BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JOSEPH H. HALLOWELL, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. DISM-04-0016 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 NUTEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on June 7 and 8, 2005.

1.2 **Appearances.** Appellant Joseph Hallowell appeared *pro se*. Laura Wulf, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of immediate suspension followed by dismissal for neglect of duty, insubordination, gross misconduct and willful violation of agency policy. Respondent alleges that Appellant engaged in unprofessional behavior, used profanity toward a juvenile resident, made inappropriate comments to female coworkers, and unnecessarily delayed the movement of others in and out of secured areas.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

II. FINDINGS OF FACT

2.1 Appellant Joseph Hallowell was a Rehabilitation Security Officer 1 and permanent employee for Respondent Department of Social and Health Services. 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 18, 2004.

2.3 Appellant began his employment at the Maple Lane School in July 1999. Appellant's duties included resident supervision and security, promoting change of resident behavior by use of appropriate interventions, acting as a role model for residents, ensuring care, welfare, safety, and security of residents. During the timeframe pertinent to this appeal, Appellant was the Rehabilitation Security officer 1 working in the Chelan/Baker control booth. As the control booth officer, Appellant's responsibilities included monitoring the security and operations of the area by coordinating movements in the Intake hallway and the Chelan and Baker Unit hallways. Entry into and out of the units was controlled electronically by Appellant from within the control booth. Appellant was also responsible for issuing equipment such as radios and keys to staff and for providing back up for staff in the pods. The control booth officer is prohibited from speaking to residents over the booth intercom.

2.4 Appellant had a history of displaying inappropriate behavior in the workplace and addressing co-workers in a confrontational and argumentative manner. Appellant's conduct was addressed by his supervisor and he was directed, on numerous occasions, to treat others in a respectful and professional manner. Appellant's performance evaluations also addressed his unprofessional behavior and his difficulties interacting with other staff. In addition, by letter dated January 9, 2002, Appellant was suspended for making offensive and inappropriate comments to co-

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

workers and for making negative ethnic comments to another co-worker. Hallowell v. Dep't. of Social and Health Services, PAB Case No. SUSP-02-0004, aff'd by Board (2002).

2.5 Maple Lane School has adopted Policy 33 which requires that employees act as role models and handle conflict, frustration, and resolution of problems in a non-aggressive manner. The school has also adopted Policy 34 which addresses employee standards of conduct which, in pertinent part, requires all employees to maintain professional standards, be mutually respectful of others and avoid engaging in any emotional abuse of employees or residents. The policy defines emotional/verbal abuse, in relevant part, as any belittling behavior, ridiculing or use of profanities and/or obscenities. Appellant acknowledged that he received and read these policies on January 14, 2000 and on February 29, 2001.

2.6 In October 2003, the department was investigating complaints filed by Appellant against other staff. During the course of that investigation, staff being interviewed came forward with their concerns about Appellant's behavior. In general, staff claimed Appellant created a negative work environment and they expressed a fear of coming forward earlier because of Appellant's aggressive and hostile manner. As a result, the department initiated 20 conduct investigation reports against Appellant. In response to the CIR's, Appellant admitted to some of the allegations and claimed that others allegations were lies made up by staff. In determining whether or not Appellant engaged in misconduct, we have reviewed the testimony and evidence presented at the hearing, and we find a preponderance of the evidence establishes Appellant engaged in a pattern of unprofessional behavior; therefore, we enter the following findings:

- Appellant yelled at a resident through the intercom, "Get your fucking ass off the railing."
- Appellant told a co-worker, "What the fuck is this for? I'm sick of this shit!" when she handed him an envelope.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

- Appellant documented co-worker behaviors and intimidated staff by waiving his notes around and threatening to report them to headquarters.
- Appellant commented to others that he was out "to get" Mr. Nelson, the superintendent, that he "had things on Mr. Nelson" and that he had Mr. Nelson's head "on the chopping block."
- Appellant commented to Michelle Francis, "This is no place for a woman to work" and that she was "stupid" for having attended a course in criminal justice aimed at working with disabled kids.
- Appellant inappropriately referred to a co-worker as "shortcakes," a reference to his stature.
- Appellant commented to Rob Colley, an intermittent JRSO 1, that he should not leave his coffee thermos in the office because someone was likely to "piss in it." Because of Appellant's behavior in the workplace and because the work relationship between Mr. Colley and Appellant was strained, Mr. Colley became concerned and began leaving his thermos in another location.
- When Dave Waterson, JRSO 1, asked Appellant why he had not completed a required equipment check off sheet, Appellant responded, "Fuck that. I don't need to do that."
- Appellant commented to Jolene Bradley, a temporary JRRC, "Hey, Jolene, your headlights are on," a reference to her nipples. Appellant repeated the statement to Ms. Bradley on more than one occasion even though Ms. Bradley asked him to stop. Appellant also referred to Ms. Warner as "just an intermittent," which she perceived as an attempt by Appellant to demean her position at the agency.
- Appellant created security risks when he intentionally made staff, including Rob Colley, Michelle Francis, Barbara Armold, Jerome McFarland, wait longer than necessary to be released from pods. At times, staff was escorting residents and feared the unnecessary delay could cause residents to become restless, engage in horseplay that could escalate into problems.
- On one occasion when Michelle Francis selected a resident to perform detail, Appellant told her over the intercom to, "choose another loser" and he called the resident a "piece of crap." Appellant refused to let Ms. Francis out of the pod until she selected another resident. On a separate occasion, Appellant also refused to let Jerome McFarland out of the pod until he selected another resident for detail duty.

