BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

BRENDA SANDERS, Appellant, v. DEPARTMENT OF LABOR AND INDUSTRIES, Respondent.	)	Case No. SUSP-00-0010 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, GERALD L. MORGEN, Vice Chair, and LEANA D. LAMB, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on April 5, 2001. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Brenda Sanders was present and appeared *pro se*. Mickey Newberry, Assistant Attorney General, represented Respondent Department of Labor and Industries.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of a fifteen-day suspension for neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of published employing agency rules or policies. Respondent alleged that Appellant failed to report to work as directed, failed to carry out her supervisor's directives, failed to provide professional, courteous and timely customer service, and failed to work cooperatively with her co-workers.

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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); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Droege v. Dep't of Information Services, PAB No. D88-024 (Littlemore, Hrg. Exam.), aff'd by Board (1988); Countryman v. Dep't of Social and Health Services, PAB No. D94-025 (1995); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

II. FINDINGS OF FACT

2.1 Appellant Brenda Sanders was an Industrial Insurance Underwriter 3 and permanent employee of Respondent Department of Labor and Industries (L&I). 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 on February 16, 2000.

2.2 L&I employees are expected to comply with agency policies and procedures. Administrative Policies 3.50 and 3.51 address the use of leave. Respondent requires employees to request vacation leave and have that request approved in advance of its use, unless vacation leave is used in lieu of sick leave or emergency childcare. Furthermore, employees are expected to report sick leave at the beginning of the absence and to provide medical certification, if required by their supervisor. Appellant was aware of the policies and procedures including the policies regarding vacation leave and sick leave.

2.3 Appellant had a history of receiving oral counseling and written documents concerning her attendance which included:

- 7/22/99 oral counseling regarding tardiness;
- 8/12/99 written expectations directing her to report to work at 8:00 a.m.;
- 8/18/99 counseling memo regarding tardiness;
- 8/20/99 e-mail informing her of the expectation that she arrive at work on time and leave on time;

- 9/28/99 counseling memo directing her to report to work on time at 8:00 a.m.;
- 10/12/99 e-mail informing her of the expectation that if she needed to report to work late she needed to call her supervisor at the beginning of her shift;
- 11/15/99 e-mail directing her to arrive to work on time; and
- 11/16/99 counseling memo regarding her possible pattern of sick leave abuse and placing her on medical verification when she used sick leave, used vacation leave in lieu of sick leave or used leave without pay (LWOP) in lieu of sick leave.

2.4 Despite the numerous oral and written counselings and directives concerning her attendance, between August 18, 1999, and December 8, 1999, Appellant reported late to work on 19 occasions for a total of 201 minutes. On each of these occasions, Appellant failed to receive prior approval for the use of leave and failed to notify her supervisor at the beginning of her shift to report her absence. In addition, on one occasion, she reported late from her morning break and on one occasion she failed to provide medical verification for her use of sick leave.

2.5 As an Industrial Insurance Underwriter (IIU) 3, Appellant was responsible for processing Master Business Applications, assisting internal and external customers, and managing an L&I caseload. Appellant's number of case assignments was less than the average number assigned to other IIUs. Appellant's case turn around times were longer than the average turn around times of other IIUs.

2.6 L&I's mission and goals set forth the expectations that employees foster a safe and healthful work environment, communicate clearly with internal and external customers, respect each other, and strive for a standard of excellence in their work. Appellant was aware of agency's mission and goals.

2.7 Appellant had a history of receiving oral counseling and written documents concerning her work performance which included:

- 8/12/99 written expectations stating, in part, that she accept and adhere to team decisions involving job and work responsibilities, perform the full scope of her duties, provide full customer service to internal and external customers, respect the opinions of others, contribute to creating and maintaining a good work environment and behave in a professional manner at all times;
- 9/28/99 counseling memo directing her to behave in a professional manner and to provide full customer service to internal and external customers;
- 9/30/99 meeting with her supervisors during which Appellant was provided oral clarification regarding her job duties and responsibilities and during which she acknowledged that she had a full understanding of her responsibilities and the mission, values and goals of the agency;
- 10/15/99 counseling memo directing her to treat all customers with respect, provide good customer service and act in a professional manner including using a pleasant telephone voice;
- 10/18/99 letter of reprimand directing her to provide good customer service to internal and external customers;
- 11/5/99 e-mail regarding the time frames for completion of "bundles," "OD claims and/or correspondences;"
- 11/15/99 e-mail directing her to provide professional, complete and timely service to internal and external customers; and
- 11/22/99 oral discussion regarding work expectations.

