BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ROXANNE EBERHART, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. SUSP-02-0027 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, and. The hearing was held at Harborview Medical Center, Personnel Building, Conference Room 16, Seattle, Washington, on May 15, 2003. BUSSE NUTLEY, Member, reviewed the record and exhibits, listened to the recorded proceeding and participated in the decision in this matter. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Roxanne Eberhart was present and was represented by Edward Earl Younglove III, Attorney at Law, of Parr & Younglove, P.L.L.C. Jeffrey W. Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a ten-day suspension for neglect of duty as a result of Appellant's unauthorized absence from work during the middle of her work shift.

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1.4 **Citations Discussed.** WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant Roxanne Eberhart was a permanent employee for Respondent University of Washington. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on June 26, 2002.

2.2 Appellant began her employment with the University of Washington, Harborview Medical Center, on August 12, 1991. Appellant has no history of corrective or disciplinary actions. Appellant worked approximately seven years in Harborview Medical Center Emergency Department. Appellant later accepted a position in the Crisis Triage Unit (CTU) of the Emergency Department. The CTU serves patients dealing with behavioral crises, such as suicide attempts. As a Medical Assistant in the CTU, Appellant was responsible for monitoring patients for safety and providing basic patient care while under the supervision of a registered nurse. Appellant worked at 75 percent time (7 a.m. to 7 p.m.), with a half hour lunch period and two 15-minute rest breaks. Appellant's performance evaluations reflect that she met or exceeded performance expectations.

2.3 Appellant was also a volunteer photographer for the Medic One Foundation. On March 28, 2002, shortly after 1 p.m. Appellant received a message about a plane crash in the Puget Sound. Because the fire department was responding, Appellant was asked to go to the scene and take photographs. Appellant advised the Registered Nurse 2 on duty, Mike Samsel, that she was taking

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her lunch break and she left. Appellant did not tell Mr. Samsel where she was going or how long she expected to be gone. There were one or two patients in the CTU when Appellant departed.

2.4 Appellant drove to West Seattle to the scene of the plane crash and took a number of photos. At approximately 2:15 p.m., Appellant called Mr. Sansel and informed him that she was on her way back to work. However, traffic was highly congested, and Appellant returned to the hospital between 3:00 p.m. and 3:15 p.m.

2.5 Edward Dwyer-O'Connor was the Program Manager for the CTU. Mr. Dwyer-O'Connor was responsible for supervising staff within the CTU, and he was informed that Appellant had left the hospital.

2.6 After her return to work, Appellant initially indicated to Mr. Dwyer-O'Connor that she had been to lunch. However, Appellant admitted that she had been to the plane crash in West Seattle to photograph the crash scene.

2.7 After learning of the plane crash, staff in the Emergency Department began to prepare for the arrival of casualties. It was not uncommon for staff from the CTU to be assigned to assist in the emergency room under an emergency situation. In this case, there was not an influx of patients due to the plane crash. However, during the time Appellant was away, the number of patients in the CTU increased to five, and Mr. Samsel was required to work in the CTU without Appellant's assistance.

2.8 By letter dated May 30, 2002, Johnese Spisso, Chief Operating Officer of Harborview Medical Center, informed Appellant of her suspension, effective June 8, 2002 through June 17, 2002, for "just cause, including but not limited to the reason(s) of neglect of duty..."

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III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that as a trauma hospital, Harborview Medical Center has to be ready for all emergencies and that Appellant's departure from the emergency room during work hours was unacceptable. Respondent argues that Appellant neglected her duty when she left work, especially at a time when she should have expected an influx of people to the hospital. Respondent argues that Appellant placed a higher priority on her hobby than on her job. Respondent acknowledges that in hindsight the hospital did not receive a significant number of critically injured, but asserts there was still a responsibility for the hospital to prepare for casualties. Respondent argues that Appellant neglected her duty and that the 10-day suspension should be affirmed.

3.2 Appellant admits that she neglected her duty when she left the hospital without making any prior arrangements with her employer. However, she asserts her actions are mitigated because 1) she felt that Mr. Samsel would be capable of taking care of any situations in their work area, 2) she had previously been assigned to work alone in the CTU, 3) staff could have paged her if necessary, and 4) she had been employed for 12 years with no prior discipline and her evaluations reflected she was an excellent and outstanding employee. Appellant argues that the 10-day suspension was too severe because it imposed a great economic penalty on her because she worked 12 hour days. Appellant also argues that the lives of the accident victims did not hang in the balance because her position as a medical assistant was not a critical one. Appellant argues that the suspension should be reduced to a lesser form of discipline or to a corrective action.

IV. CONCLUSIONS OF LAW

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

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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; WAC 251-12-240(1); 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 Respondent has met its burden of proving by a preponderance of the credible evidence that Appellant neglected her duty when she left her work post and was absent from approximately 1:15 p.m. to 3:15 p.m. Appellant should have reasonably expected that the drive to and from the crash site alone would have taken more time than allowed by her 30-minute lunch period. Appellant's misconduct was further exacerbated because she failed to inform anyone in her supervisory chain-of-command that she was going to the crash site. Appellant neglected her duties while she was away from her work and her absence from the CTU created an additional work burden on Mr. Samsel.

4.5 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).

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4.6 In assessing the level of discipline imposed here, we conclude that the 10-day suspension was appropriate under the circumstances. Appellant cites a number of reasons why her misconduct was mitigated, however, we are not convinced that as a 12-year employee, Appellant did not understand the consequences of leaving the workplace for an unacceptable period of time, especially when she had failed to notify a superior of her absence. We recognize that Appellant was a long-term employee with the University and had no history of disciplinary problems. However, Appellant's action in this case reflects a serious lack of good judgment and warrants a significant suspension. Therefore, the appeal of Roxanne Eberhart should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Roxanne Eberhart is denied.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Busse Nutley, Member

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