BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MAMA ARGO, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. SUSP 04-0046 Case No. DISM 05-0013 ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

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 October 17, 2005, for consideration of written argument on Respondent's Motion for Summary Judgment.

1.2 **Representation.** Jeffrey W. Davis, Assistant Attorney General, represented Respondent University of Washington. Appellant was not represented and did not respond to the Motion.

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including Respondent's Motion for Summary Judgment and attached exhibits, filed September 22, 2005. Appellant did not file a response to this Motion.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

II. BACKGROUND AND FACTS

2.1 Appellant Mama Argo was employed as a Medical Assistant in the Rehabilitation Medicine Clinic at Harborview Medical Center, which is operated by the University of Washington. His primary duties were to supply and prepare examination rooms, safely and accurately take patients' vital signs, assist with patient transfer, manage patient flow, properly room patients, communicate effectively with co-workers, and effectively use email, fax machines and other appropriate technology.

2.2 Appellant received a Letter of Counsel on February 10, 2004 for failure to do his job properly. A Performance Action Plan was given to the appellant at that time to assist him in meeting his performances goals.

EVENTS LEADING TO APPELLANT'S SUSPENSION, CASE No. SUSP-04-46

2.3 The department continued to have performance problems. On March 2, 2004, a patient examination room was not properly stocked. On March 8 and again on March 10, Appellant failed to prepare an exam room and to pull patient paperwork. On March 11, 2004, he injured a nurse by not listening closely to her instructions while moving a patient.

2.4 Appellant had training in sending and tracking faxes, but failed to send one on April 22, and failed to notify the nurse that it had not been sent. Appellant also failed to do his job of rooming patients properly. On April 26, 2004, he put a patient in an exam room 30 minutes early, tying up the exam room when it was needed for other appointments and causing the patient to wait an unusually long time there. On May 4, Appellant put patients of Dr. Smith in three of the four exam rooms, leaving only one room for patients of Dr. Judish, also causing delays in the patient flow.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.5 On April 20, 2004, Appellant placed a blood pressure cuff on a patient's arm which was both amputated and contained an arteriovenous dialysis shunt, despite instructions never to take a patient's blood pressure on an arm which had a wound, amputation, or dialysis shunt. Had the shunt been damaged, the patient would have been unable to receive dialysis until the shunt was repaired. Both the operation to repair it and the delay in receiving dialysis could have caused significant medical complications for the patient.

2.6 By letter dated July 6, 2004, Chief Operating Officer Johnese Spisso informed Appellant of his suspension for five days, effective July 12, 2004. Ms. Spisso charged Appellant with neglect of duty, failure to take direction from clinical staff, and putting a clinic patient at risk by attempting to take the patient's blood pressure on an amputated arm with an arteriovenous shunt for dialysis.

2.7 Appellant filed a timely appeal with the Personnel Appeals Board on July 26, 2004.

EVENTS LEADING TO APPELLANT'S DISMISSAL, CASE No. DISM-05-0013

2.8 After Appellant returned from this suspension, he was unable to use the Medical Center's EPIC database system, a crucial part of the job duties, despite a training class in June 2004, a basic computer skills class in the fall of 2004, then a five and a half hour, one-on-one training session with the EPIC instructor. As a result, many of Appellant's most basic tasks had to be relegated to other staff, such as looking up and printing schedules for patients or for doctors, or printing labels for patient charts.

2.9 Appellant continued on numerous occasions to fail to prepare and stock patient examination rooms. His actions caused other health professionals to have to do his job as well as their own

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.10 Appellant also continued to fail to room patients properly. This caused delays for the patients and for the physicians and other health care professionals conducting examinations in the Harborview Rehabilitation Medicine Clinic.

2.11 On September 15, 2004, Appellant obtained a urine sample from a spinal cord injury patient who needed a colonoscopy. Appellant failed to attach the patient's information when he sent it to the laboratory for analysis, and the lab had to discard it because it could not be certain whose sample it was. The patient then had to provide another urine sample.

2.12 In December, 2004, Constance Wilkinson, the Manager of Appellant's Clinic, sought feedback from Dr. Douglas Smith, MD, with whom Appellant regularly worked. Dr. Smith stated that Appellant "does 1/10 of what the Medical Assistants in ortho clinic do. … [He] does not have the insight and skills to perform the required job tasks. … [A]fter I ask him to do something – he just walks away and what I asked for doesn't get done. …[E]ven the most basic tasks such as turning the rooms or putting a note in a file is not completed in a timely manner or not completed at all."

