BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ROBERT GREEN, Appellant, v. WASHINGTON STATE PATROL, Respondent.	Case No. DISM-04-0067 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, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on June 14 and 15, 2005.

1.2 **Appearances.** Appellant Robert Green was present and was represented by Martha Trupp, Attorney at Law. Assistant Attorney General Elizabeth Delay Brown represented Respondent Washington State Patrol (WSP).

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for just cause of a Washington Management Service (WMS) manager being untruthful about engaging in a conversation in which he allegedly instructed another state agency to defer billing for fuel purchases from one biennium to the next.

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II. FINDINGS OF FACT

2.1 Appellant was a Washington Management Service (WMS) Fleet Manager and permanent employee for Respondent Washington State Patrol. 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 June 25, 2004.

2.2 Appellant began his employment as the Fleet Manager in the Property Management Division of the Washington State Patrol in September 1999. As Fleet Manager, Appellant managed the agency's statewide vehicle fleet consisting of approximately 1,500 vehicles, assuming responsibility for the fleet's operating budget and centralized vehicle maintenance accounts. Part of Appellant's responsibilities included managing the Pursuit Vehicle Account 355, which included fuel purchased at sites operated by the Washington State Department of Transportation (WSDOT). Appellant's employment history reflects two previous written reprimands in December 2000, as a result of an investigation by WSP's Office of Professional Standards.

2.3 In early 2003, Appellant reported to Thomas Neff, Division Commander for the Property Management Division. At that time, Appellant and Mr. Neff began monitoring expenses and working with a budget analyst to project expenditures through June 30, 2003, the end of the 2001 – 2003 biennium. In May 2003, it became apparent that Account 355 had a significant deficit. As a result, Mr. Neff asked Appellant to work with WSDOT's Fleet and Equipment Manager, David Farnsworth, to estimate the fuel costs through the end of the biennium.

2.4 On approximately June 10, 2003, Appellant contacted Mr. Farnsworth to estimate the fuel bill through the end of the biennium. Appellant asked Mr. Farnsworth to "cut off the fuel billing"

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around the middle of June to process fuel transactions in order to obtain current figures needed to meet an end of the biennium reporting deadline. It is undisputed that Appellant also asked Mr. Farnsworth about the possibility of deferring the June fuel bill and discussed the fleet section's budget problems. However, Mr. Farnsworth said it was not possible to defer on-site fuel transactions because the data collected at the pumps reflected the date fuel was received, regardless of the date the information was retrieved. Appellant accepted Mr. Farnsworth's answer that it was not possible to defer fuel billing.

2.5 Mr. Farnsworth then suggested that a temporary closure of certain fuel sites might be beneficial to both WSDOT and WSP because WSDOT needed to perform computer maintenance on some of the pumps due to problems with the polling and invoicing system. The term "polling" refers to a downloading process of pump activity used by WSDOT to invoice WSP. Mr. Farnsworth testified that Appellant agreed with him that it would be all right for WSDOT to temporarily shut down some of the fuel sites, making those sites unavailable for WSP's vehicles to access fuel.

2.6 After reviewing the statements and testimony of Appellant and Mr. Farnsworth, we find there was a mistaken assumption about Appellant's intent in asking that fuel billing be stopped. Mr. Farnsworth suggested a temporary closure would allow WSDOT to perform necessary maintenance and, in effect, delay processing of those transactions. However, we find Appellant wanted to stop the polling to generate a partial June 2003 invoice to obtain up-to-date billing information and have the remainder of the June billing invoiced in the following month, realizing the June transaction dates would still be reflected in the July 2003 invoice.

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2.7 Appellant asserted that polling, in fact, never did cease. The June 30, 2003 invoice reflected transactions ranging from the beginning to the end of June 2003, as well as earlier transactions, supporting the fact that polling continued after Appellant's June 10, 2003 conversation with Mr. Farnsworth. The July 31, 2003 invoice also showed transactions from May and June 2003. The evidence supports there were ongoing problems that existed with WSDOT's polling and invoicing system that often caused delays in billing, which is further supported by the credible testimony of Mr. Neff, Fleet Secretary Sylvia Lewallan, and Fleet Analyst Leonard Ong. Therefore, we find the late billings were more likely attributable to problems with WSDOT's system than to any intentional manipulation of the billing to defer costs to the next biennium.

