BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

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| MARTINA ROBERTS-SPENCER,<br><br>Appellant,<br><br>v.<br><br>DEPARTMENT OF CORRECTIONS,<br><br>Respondent. | Case No. DEMO-05-0005<br><br>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, BUSSE NUTLEY, Vice Chair. The hearing was held at Eastern State Hospital, Conference Room A&B, Activities/Therapy Building, Medical Lake, Washington on August 30, 2005, and at the Attorney General's Office, Evergreen Conference Room, Spokane, Washington, on September 21, 2005. GERALD L. MORGEN, Member, listened to the recorded proceedings, reviewed the file and exhibits and participated in this decision.

1.2 **Appearances.** Appellant Martina Roberts-Spencer was present and was represented by Gregory Rhodes, of Parr, Younglove, Lyman & Coker, P.L.L.C. Kari Hanson, Assistant Attorney General, represented Respondent Department of Corrections, Pine Lodge Corrections Center for Women.



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1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of demotion for neglect of duty as a supervisor, gross misconduct, and willful violation of agency policy. Respondent alleges Appellant disclosed confidential information and discussed work performance issues regarding subordinate staff to other subordinate staff members. Respondent further alleges Appellant displayed unprofessional and inappropriate behaviors toward one of her subordinate employees in the presence of other staff.

## II. FINDINGS OF FACT

2.1 Appellant is an Office Assistant Senior and permanent employee for Respondent Department of Corrections (DOC). 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 February 22, 2005.

2.2 Appellant began working as a Secretary Supervisor at Pine Lodge Corrections Center for Women (PLCCW) in December 2002. Prior to that Appellant worked as a Secretary Senior at the Everett Community Justice Center and held previous state employment in the Office Assistant series, including lead work. Appellant has not received any previous formal discipline.

2.3 At PLCCW, Appellant supervised a work unit consisting of three Office Assistant Seniors working in the Administration Building and providing administrative support. In February 2003, Appellant attended Correctional Worker Core Training, which included training on behavior management, information management, and professionalism. In addition, Appellant received training to assist her in her role as a supervisor, including the following courses:

- Developing a Professional Attitude
- Confronting Behavior



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- Dis-Solving Problems
- DOC Survival Skills
- Personnel Issues
- Diversity
- Entry Level Management
- Ethics
- Survival Skills for Supervisors

2.4 Within the first few months of Appellant's employment at PLCCW, communication problems developed between Appellant and her subordinate staff. Appellant's supervisor at the time, Correctional Program Manager Sherri Tucker, informed Appellant that her subordinates reported concerns regarding Appellant's supervisory style. Appellant felt Ms. Tucker did not support her in addressing performance issues with her staff, and she subsequently mentioned her concerns to Superintendent Donna Cayer, who then offered to meet with Appellant and Ms. Tucker to discuss Appellant's concerns. However, Appellant decided not to pursue the matter.

2.5 In May 2004, Correctional Program Manager Laura Jense became Appellant's supervisor. Ms. Jense met with Appellant on a weekly basis to discuss routine and ongoing issues in the office. Appellant and Ms. Jense also talked about communication problems between Appellant and her subordinates, particularly Office Assistant Senior Sheree Raska. Ms. Jense discussed with Appellant approaches to managing performance issues with her subordinates, guidelines for maintaining professionalism, and methods for properly documenting concerns about subordinates' work performance. In June or July 2004, Ms. Jense directed Appellant not to discuss concerns regarding her subordinate employees with other staff.

2.6 By August 2004, Appellant's working relationship with Ms. Raska had deteriorated significantly. Within the same timeframe, Office Assistant Senior Jamie Clark, a new employee also supervised by Appellant, expressed her frustration with the negative atmosphere in Appellant's



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work unit to Superintendent Cayer. As a result, Superintendent Cayer asked a correctional supervisor from Airway Heights Corrections Center, CCS 1 Kevin House, to perform a fact finding investigation to determine the causes of conflict in Appellant's unit.

2.7 Mr. House interviewed past and present employees in Appellant's work unit, as well as other employees working at PLCCW. Mr. House determined there was sufficient evidence to warrant further investigation into allegations that Appellant demonstrated inappropriate conduct and created a hostile working environment for her subordinates. Based on the fact finding investigation, Ms. Jense initiated an Employee Conduct Report (ECR), and ECR Investigator Lori Morrow conducted a full investigation.

2.8 On November 18, 2004, Superintendent Cayer met with Appellant to discuss specific allegations of Appellant's inappropriate conduct toward her subordinates. Superintendent Cayer was not persuaded by Appellant's assertions that either her words were taken out of context or her actions misconstrued. Superintendent Cayer felt Appellant failed to take responsibility for her actions, blamed others, and made excuses for her behavior; therefore, she concluded that misconduct occurred.