2.7 Superintendent Nelson was Appellant's appointing authority when the discipline was imposed. After reviewing the conduct investigation reports filed against Appellant and the investigative results into each of the allegations and Appellant's responses to the charges, Mr. Nelson made a finding of misconduct in each incident. Mr. Nelson met with Appellant on December 17, 2003, to discuss the allegations. However, Appellant failed to present Mr. Nelson with any explanation to mitigate his behavior.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.8 Mr. Nelson determined that Appellant engaged in an unacceptable pattern of inappropriate behavior in the workplace. Mr. Nelson indicated that because the residents of Maple Lane School are juveniles incarcerated for a variety of crimes, it is imperative for all staff to model appropriate behavior. Mr. Nelson was concerned by Appellant's belittling and disrespectful behavior toward co-workers and his use of profanity toward a resident. Mr. Nelson concluded that Appellant neglected his duty when he failed to perform his duties in a professional manner and that his misconduct violated Policies 33 and 34. Mr. Nelson further concluded that Appellant was insubordinate when he disregarded previous directives that he behave himself in a professional manner and treat others with respect. Mr. Nelson found that Appellant lacked sound judgment in performing his duties and created safety and security issues when he deliberately delayed the exit of staff and residents out of pods. Mr. Nelson concluded that Appellant's repeated pattern of misconduct created a negative work environment for others and that despite previous warnings, he failed to conduct himself in an acceptable manner. Therefore, Mr. Nelson concluded that termination was the appropriate level of discipline. By letter dated January 13, 2004, Mr. Nelson informed Appellant of his immediate suspension, effective January 14, 2004, followed by dismissal, effective January 30, 2004. Mr. Nelson charged Appellant with neglect of duty, insubordination, gross misconduct and willful violation of agency policy,

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant has the capacity to be a good employee, but that despite his work skills, he engaged in an inappropriate pattern of behavior that was severe and pervasive and negatively impacted the work environment for others. Respondent argues that Appellant's co-workers testified credibly regarding Appellant's behavior, which included yelling at others, using profanity, refusing to release staff from pods, and making sexist remarks to women. Respondent

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

argues that under the circumstances, including Appellant's demonstrated pattern of intimidating, inappropriate and negative behavior, termination was appropriate and should be upheld.

3.2 Appellant asserts that the allegations against him were in retaliation for a complaint he filed against the department's security manager to the Washington State Ethics Board. Appellant claims that female staff "rehearsed" their stories against him, he asserts that he had a "joking" relationship with the person he called "short cakes" and he claims that he released staff from pods according to the control booth standard operating procedures.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto 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 Respondent met its burden of proof that Appellant neglected his duty when he failed to act professionally, failed to treat residents and co-workers in an appropriate, respectful and professional manner and when he failed to model appropriate and acceptable behavior for residents.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

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 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).

4.7 Respondent has met its burden of proof that Appellant's belittling and intimidating comments to his co-workers, his use of profanity toward a resident, and his offensive remarks to female co-workers rises to the level of gross misconduct and violates agency policy.

4.8 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).

4.9 In determining the disciplinary action imposed, we recognize that in isolation, none of the incidents here warrant dismissal. However, in this case, Appellant had been previously disciplined for similar misconduct, he was provided written performance expectations directing him to behave in a professional manner, and he was given additional training to address his interpersonal communications with others. Nonetheless, Appellant continued to engage in a pattern of inappropriate and discourteous behavior which, when coupled with his history of disciplinary and

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

corrective action, warrants the disciplinary sanction of dismissal. Therefore, the appeal of Joseph H. Hallowell should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Joseph H. Hallowell is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504