2.8 On August 18, 2003, Les Brodie became Division Commander for the Property Management Division and became Appellant's direct supervisor. On August 21, 2003, the Business Office Manager for Budget and Fiscal Services, Maria Hug, apprised Mr. Brodie about her concerns that charges from the previous biennium appeared on the July 2003 fuel bill. Ms. Hug also informed Mr. Brodie that Don Noble, an employee in WSDOT's fuel program, told her that June billings had been put in July as a result of a conversation Appellant had with WSDOT on June 10, 2003. Mr. Noble reports directly to Mr. Farnsworth. Ms. Hug also advised Division Commander of Budget and Fiscal Services Robert Maki and Director of Management Services Bureau Diane Perry about her concerns, as well as Mr. Noble's comment.

2.9 At the request of Ms. Hug, Mr. Noble emailed a zip file to her containing DOT's billing information for July 2003; however, Ms. Hug was unable to access the file. Appellant, along with Ms. Lewallan, and Mr. Ong, unzipped the data file and coded each transaction to the appropriate biennium. There is no dispute that charges incurred in the 2001 – 2003 biennium were ultimately and correctly paid out of that biennium's budget.

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2.10 On August 27, 2003, Ms. Hug emailed Mr. Noble at the request of Mr. Brodie and Ms. Perry. Ms. Hug's email states, in part:

> . . . When we spoke last Thursday [August 21, 2003] you stated the reason DOT did not bill WSP for fuel for the month of June was because of a phone call from Bob Green on 6/10/03 requesting that you not bill based on budget shortfalls. I need you to verify this for me if you can. . . .

2.11 Mr. Noble did not respond to Ms. Hug's request. Instead, Mr. Farnsworth responded by stating that he did not want his staff "caught in the middle" of what he considered a WSP issue. On August 29, 2003, Ms. Hug forwarded Mr. Farnsworth's email to Mr. Brodie and Mr. Maki. During the investigation into Appellant's alleged misconduct, Mr. Noble provided a statement in which he confirmed that Appellant spoke to Mr. Farnsworth on or around June 10, 2003, and had asked Mr. Farnsworth about stopping the June fuel billing.

2.12 Sometime between August 21 and 29, 2003, (Appellant disputes the meeting occurred on August 21) Mr. Brodie met with Appellant and Financial Analyst Rachel Sandwick to discuss the budget and biennium closing. In his testimony, Mr. Brodie could not recall the exact question he posed to Appellant regarding a deferred billing. However, during the investigation into the allegation Appellant had been untruthful (Exhibit R-20), Mr. Brodie stated that he asked Appellant if he had "instructed WSDOT to change the fuel billing obligations to coincide with the billing for the next biennium." During the same conversation, Ms. Sandwick asked a similar question to clarify why they had received prior billings in the July 2003 invoice and whether they needed to account for additional charges prior to the biennium closeout. Both Mr. Brodie and Ms. Sandwick stated that Appellant answered "no" when asked if he instructed WSDOT to defer billing.

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2.13 Appellant stated that he did not remember that specific question but testified he answered "no" when asked if he requested that May and June bills be deferred into the next biennium. Appellant testified that he explained to Mr. Brodie and Ms. Sandwick that he had asked Mr. Farnsworth to "cut off the billing" as of June 20, 2003, to provide Budget and Fiscal Services with an estimated figure for fuel expenses by the end of the biennium deadline. Similarly, Ms. Sandwick stated that Appellant told them he had asked Mr. Farnsworth to make sure June billing came in to process with the end of the biennium payments.