2.9 In determining the appropriate discipline, Superintendent Cayer considered Appellant's positive work history, the seriousness of the misconduct, and Appellant's inability to accept responsibility for her behavior. Because Appellant was a supervisor, Superintendent Cayer felt she was held to a higher standard and had a responsibility to model appropriate communication, be flexible, and set a positive example for her employees. Superintendent Cayer reviewed Appellant's supervisory training record and considered the guidance her supervisors provided regarding her supervisory style, concluding that Appellant received adequate training. While Superintendent



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Cayer believed Appellant had some positive work skills, she also had concerns about Appellant's inability to be trustworthy and use good judgment, especially in stressful situations. As a result, Superintendent Cayer determined that a supervisory role was not appropriate for Appellant.

2.10 By letter dated January 14, 2005, Superintendent Cayer notified Appellant of her demotion from her Secretary Supervisor position to an Office Assistant Senior, effective February 1, 2005. Ms. Cayer charged Appellant with neglect of duty, gross misconduct, and willful violation of agency policy for inappropriate and unprofessional behaviors between March and September 2004. Specifically, Ms. Cayer alleged Appellant disclosed confidential information and discussed performance issues regarding subordinate staff with other subordinate staff and displayed unprofessional and inappropriate behaviors toward her subordinate employee, Sheree Raska.

2.11 The Board heard testimony from several of Appellant's former subordinate employees. In particular, Kelly Schimetz testified that Appellant told her another employee had been reprimanded and stated that Appellant seemed to "wedge employees against one another." Additionally, the testimonies of Jamie Clark and Sharon Howell affirm that Appellant discussed issues concerning Ms. Raska, either to them directly or in the office where they and others were able to hear her comments. Dawnell Southwick, a records employee at the time, also corroborated Appellant's ill treatment of Ms. Raska when she testified that she witnessed Appellant speak to Ms. Raska in a demanding and condescending tone. Finally, Sheree Raska and Penny Kleinknecht both described Appellant as a controlling and intimidating supervisor.

2.12 Appellant denied engaging in any inappropriate conduct, and she testified that her employees resisted her attempts to make them accountable for their work. Appellant further



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testified that Ms. Raska became increasingly difficult to supervise and reacted unprofessionally and defensively whenever Appellant tried to address her performance or behavior.

2.13 After reviewing all of the testimony and exhibits, we find the weight of the credible evidence supports that Appellant, more likely than not, engaged in misconduct, including disclosing confidential information, such as mentioning an employee's reprimand to other staff; making inappropriate comments to and about employees in the presence of others; generally undermining her subordinate staff; and exhibiting unprofessional behavior inconsistent with the expectations of a supervisor.

2.14 DOC has adopted policy 800.010, Ethics, which requires that employees "maintain high professional and ethical standards at all times." The policy also prohibits employees from disclosing confidential information for personal benefit. In addition, DOC's Code of Ethics prohibits employees from using inflammatory remarks and engaging in threatening behavior.

## III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant abused her power as a supervisor and created a negative and controlling environment for her subordinates. Respondent acknowledges that problems existed within the work unit but asserts others who supervised the unit both before and after Appellant were able to work through any issues and resolve conflicts. Respondent contends that Appellant, however, was unable to interact appropriately with her staff and asserts she was not suited to be in a supervisory position. Respondent asserts that employees in Appellant's work unit consistently testified about Appellant's inappropriate actions and argues the evidence supports that Appellant lacks credibility. Respondent asserts Appellant's behavior undermined staff and destroyed morale and argues she could not remain in a supervisory position.



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3.2 Appellant denies she was abusing her authority as a supervisor and asserts she was simply trying to impose a sense of order to an office with no organization or accountability. Appellant contends that tension already existed within the work unit and asserts she was tasked with supervising difficult individuals who objected to the changes she made in the office and work expectations she set for them. Appellant argues she did not receive adequate support from her supervisor in managing a difficult work unit. Appellant argues that if any of her comments or gestures were inferred as inappropriate, it was not her intention and asserts she did not behave inappropriately. Therefore, Appellant argues she should be reinstated to her supervisory position.

## IV. CONCLUSIONS OF LAW

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

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 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). Flagrant



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misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

4.5 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).

4.6 Appellant received extensive training to assist her in performing her supervisory duties. In addition, Appellant's supervisors spoke to her regarding her supervisory style and discussed methods for resolving areas of conflict in her work unit. Despite her training, Appellant neglected her duty as a supervisor when she inappropriately discussed issues regarding subordinate staff to other subordinate staff. Appellant also acted unprofessionally when she made derogatory and demeaning remarks to and about Ms. Raska. As a supervisor, Appellant failed to model appropriate behavior, and her inappropriate actions created significant tension within the unit she supervised. Respondent has proven by a preponderance of the credible evidence that Appellant neglected her duty as a supervisor, that her hostile actions toward a subordinate employee constituted gross misconduct, and that her behavior violated agency ethics and confidentiality policies.

4.7 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness 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).



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4.8 Superintendent Cayer credibly conveyed her belief that Appellant had good working skills but lacked the high ethical standard and judgment necessary to supervise others and maintain the integrity of the program. Based on Appellant's inappropriate interaction with her subordinate employees, demotion is the appropriate sanction.

## V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Martina Roberts-Spencer is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

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Gerald L. Morgen, Member



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