant's failure to perform his duties caused Mr. Kirkpatrick to unnecessarily remain at work for an additional one and one half hours. Respondent has met its burden of proof that Appellant neglected his duty, was inefficient and willfully violated SOP #6. However, Respondent has not shown that Appellant's failure to respond to Mr. Kirkpatrick's

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request adversely affected the agency's ability to carry out its primary functions of enforcing laws and ensuring the security of hospital grounds, buildings, property and personnel. Therefore, Respondent has not met its burden of proof that Appellant's misconduct rises to the level of gross misconduct. Nonetheless, Appellant had been directed in the letter of reprimand dated December 19, 1996, that he had a duty to respond to and cooperate with requests from hospital staff. Respondent has met its burden of supporting the charges and proving that a two-month reduction in salary is appropriate under the facts and circumstances. Therefore, the disciplinary sanction of a two-month reduction in salary should be affirmed.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Adam Glanz is denied.

DATED this _____ day of _____, 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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