BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

BARRETTE GREEN, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. DISM-03-0115 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Consideration of Motion.** This appeal came on for hearing on Respondent's Motion for Summary Judgment 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 May 3, 4, 5, June 30, and July 19, 2005. The parties submitted written closing arguments on August 5, 2005.

1.2 **Representation.** Appellant was present and was represented by Edward E. Younglove III, of Parr, Younglove, Lyman & Coker, P.L.L.C. Janetta Sheehan, Assistant Attorney General, represented Respondent Department of Social and Health Services (DSHS).

II. MOTION FOR SUMMARY JUDGMENT

2.1 **Background.** Appellant Barrette Green was employed in a Washington Management Service (WMS) position as a Risk Manager with the Department of Social and Health Services,

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Mental Health Division, Western State Hospital (WSH). Appellant was employed at WSH from August 16, 1988, until his termination, effective November 24, 2003.

2.2 On June 28, 2001, Kathleen Lizee filed a lawsuit against the state of Washington and Appellant, alleging sexual harassment by Appellant. On March 10, 2003, the jury trial on Ms. Lizee's allegations began. The parties reached a settlement on March 31, 2003, and the Court entered a judgment on April 1, 2003.

2.3 On April 4, 2003, WSH placed Appellant on administrative leave. In mid-April 2003, the department hired Jan Salisbury of Salisbury Consulting to conduct an independent investigation into the allegation of sexual harassment, retaliation, and workplace violence.

2.4 Salisbury Consulting submitted its report of investigation into Appellant's alleged misconduct on July 1, 2003. The Salisbury report indicated that new allegations of misconduct required additional investigation. The report identified three employees, namely Jackie Delgado, Linda Salazar, and Cheryl Reis, who alleged that Appellant subjected them to harassment.

2.5 Based on the information in the Salisbury report, Karl Brimner, Director of the Mental Health Division and Appellant's appointing authority, initiated pre-disciplinary proceedings. Appellant was dismissed from his employment effective November 24, 2003.

2.6 Appellant filed a lawsuit naming the state of Washington, DSHS, the appointing authority, the DSHS Secretary, other DSHS management, the three named victims, and Jan Salisbury as defendants. Appellant filed a Second Amended Complaint. His claims in the second complaint included due process and free speech violations, conspiracy, deprivation of liberty and property

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rights, sex and race discrimination, invasion of privacy, defamation and negligent investigation, among others.

2.7 Respondent subsequently filed a Motion for Summary Judgment. The United States District Court granted summary judgment and dismissed Appellant's complaint with prejudice.

2.8 On April 1, 2005, Respondent filed a Motion for Summary Judgment and Dismissal of [PAB] Appeal. On April 14, 2005, Appellant filed his Opposition to Respondent's Motion for Summary Judgment. On April 20, 2005, Respondent filed its Reply in Support of Motion for Summary Judgment and Dismissal of Appeal.

2.9 On May 2, 2005, the Board heard oral argument on Respondent's motion.

2.10 **Respondent's Argument.** Respondent contends that the facts before this Board are essentially the same as those before United States District Court. Respondent asserts that any facts in dispute have already been presented to and determined by the federal court. Respondent argues that Appellant's Second Amended Complaint, Appellant's attorney deposed several individuals and the Court had before it the deposition testimony of the appointing authority, Cheryl Reis, Jackie Delgado, and Linda Salazar, the three women referred to in the disciplinary letter, as well as the deposition testimony of Mr. Green. Respondent argues that although Appellant claimed there were conflicting stories, when asked by the judge, the court noted that Appellant never made an outright denial of the charges during the pre-disciplinary process. Respondent argues that Washington law recognizes *res judicata*, which bars parties from re-litigating claims and *collateral estoppel*, which bars parties from re-litigating issues. Respondent argues that both doctrines apply to Appellant's case, and therefore, he is not entitled to a second opportunity to present his case in this forum.

