BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MARK ALDRICH, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. DISM-04-0058 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, GERALD L. MORGEN, Member. The hearing was held at the Department of Transportation, 8293 Spring Creek Road, Port Orchard, Washington, on June 1, 2005. BUSSE NUTLEY, Vice Chair, reviewed the record and participated in this decision.

1.2 **Appearances.** Appellant Mark Aldrich did not appear. Kari Hanson, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of suspension followed by dismissal for neglect of duty, insubordination, gross misconduct and willful violation of agency policies. Respondent alleges Appellant failed to abide by the conditions of his home assignment.

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II. FINDINGS OF FACT

2.1 Appellant Mark Aldrich was a permanent employee for Respondent Department of Corrections. 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 11, 2004.

2.2 On October 15, 2004, the Board issued a Notice of Scheduling notifying the parties that a hearing on this matter would be held on June 1, 2005. Prior to June 1, Appellant left a message for the Board's Executive Secretary, and indicated he would not attend his hearing.

2.3 Appellant was a Community Corrections Officer 3. His duties included managing a caseload of adult criminal offenders, monitoring the conditions of supervision, investigating alleged parole, probation, and sentencing violations, conducting searches and arrests, and testifying in court. Appellant's personnel file reflects a history of corrective actions since July 2002, including four letters/memos of concern and a letter of reprimand related to his job performance.

2.4 On September 29, 2003, Tom McIntyre, Regional Administrator, notified Appellant he was reassigned to his home pending an investigation. The letter indicated that during the pendency of the home assignment, Appellant's work shift was designated from Monday to Friday, from 8 a.m. to 5 p.m. and that Appellant was still subject to all DOC policies, rules and regulations. Mr. McIntyre clarified the department's expectations and stated, in pertinent part, that Appellant was expected to:

- remain available for contact by telephone during the scheduled work shift,
- notify Frank Ohly, his supervisor, if for any reason (including illness or personal emergency) during this scheduled shift, he was required to leave his home, and
- obtain prior authorization from Mr. Ohly for any planned leave or leave of absence during the home assignment time period.

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Mr. McIntyre also warned Appellant that failure to abide by the department's expectations could result in disciplinary action.

2.5 On November 21, 2003, at 4:42 p.m., Appellant was involved in a head on collusion in Kitsap County. Appellant's blood alcohol level was .043. Appellant was still on home assignment and therefore, on official duty when the accident occurred. The credible evidence establishes that Appellant had not obtained permission from anyone in his supervisory chain to take any form of approved leave from work that day. Following the accident, Appellant continued to remain on home assignment.

2.6 On December 5, 2003, Mr. Ohly made numerous phones call to Appellant's home. Mr. Ohly was unsuccessful in reaching Appellant; therefore, he drove to Appellant's residence to attempt to make contact with Appellant. Again, Mr. Ohly's attempt to locate Appellant was unsuccessful.

2.7 In February 2004, Appellant was charged with one count of Vehicular Assault.

2.8 Southwest Regional Administrator Ruben Cedeño was Appellant's appointing authority. On April 22, 2004, Mr. Cedeño notified Appellant that he was suspended from June 1, 2004, through June 15, 2004, followed by dismissal, effective at the end of his shift on June 15, 2004. Mr. Cedeño charged Appellant with neglect of duty, insubordination, gross misconduct and willful violation of agency policies. Mr. Cedeño alleged that Appellant violated the conditions of his home assignment when 1) on November 21, 2003, Appellant left his home, was involved in an accident that resulted

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in a head-on collision in Kitsap County and had a blood alcohol level of .043, and 2) on December 5, 2003, he failed to be available during his regularly scheduled shift.

2.9 On April 21, 2004, Mr. Cedeño met with Appellant to discuss the allegations that Appellant violated the conditions of his home assignment. During the meeting, Appellant admitted he departed his home prior to 5 p.m. on November 21, 2003; however, he claimed Mr. McIntyre had authorized him to take compensatory leave. Mr. Cedeño found no evidence to support that Appellant sought pre-approval to take any type of leave on November 21, and he found that Appellant failed to take responsibility for his actions.

2.10 Mr. Cedeño concluded that Appellant violated the conditions of his home assignment and that he was on duty at the time of the accident on November 21, 2003, when he should have been at home, his assigned duty station. Mr. Cedeño found that Appellant had received clear instructions regarding the conditions of his home assignment, including the requirement that he contact his supervisor prior to taking any leave. In determining the level of discipline, Mr. Cedeño reviewed Appellant's personnel record, which included a history of prior corrective actions to his performance and failing to meet the expectations of the department.

2.11 Mr. Cedeño found nothing to mitigate Appellant's misconduct, and he ultimately concluded that Appellant engaged in misconduct when, while on duty, he went out drinking and was involved a serious car accident, which resulted in a felony charge against him. Because Appellant's primary responsibility involved supervising felons, Mr. Cedeño found that Appellant failed to model appropriate behavior, and therefore, was no longer competent to perform this duty. Mr. Cedeño concluded that Appellant failed to comply with the standards and expectations of his job and that the egregious nature of Appellant's misconduct warranted termination.

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2.12 DOC's ethics policy, 801.010, directs employees to act in a manner that demonstrates high ethical standards. DOC informs all employees of their duty to "be a good citizen" and to "obey all laws while on or off duty." DOC policy 807.005 addresses a drug and alcohol free work place and prohibits employees from performing their duties while under the influence of illegal drugs or alcohol. Appellant acknowledged he read and understood these policies.

III. CONCLUSIONS OF LAW

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

3.2 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).

3.3 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).

3.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995).

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3.5 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 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).

3.6 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).

3.7 Respondent has met its burden of proving by a preponderance of the credible evidence that Appellant neglected his duty, was insubordinate, engaged in gross misconduct, and willfully violated agency policies when on November 21, 2003, he left his assigned duty station without prior authorization and was involved in an auto accident and was under the influence of alcohol during his regularly scheduled shift. In addition, Appellant violated the conditions of his home assignment again on December 5, 2003, when he failed to be available at home during his regularly scheduled hours.

3.8 Although it is not appropriate to initiate discipline based on prior formal and informal disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No. D93-163 (1995).

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3.9 Respondent has proven, under the facts and circumstances, that Appellant's suspension followed by termination was warranted. Therefore, the appeal of Mark Aldrich should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Mark Aldrich is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

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