2.14 On or about September 19, 2003, Mr. Brodie had a conversation with Mr. Farnsworth's supervisor at WSDOT, Fred DeBolt. Mr. Brodie testified that they had been discussing other issues when he learned from Mr. DeBolt that Appellant had instructed Mr. Farnsworth to "alter the fuel bill to coincide with WSP's next biennium." However, we find Mr. Brodie clearly had knowledge of Appellant's alleged request to defer billing as early as August 21, 2003, and certainly by the end of August 2003 when he and Ms. Perry directed Ms. Hug to obtain a statement from Mr. Noble. Mr. DeBolt did not testify at the hearing on this appeal.

2.15 After speaking with Mr. DeBolt on September 19, 2003, Mr. Brodie determined Appellant had been untruthful in responding to his question about fuel bill deferment in the August 21, 2003, meeting. Consequently, Mr. Brodie filed a complaint with the Office of Professional Standards (OPS), and Internal Affairs initiated an administrative investigation on September 30, 2003. In December 2003, Chief Ronal Serpas appointed Mr. Maki to be the appointing authority and decision-maker in the OPS investigation of Appellant. Mr. Maki reviewed the investigative file, including Appellant's interview with Internal Affairs, and determined the June 2003 charges appearing in the July 2003 fuel bill were due to WSDOT deferring those charges at Appellant's request. Mr. Maki further determined that Appellant's request to defer billings to the subsequent

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accounting period was deceptive and misrepresented the agency's official accounting records. Finally, Mr. Maki found that Appellant had been untruthful in his response to Mr. Brodie when asked about deferring the fuel bill. On January 15, 2004, Mr. Maki provided OPS with an Administrative Insight memorandum in which he stated that the allegations against Appellant had been proven and that he contemplated termination.

2.16 On January 26, 2004, Ms. Perry placed Appellant on administrative reassignment, with pay, to his residence. On February 18, 2004, Mr. Maki met with Appellant for a predetermination conference, at Appellant's request. Appellant explained to Mr. Maki that he and Mr. Farnsworth discussed the possibility of deferment as a brainstorming effort, stating that fuel payments had historically crossed biennium lines, but he denied that he in fact directed WSDOT to defer billing into the next biennium. Appellant also denied lying to Mr. Brodie and stated that in the meeting he explained to Mr. Brodie WSDOT's billing issues and how that resulted in late billing of fuel transactions.

2.17 In March 2004, Chief Lowell Porter appointed Larry Hebert, Commander of the Crime Laboratory Division, as Appellant's appointing authority. Mr. Hebert reviewed the investigative file, Mr. Maki's determination, and Appellant's response to the allegations, and he concurred with Mr. Maki that there was just cause for Appellant's termination. By memo dated June 8, 2004, Mr. Hebert notified Appellant of his termination, effective June 22, 2004. Mr. Hebert determined Appellant should be dismissed for cause, based on neglect of duty, gross misconduct, and willful violation of the published employing agency or department of personnel rules or regulations. Mr. Hebert further indicated that Appellant specifically violated WSP Regulation 8.00.030, Unbecoming Conduct; WSP Regulation 800.180, Neglect of Duty; and WSP Regulation 800.300, Truthfulness.

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2.18 Mr. Hebert considered Appellant's lack of truthfulness to be the most significant issue. Mr. Hebert felt that as a high level manager, Appellant had a responsibility to be truthful to his superior when asked a direct question, especially when his superior was trying to elicit important and necessary information to ensure the agency's budget met accounting regulations. Mr. Hebert believed Appellant had engaged in the conversation with Mr. Farnsworth and had asked him to defer billing into the next biennium, and he did not find Appellant's mitigating statements credible. Mr. Hebert also felt Appellant acted inappropriately by even suggesting a deferment of the fuel bill. In determining the level of discipline, Mr. Hebert considered Appellant's position as a WMS manager and the agency's emphasis on truthfulness. Although Mr. Hebert considered lesser sanctions, he concluded Appellant had breached the agency's trust by being untruthful and felt dismissal was the only appropriate discipline.