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2.11 **Appellant's Argument.** Appellant argues that the basis for his dismissal, as stated in the disciplinary letter, is for engaging in inappropriate conduct toward co-workers Linda Salazar, Jackie Delgado, and Cheryl Reis from the early 1990s through 2002. Appellant argues there has never been an evidentiary hearing or trial with a factual determination as to the truth or falsity of the charges outlined in the disciplinary letter. Appellant argues that the U.S. District Court's Order Granting Motions for Summary Judgment is not relevant, in that it tends to neither prove nor disprove any of the allegations in the disciplinary letter, is highly prejudicial, and concerns different issues and standards of proof. Appellant further argues that his claims in federal court are not relevant to the truth or falsity of the allegations before the PAB. Appellant argues that the court's concern was whether Appellant was given the opportunity to present his version of events during the pre-disciplinary process. Appellant asserts the record before the PAB on summary judgment contains almost no evidence of any of the charges against him. Appellant further contends that the evidence he submitted in opposition to summary judgment raises issues of fact. Appellant argues that the issue before the PAB is whether Appellant was guilty of the alleged misconduct and whether his conduct justified termination; and therefore, summary judgment in this case is inappropriate.

2.12 On May 2, 2005, the Board issued an oral ruling granting, in part, Respondent's Motion for Summary Judgment. Specifically, the Board ruled that *collateral estoppel* was appropriate for each of the claims addressed in Judge Leighton's order, but that *collateral estoppel* and *res judicata* did not apply to the underlying allegations contained in the disciplinary letter. The Board further ruled that the hearing would proceed as scheduled. The Board now affirms its earlier ruling as follows:

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2.13 The issue is whether Appellant's appeal should be dismissed based on the outcome of Appellant's lawsuit in U.S. District Court.

2.14 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).

2.15 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).

2.16 The primary issue before the Board in any appeal from a disciplinary action is whether the events alleged in the disciplinary letter occurred and whether the department imposed the correct level of discipline.

2.17 The agency has the burden of proving the charges set out in the disciplinary letter. The court determined there was nothing arbitrary or unfair about the investigative process and that Appellant's right to due process had not been violated. The court further concluded the appointing authority had reasonable cause to terminate Appellant based on the information he had when the discipline was imposed. In addition, the court determined that Appellant's claims alleging violations of his constitutional rights, discrimination, and defamation, among other charges, were unsubstantiated. Therefore, the Board precluded Appellant from presenting those claims to this Board as defenses. However, the Board found that the underlying issues of this appeal were not resolved by the court. In light of Appellant's claims that 1) he either did not commit the alleged

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acts or 2) the acts were consensual, the factual question of whether the alleged events occurred had not been answered. In addition, the Board found it had not had an opportunity to make a determination regarding the credibility of the witnesses.

III. FINDINGS OF FACT

3.1 Appellant was a 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 November 18, 2003.

3.2 Appellant began his employment at WSH as a temporary Mental Health Technician (MHT) 1 in August 1988 and on February 1989, he was appointed to the position on a permanent basis. Concurrent with his appointment, Appellant became a member of the Washington Federation of State Employees (WFSE). In 1994, Appellant was promoted to a temporary Forensic Therapist (FT) 2 position. Appellant also obtained permanent status in the FT 2 position and in 1999, he promoted to a permanent FT 3 position. In June 2001, Appellant was promoted to a position as a Habilitation Plan Administrator. In March 2002, Appellant was appointed to a Washington Management Service (WMS) position as Acting Risk Manager for WSH. In March 2003, Appellant was appointed to the Risk Manager position on a permanent basis.

3.3 Appellant was a chief shop steward for the Union Local 793 from 1994 to 2001, he held a position on the WFSE Statewide Executive Board, and in November 2001, he was elected President of Local 793.

