BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

REYNALDO ROSALES, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. DISM-04-0061 ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

1.1 **Consideration of Motion.** This appeal came before the Personnel Appeals Board, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member, on May 9, 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.

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 April 14, 2005. Appellant did not file a response to this Motion.

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II. BACKGROUND AND FACTS

2.1 Appellant was terminated from his position as a Stockroom Attendant 2 at the University of Washington effective June 8, 2004, for repeated threats to a coworker. On June 16, 2004, Appellant filed an appeal of his dismissal by Respondent University of Washington.

2.2 On March 11, 2005, Respondent served Appellant with Requests for Admissions by UPS next day delivery. These documents were delivered to Appellant on March 12, 2005. Appellant's responses were due back to Respondent no later than April 11, 2005. However, Appellant failed to respond.

2.3 Appellant was trained concerning the University's policy prohibiting workplace violence on June 4, 2001. Appellant was also counseled about his anger in 1996, on March 7, 2002, and on February 26, 2003. As a result of the 2003 counseling, Appellant was required to attend Anger Management classes, which he did complete.

2.4 Respondent's Workplace Violence Policy prohibits behavior that is violent; threatens violence; harasses or intimidates others; interferes with an individual's legal rights of movement or expression; or disrupts the workplace, the academic environment or the University's ability to provide service to the public.

2.5 On May 12, 2004, Appellant became angry with coworker Tim Eastman and made violent statements to Mr. Eastman, including "Fuck You!" and "I'm going to fucking kick your ass!" Appellant then said if they were outside he would kill Mr. Eastman. Mr. Eastman repeatedly tried to walk away from Appellant, but Appellant repeatedly followed him and continued yelling at him. Appellant continued yelling even when his coworker Isabelle Quedado told him to calm down. Appellant was still cursing at Mr. Eastman half an hour later.

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2.6 Respondent filed its Motion for Summary Judgment of Dismissal on April 14, 2005. Appellant did not respond to that Motion.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Requests for Admissions must be answered within 30 days unless a shorter or longer period is allowed by the Board. No request for additional time was made. Since Appellant did not reply, all Requests for Admissions are now deemed admitted as a matter of law. Respondent argues that Appellant grossly mistreated his coworker, despite having received numerous counselings, and violated the University's Workplace Violence Policy. Therefore, Respondent argues that dismissal is proper and that summary judgment dismissing the appeal is appropriate.

3.2 Appellant did not provide a response to the Motion to Dismiss.

IV. DISCUSSION

4.1 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).

4.2 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).

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4.3 The issue here is whether Appellant's appeal should be dismissed based on his mistreatment of and threats to his coworker, in violation of the University's Workplace Violence Policy.

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. CR 36; Melby v. Hawkins Pontiac, Inc., 13 Wn. App. 745, 537 P.2d 807 (1975); French v. University of Washington, PAB No. DISM 03-0098 (2004); Prachyabrued v. University of Washington, PAB No. SUSP 04-0027 (2005). Here, Appellant had until April 11, 2005, to respond to the Requests for Admissions. More than thirty days later, at the time Respondent's Motion was made, they had still not been responded to. All the Requests for Admissions are deemed admitted.

4.5 Mistreatment or abuse of a coworker is established by evidence that the appellant wrongfully or unreasonably treated another by word or deed. Johnson v. Lower Columbia College, PAB No. D93-077 (1994). Loud and discourteous language to another constitutes mistreatment or abuse of a coworker. Alexander v. Dept. of Transportation, PAB No. D89-058 (1989). Hostile and abusive language directed at a coworker who is attempting to defuse and not inflame the situation, and in the presence of other coworkers, is an appropriate basis for dismissal. Reutimann v. University of Washington, PAB No. DISM 04-0054 (2005).

4.6 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 the department. Appellant's acts constitute mistreatment and abuse of a coworker and a violation of the University's Workplace Violence Policy. Therefore, Respondent's Motion to Dismiss should be granted, and the appeal should be denied.

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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 to Dismiss is granted, and the appeal of Reynaldo Rosales is denied.

DATED this _____ day of May, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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