2.13 By letter dated December 23, 2004, Chief Operating Officer Johnese Spisso informed Appellant of his dismissal, effective January 10, 2005. Ms. Spisso charged Appellant with incompetence, inefficiency, neglect of duty, gross misconduct and failure to meet performance expectations.

2.14 Appellant filed a timely appeal with the Personnel Appeals Board on February 3, 2005.

2.15 Appellant was served Requests for Admissions by Respondent. He did not respond to them, other than to answer the first Request by stating "I am not Medical Assistant. The allegation within

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

this title is wrong, therefore it doesn't apply to me. I think there is no use to spend my time anymore on this case. [signed] Mama Argo."

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that all Requests for Admissions served on Appellant are deemed admitted, since Appellant did not respond to them, other than the first one, where his response did not fairly meet the substance of the requested admission. Respondent argues that Appellant neglected his duties, failed to take direction from clinical staff, and put a clinic patient at risk. Therefore, Respondent argues that Appellant's suspension was appropriate and that summary judgment dismissing the suspension appeal is appropriate. Respondent argues that after he returned from his suspension, Appellant was incompetent and/or inefficient, that he again neglected his duties, committed gross misconduct, and failed to meet performance expectations. Respondent additionally argues that Appellant's dismissal was appropriate and that summary judgment dismissing the dismissal appeal is appropriate.

3.2 Appellant did not provide a response to the Motion for Summary Judgment.

IV. DISCUSSION

4.1 The issues here are whether Appellant's actions warranted a five-day suspension and then dismissal.

4.2 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).

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.3 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).

4.4 Requests for Admissions are deemed admitted when not responded to within thirty days or within any shorter or longer period established by the Board, or when the responses do not fairly meet the substance of the requested admission. CR 36; Melby v. Hawkins Pontiac, Inc., 13 Wn. App. 745, 537 P.2d 807 (1975). All the Requests for Admissions are deemed admitted.

4.5 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).

4.6 The first issue before the Board is whether Appellant's action in neglecting his duty warrants a five-day suspension. We are able to make this determination based on the uncontroverted facts presented here that were the basis for Appellant's suspension.

4.7 Appellant has failed to set forth any specific facts that show a genuine dispute of material fact exists. Therefore, there are no questions of material fact that Appellant engaged in the conduct alleged by Harborview Medical Center as the basis for his suspension. Appellant's acts constitute a neglect of duty.

4.8 Incompetence presumes a lack of ability, capacity, means, or qualification to perform a given duty. *Plaisance v. Dep't of Social and Health Services*, PAB No. D86-75, *aff'd by Board* (1987). It may also be shown by lack of improvement or lack of understanding. *Brennan v. The Evergreen State College* PAB No. DISM-97-0019 (1998).

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.9 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 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); *Bonham v. Dept. of Labor & Industries*, PAB No. DISM 02-0019 (2003).

4.10 Gross misconduct is flagrant misbehavior that adversely affects the agency's abilities to carry out its functions. *Rainwater v. School for the Deaf*, PAB No. D89-004 (1989). Flagrant misbehavior occurs when an employee evinces willful or wanton disregard for his/her employer's interests for standards of expected behavior. *Harper v. WSU*, PAB No. RULE-00-0040 (2002). Misconduct that interferes with a hospital's responsibility to generate public trust and confidence by providing patients with the best possible care constitutes gross misconduct. *Berry v. Department of Social and Health Services*, PAB No. DISM 01-0086.

4.11 Appellant has failed to set forth any specific facts that show a genuine dispute of material fact exists. Therefore, there are no questions of material fact that Appellant engaged in the conduct alleged by Harborview Medical Center as the basis for his dismissal. Appellant's acts constitute incompetence, inefficiency, neglect of duty and gross misconduct.

4.12 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness and circumstances of the offenses. The penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.13 The sanction of dismissal, under the facts and circumstances, is appropriate to deter others from similar misconduct. Appellant's actions put a significant burden on others to do his job, and a severe burden on patients, whose care was negatively affected. Therefore, Respondent's Motion for Summary Judgment should be granted, and the appeal should be denied.

Having reviewed the file and record in this matter and being fully advised in the premises, the Board enters the following:

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion for Summary Judgment is granted, and the appeal of Mama Argo is denied.

DATED this _____ day of October, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504