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3.4 By letter dated November 6, 2003, Karl Brimner, Director for the Mental Health Division, notified Appellant of his immediate suspension followed by dismissal from his WMS position as a Risk Manager at Western State Hospital. The suspension was effective November 7, 2003 through November 22, 2003, followed by dismissal effective November 24, 2003. Mr. Brimner specifically alleged that Appellant engaged in misconduct when he directed inappropriate conduct toward three co-workers: Linda Salazar, Jackie Delgado, and Cheryl Reis. In determining the disciplinary sanction, Mr. Brimner considered Appellant's work history and his knowledge of the agency's policies. However, Mr. Brimner concluded that Appellant failed to adequately respond to the charges. On the other hand, Mr. Brimner met with Ms. Delgado, Ms. Salazar and Ms. Reis and he found them to be credible based on consistency of the information the three women provided, their statements regarding what impact their experiences with Appellant had on them, and their visible discomfort in talking about those experiences. Mr. Brimner determined that Appellant began engaging in inappropriate behavior toward women not long after he became employed by the state and he demonstrated a long pattern of initiating inappropriate sexual behavior toward women at work. Therefore, Mr. Brimner concluded that immediate suspension followed by termination was the only way to ensure that Appellant would not continue to have inappropriate contact with female co-workers.

3.5 The Board heard the testimony of 15 witnesses over a period of five days. Mr. Brimner's disciplinary letter alleged numerous incidents of misconduct committed by Appellant over a period of time spanning from 1988 through 2002. After reviewing all of the testimony and exhibits, we find the weight of the evidence supports that Appellant, more likely than not, engaged in misconduct towards Ms. Delgado, Ms. Salazar and Ms. Reis:

Allegations related to Jackie Delgado

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- Ms. Delgado became employed at WSH in June 1988 as a Mental Health Technician 1. She was also a member of Local 793 and held numerous positions within the union: shop steward, lead shop steward, union trustee, and positions on the executive board and on the statewide policy committee.

- Ms. Delgado testified she met Appellant in 1989 when he was an MHT on the admission ward (ward E-1). Ms. Delgado worked on ward E-4. She interacted with Appellant because he frequently responded to requests for help from her ward and other times she might work on his ward if it was short staffed. In addition, she also interacted with Appellant when she was in-training for a shop steward position.

- Ms. Delgado testified that Appellant did not initially express his interest in her verbally; rather, one evening on the graveyard shift they both went to the basement of a ward to throw away trash when Appellant kissed her. Ms. Delgado testified that she was not a willing participant, the kiss caught her off guard and she was embarrassed. Ms. Delgado pretended the incident did not happen. In a subsequent incident, Ms. Delgado and Appellant were in an elevator and he stood very close to her and kissed her. Ms. Delgado told Appellant that she was happily married and did not "do things like that." Ms. Delgado indicated that Appellant "brushed it off."

- Ms. Delgado indicated that another incident of unwelcome touching by Appellant occurred when she and Appellant went to obtain a mattress for a patient. As she was picking up the mattress, she lost her balance and fell over. When Appellant went to assist her up, he kissed her. Ms. Delgado told him no. Appellant then made an "off the wall" remark about her mother who was a patient at WSH at that time. Ms. Delgado perceived the comment to be a threat that something could happen to her mother if she told anyone what happened.

- Ms. Delgado testified that following this incident, Appellant's advances toward her escalated, occurred more frequently and were more "vulgar" in nature. Ms. Delgado described an incident where Appellant, during a smoke break at work, approached her, stood close to her, commented that her hair was beautiful and then ran his fingers down her arm, brushing up against her breast. On another occasion, she and Appellant were in an office where Appellant kissed and fondled Ms. Delgado and told her to keep quiet.

- Ms. Delgado testified that in the subsequent years and through 2001 or 2002, Appellant inappropriately touched, kissed and engaged in sexual activity with her on WSH grounds. Appellant also engaged in graphic sexual conversations over the telephone with Ms. Delgado. At times Appellant's attention toward Ms. Delgado decreased; however, it did not completely cease. The last time Ms. Delgado had any sexual contact with Appellant occurred in 2001 or 2002, when Appellant called her from a hotel and asked her meet him there to have sex.

- Ms. Delgado felt powerless against Appellant and believed she had no control over what was happening to her. Ms. Delgado feared Appellant would hurt her, her mother, or jeopardize her job if she reported him. Appellant frequently told Ms. Delgado that he had a

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great deal of power over WSH management. As a result, Ms. Delgado believed it was useless to report Appellant, because she believed she would not only suffer repercussions from Appellant, but that the system within WSH would not take her complaint seriously.