2.19 Upon hearing the facts and circumstances in this case, we find that Appellant was not deliberately untruthful. Rather, we find there was considerable miscommunication with regard to the June 10, 2003 conversation between Appellant and Mr. Farnsworth, which was further exacerbated by the perceptions of those who had second-hand knowledge of the conversation. A preponderance of the credible evidence establishes that Appellant initiated the call to Mr. Farnsworth at the direction of Mr. Neff to obtain current billing information. As a result, Appellant asked Mr. Farnsworth to stop the billing at some point in June 2003 to allow time for WSDOT to process a complicated invoice. Additionally, the evidence reflects that WSDOT had ongoing problems with their polling and invoicing system.

2.20 At the same time, the fleet section was struggling to balance the end-of-the biennium budget, which Appellant expressed to Mr. Farnsworth. Although Appellant and Mr. Farnsworth

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discussed the possibility of deferring the fuel bill, the evidence does not support that Appellant instructed Mr. Farnsworth to alter any transactions or purposely delay billing. Further, the credible testimony of Ms. Sandwick supports that Appellant explained to Mr. Brodie how he asked Mr. Farnsworth to stop the billing to obtain a current balance to meet biennium deadlines.

2.21 Finally, we find that when Mr. Brodie met with Appellant in August 2003, he already had substantial information from Ms. Hug that caused him to believe Appellant had specifically instructed WSDOT to defer the June fuel billing. Yet neither Mr. Brodie nor Ms. Hug directly addressed their suspicion with Appellant. Instead, Mr. Brodie indirectly raised the issue of deferment in a troubleshooting discussion he had with Appellant and Ms. Sandwick. In the context of the conversation, Appellant's "no" response would have been reasonable because Appellant's question about the possibility of deferral did not result in a deferred billing. While we find Mr. Brodie was trying to elicit specific information from Appellant based on his discussion with Ms. Hug, we also find that he did not specifically reference Appellant's June 10 conversation with Mr. Farnsworth or Mr. Noble's comment. Consequently, the intent of Mr. Brodie's question was not clearly understood by Appellant, and we find Appellant's perceived untruthfulness was really the result of a misunderstanding.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant was untruthful about the conversation he had with WSDOT when directly asked by his supervisor. Respondent asserts that as a WMS manager, Appellant was held to a higher standard and contends the agency has high expectations of its managers handling budget issues and the public's money. Respondent argues there is no rehabilitation for being untruthful and asserts the agency can no longer trust Appellant. Respondent

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argues that being untruthful is contrary to the agency's mission and cannot be tolerated. Therefore, Respondent argues termination is appropriate.

3.2 Appellant denies that he lied to his supervisor. Appellant argues that he does not have the authority to instruct or direct another agency to defer billing. While Appellant acknowledges that he discussed the possibility of a deferred billing, he argues he was simply trying to brainstorm in order to meet budget constraints. Appellant asserts he did ask Mr. Farnsworth to stop the billing but contends it was to process the June invoice faster to meet biennium deadlines imposed by Budget and Fiscal. Appellant asserts the charges were ultimately paid out of the correct biennium and asserts the agency suffered no adverse impact as a result of his conversation with WSDOT. Appellant argues he is a manager with a positive work record and that termination is unwarranted.

IV. CONCLUSIONS OF LAW

4.1 Washington Management Service employees may appeal disciplinary actions to the Personnel Appeals Board under WAC 356-56-600.

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 In carefully weighing the evidence regarding Appellant's conversation with Mr. Farnsworth and his subsequent response to Mr. Brodie with regard to fuel bill deferment, we conclude there was a great deal of confusion, beginning with the conversation itself and Appellant's intent for

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asking to have the June billing stopped. The evidence does not support that Appellant specifically instructed Mr. Farnsworth to stop billing for the purpose of moving expenditures into the next biennium. Therefore, Appellant's response to Mr. Brodie was not untruthful.

4.4 Under the facts and circumstances, Respondent has failed to meet its burden; therefore, the appeal of Robert Green should be granted, and he should be fully reinstated with back pay and benefits.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Robert Green is granted.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

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