2.8 Despite the numerous oral and written counselings and directives concerning her performance, between August 18, 1999 and December 1, 1999, Appellant failed to meet the performance expectations of her position on 19 occasions. During this time, Appellant behaved in a rude, negative, unfriendly and argumentative manner towards her supervisors and external customers, failed to assist customers, failed to complete her work, failed to follow supervisory directions, refused to answer her work phone, and discarded a large stack of work papers without completing the actions required on three accounts.

2.9 Prior to determining the level of discipline to impose in this case, Douglas Connell, Assistant Director for Insurance Services, met with Appellant and her representative. Mr. Connell considered Appellant's oral response to the charges as well as her written response. Mr. Connell also considered the allegations Appellant raised regarding a hostile and uncomfortable work environment, an alleged assault by a coworker, the agency's failure to accommodate her, her

supervisor's repeated directive that she submit LWOP for her absences, and her supervisor's allegedly inequitable assignment of work to her. Mr. Connell found that Appellant's allegations had either been previously addressed or were unsubstantiated.

2.10 After considering all the available information, including Appellant's personnel history and her history of corrective actions, Mr. Connell concluded that Appellant failed to report to work as directed, failed to carry out her supervisor's directives, failed to assist customers as expected, and failed to work cooperatively with her coworkers. He found that these behaviors negatively impacted Appellant's coworkers, negatively impacted customer service, and conflicted with the agency's missions and goals.

2.11 By letter dated January 21, 2000, Mr. Connell informed Appellant of her fifteen day suspension for neglect of duty, inefficiency, insubordination, gross misconduct and willful violation of published employing agency rules or policy.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that in spite of the agency's numerous efforts to assist Appellant in improving her behavior and performance, Appellant continually and persistently behaved in an uncooperative, uncommunicative, difficult and argumentative manner. Respondent contends that Appellant refused to positively respond to the directives of her supervisors. Respondent asserts that Appellant had been with the agency for seven years and was capable of performing the duties of her position, yet she refused to follow directives and failed to get her work done. Respondent contends that a fifteen-day suspension is warranted.

3.2 Appellant contends that she was subjected to numerous acts of hostility, was assaulted by a co-worker who deliberately brought fragrances into the work area that bothered her, was assigned

more work than other staff, was required to attend meetings that took away from the time she had available to do her work, was treated with disrespect, was forced to work under disparate conditions, and was held to a different standard than other staff. Appellant asserts that her supervisors engaged in a campaign to increase the hostility and her discomfort in the work place and ignored and belittled her concerns. Appellant asserts that the agency's investigations into her concerns were careless and biased, and that the agency failed to fulfill its obligation to provide her with a safe work environment. Appellant argues that this disciplinary action was taken in retaliation for her complaints of a hostile and uncomfortable work environment and for her filing a grievance and she contends that the discipline was based on unsubstantiated allegations. Appellant argues that she was not inefficient or insubordinate and that she did not commit gross misconduct or willfully violate agency policies. Rather, Appellant asserts that she was required to conform to conflicting policies and then was denied the opportunity to use annual leave to seek help in dealing with the emotional, psychological and other behavioral issues that resulted from Respondent's failure to address her concerns.

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 a failure to produce the desired effect with the minimum of energy and time. Droege v. Dep't of Information Services, PAB No. D88-024 (Littlemore, Hrg. Exam.), aff'd by Board (1988).

4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior and is defined as not submitting to authority, willful disrespect or disobedience. Countryman v. Dep't of Social and Health Services, PAB No. D94-025 (1995).

4.6 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).

4.7 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).

4.8 Respondent has met its burden of proving that Appellant neglected her duty, was insubordinate and inefficient, committed gross misconduct, and willfully violated agency policies. A preponderance of the credible evidence and testimony establishes that Appellant repeatedly failed to report to work on time, failed to serve customers in an appropriate manner, failed to complete her work, failed to comply with the lawful directives of her supervisors, and failed to meet performance

expectations. Appellant's behavior was contrary to agency policies and procedures and had a negative impact on her co-workers and external customers. The agency made reasonable efforts to provide Appellant guidance and direction to improve her attendance and performance, yet Appellant continually failed to demonstrate any improvement.

4.9 Appellant provided no credible evidence to support her defense. Therefore, we find no reason to believe that Appellant was subjected to retaliation, hostility, or disparate treatment.

4.10 Under the totality of the proven facts and circumstances, a fifteen-day suspension is appropriate and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Brenda Sanders is denied.

DATED this _____ day of _____, 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Gerald L. Morgen, Vice Chair

_____
Leana D. Lamb, Member

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