Allegations related to Linda Salazar

- Linda Salazar was a Registered Nurse 3 in 1998. Ms. Salazar and Appellant both worked in the same building but on different floors and she met Appellant sometime in 1998 when they attended meetings on the unit. Ms. Salazar testified that she and Appellant established a friendship and they shared personal information, including details of her marriage and divorce. Ms. Salazar testified that on one occasion Appellant called her into his office and asked her out on a date to have dinner. Ms. Salazar declined. Following that incident, she and Appellant continued to engage in friendly conversations. At times Ms. Salazar met with Appellant in his office, and he would hug her before she left.

- Sometime in 1999, Appellant called Ms. Salazar's home from a hotel requesting she come over and have sex with him. During the conversation, Appellant used sexually graphic words. Ms. Salazar felt sick to her stomach, asked Appellant why he was talking to her that way, and she hung up. The following morning, however, Appellant called her again and told her he had "fantasized" about her and had masturbated. Ms. Salazar was "shocked" by Appellant and ended the conversation.

- Subsequent to these calls, Ms. Salazar attempted to keep her interactions with Appellant at work on a professional level. However, Appellant's behavior toward Ms. Salazar continued to escalate. Sometime in the fall of 1999, Ms. Salazar went into Appellant's office to have a discussion. Appellant locked the door and after they finished the conversation, Appellant hugged Ms. Salazar. When Ms. Salazar pulled away from the hug to leave, Appellant attempted to kiss her. As she turned away, Appellant grabbed her v-neck sweater and bra, and exposed her breast. Appellant then kissed Ms. Salazar's breast. Ms. Salazar also described an incident where Appellant pushed her against a wall and tried to kiss her, and she resisted.

- Ms. Salazar further described Appellant's proposition that he go to her house and perform oral sex on her. Appellant continued to be persistent on the topic and Ms. Salazar finally relented. Appellant did in fact visit Ms. Salazar's home, and although Appellant began to engage in oral sex with Ms. Salazar, she asked him to stop. Appellant subsequently left.

- Ms. Salazar was experiencing serious personal issues with her husband and had filed for divorce. In addition, Ms. Salazar had obtained a restraining order against her husband. Appellant was at Ms. Salazar's home a second time to discuss her impending divorce and to be present when her ex-husband visited the house. Although Appellant attempted to initiate sexual contact with Ms. Salazar, she rejected his advances and Appellant left. There were no subsequent incidents of a sexual nature by Appellant toward Ms. Salazar.

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Allegations related to Cheryl Reis

- Cheryl Reis was employed at WSH for approximately 17 years. Prior to 2002, Ms. Reis had not worked with Appellant, but she knew of him and his reputation as powerful individual within the union.

- In 2002, Ms. Reis was promoted to a position as the Director of Quality Management in the Organization Performance Department. Ms. Reis testified that the first day she worked with Appellant, they had a difference of opinion about a work related issue. Later that day, Appellant entered Ms. Reis' office where she was seated at her desk. Appellant sat down on the side of Ms. Reis' desk. Appellant folded his arms across his chest, leaned forward and told Ms. Reis, "we have a problem." Ms. Reis believed Appellant's approach towards her was a deliberate act designed to intimidate her and to set the tone "for the way things were going to be in the unit." Ms. Reis testified that she "felt sick" following the interaction and as a result she concluded she could not challenge or speak her mind again without fear of losing her job, because she believed Appellant had the ability to influence her superior. Ms. Reis described her relationship with Appellant after that incident as "cordial."

- Ms. Reis also described an incident when, following a stressful situation at work, Appellant stood behind her and rubbed her neck while she was standing. Although Ms. Reis believed Appellant was trying to be friendly, she also believed the neck rub was too personal and unnecessary. However, Ms. Reis did not find the neck rub to be sexual in nature.

3.6 Appellant denies he engaged in any sexually harassing behavior or any inappropriate behavior towards Ms. Delgado, Ms. Salazar or Ms. Reis. Rather, Appellant contends that Ms. Delgado, Ms. Salazar and Ms. Reis were motivated by money to make false claims against him after the state settled Kathleen Lizee's lawsuit. However, Ms. Delgado and Ms. Reis testified their reluctance to come forward was due to their fear of Appellant and their perception that Appellant was well connected with WSH management. Therefore, they believed it would be futile to challenge Appellant. Ms. Salazar, on the other hand, expressed shame and embarrassment that she was unable to tell Appellant "this is unacceptable." Ms. Delgado, Ms. Salazar, and Ms. Reis kept their silence until the Salisbury investigation commenced and they were finally able to tell their stories to an investigator, whom they believed would keep the information confidential. Nonetheless, those investigative findings were forwarded to the appointing authority, who took ultimate action against Appellant.

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3.7 The reluctance to come forward as expressed by Ms. Delgado, Ms. Salazar, and Ms. Reis is not unusual under the circumstances. Dr. Louise Fitzgerald, Professor of Psychology in gender and women's studies at the University of Illinois, provided expert testimony regarding sexual harassment in the workplace. Dr. Fitzgerald stated that the majority of sexual harassment in the workplace is never reported. She indicated that victims of sexual harassment are reluctant to come forward for a number of reasons, including shame, embarrassment, and self-blame. Additionally, a woman is less likely to come forward unless she feels the complaint will be taken seriously by the employer, that she will be safe after filing a complaint, and believes there will be meaningful sanctions for the perpetrator.

3.8 In addition, the more power the individual is perceived to have within the organization (e.g. power acquired through relationships with others in authority, involvement in organizations such as employee groups or union groups, physical power), the less likely the individual will be reported.

3.9 Although Appellant contends he was not an influential figure at WSH, a significant amount of testimony established Appellant was held in high esteem by other employees, and he was considered charismatic and friendly. Appellant is described as a "touchy, feely guy" and he routinely hugged others in the workplace. The testimony established that many other employees also perceived that Appellant had enormous power and influence at WSH and that as a high ranking union official, he had considerable influence over union members as well as access to the management at WSH.

3.10 For example, Appellant and Dolly Hanson, Director of Organization Performance, and Appellant's direct supervisor when he was hired for the Risk Manager position, testified she and

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Appellant had a close working relationship dating back to when Ms. Hanson was a Labor Relations Manager for WSH and Appellant was the chief shop steward for Local 793. Ms. Reis, who was also supervised by Ms. Hanson, observed that Appellant and Ms. Hanson spent a significant amount of time together and appeared to make decisions together. Therefore, she believed that Appellant could affect her position because of his relationship with Ms. Hanson

3.11 In addition, the credible evidence supports that Appellant boasted to others about his power over management at WSH. For example:

- Appellant told Ms. Salazar that Dr. Hamilton, the Clinical Director for Forensic Services, did not make decisions without his input.
- Donna Slagle, Registered Nurse 3, who worked with Appellant when he was a Forensic Therapist, testified that Appellant talked to her about "his perceived perception of the power and influence that he had at Western State Hospital." Appellant told her that he "could make things happen," and that he "could make it or break it" for others, including Ms. Slagle. He told her stories about things he had done to get others in trouble, he described the deals he would make, and he stated that people owed him favors. In addition, Ms. Slagle described how Appellant could persuade Dr. Hamilton to change his direction on certain issues; however, whenever she or other RNs argued something differently, Dr. Hamilton would not be persuaded by them.
- Kathleen Lizee, a Forensic Therapist at WSH, also provided credible testimony of how she came to believe that Appellant had power at WSH. Ms. Lizee described how Appellant impressed upon her that he was "an extremely powerful, well-connected individual" who had the ability "to muscle management at will." Appellant also told her that he leveraged management through the power of his union affiliation and he spoke about his association with the former Secretary of DSHS.

3.12 Therefore, the evidence supports that Ms. Delgado's, Ms. Salazar's and Ms. Reis's reasons for not coming forward to report Appellant sooner were reasonable based on their perception of Appellant's power and authority within WSH. Furthermore, their reluctance is consistent with Dr. Fitzgerald's expert testimony regarding why victims of sexual harassment are reluctant to come forward.

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3.13 DSHS has adopted and published Administrative Policy 6.02 which prohibits sexual harassment. The policy defines sexual harassment as behavior of a sexual nature which is unwelcome and personally offensive to the recipient of the action. The policy further defines a hostile working environment as a working situation in which the employee has not suffered any tangible economic loss as a result of the alleged harassment but rather the employee has been subjected to a working environment that is sexually offensive or intimidating to the employee. The policy indicates that sexual harassment can occur as an abuse of power differential (e.g. supervisor to subordinate) or between personnel of similar status (e.g. co-worker to co-worker). The intent of the policy is to ensure that employees work in an environment free from unsolicited, unwelcome, and inappropriate sexual overtones.

3.14 DSHS has adopted and published Administrative Policy 6.04 which requires employees to maintain high ethical and professional standards at all times.

3.15 Western State Hospital has also adopted Policy 3.1.8, which defines sexual harassment, in part, as "conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

3.16 Appellant was aware of the agency's policies, and he had attended Sexual Harassment training as recently as June 2002.

IV. ARGUMENTS OF THE PARTIES

4.1 Respondent argues the evidence overwhelmingly supports that Appellant engaged in inappropriate conduct toward three female staff members. Respondent asserts the allegations

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involving these particular women came to light as a result of an investigation prompted by another allegation of inappropriate conduct and sexual harassment involving a female co-worker. Respondent argues that the women in this case were credible and had no motive for pursuing the allegations other than to end Appellant's egregious behavior, for themselves and others. Respondent further asserts there is no merit to Appellant's claim the women were financially motivated because they were reluctant to come forward and displayed genuine emotions of anger, frustration, and embarrassment, all of which are consistent with Dr. Fitzgerald's portrayal of sexual harassment victims. Respondent argues that based on Appellant's position as a manager, termination was the only appropriate sanction to ensure others are safe and to send a clear message that Appellant's flagrant sexual misconduct and intimidating behavior will not be tolerated.

4.2 Appellant denies he engaged in any sexually harassing behavior and asserts he held no supervisory or employment related power over any of these women. Appellant asserts he had a prior consensual relationship with Ms. Delgado, but asserts there is no credible evidence their romantic relationship or any sexual conduct occurred in the workplace. Appellant contends he and Ms. Salazar and Ms. Reis were nothing more than co-workers. Appellant contends he and Ms. Salazar had established a friendship for a period of time, but he denies having any inappropriate contact with her. Appellant argues the allegations of the three women are sufficiently distinct and do not lend support or credibility to one another. In fact, Appellant argues the women are not credible and asserts they only made the allegations after a former co-worker, making similar allegations, received a large settlement in a lawsuit against the department. Appellant further asserts there is no evidence he ever abused his position or intimidated anyone. Appellant argues he is an 18-year employee who has promoted up through the ranks and is respected by his co-workers, who elected him as a union leader. Appellant argues the department failed to prove, by a

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preponderance of the evidence, that he committed the allegations in the disciplinary letter and argues his termination should be reversed.

V. CONCLUSIONS OF LAW

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

5.2 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).

5.3 Respondent has met its burden of proving that Appellant engaged in misconduct toward co-workers Jackie Delgado, Linda Salazar and Cheryl Reis. Appellant was a long-term employee who promoted up the ranks from an entry level position to a Washington Management Service position as a Risk Manager for WSH. Therefore, Appellant had the knowledge and experience necessary to understand his responsibility to model appropriate and proper workplace behavior. The preponderance of the evidence, however, supports that contrary to his duty Appellant engaged in a pattern of misconduct which undermined the department's ability to ensure that its employees were protected from any form of harassment in the workplace.

5.4 WAC 356-56-500 authorizes appointing authorities to impose disciplinary sanctions on Washington Management Service employees "for cause." In this case, we conclude the disciplinary action imposed by the appointing authority, immediate suspension followed by dismissal, was

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justified and appropriate under the facts and circumstances. Therefore, the appeal of Barrette Green should be denied and the termination should be upheld.

VI. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED the appeal of Barrette Green is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

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