BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

STEFFANIE CHAU, Appellant, v. EMPLOYMENT SECURITY DEPARTMENT, Respondent.	Case No. DISM-02-0036 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, WALTER T. HUBBARD, Chair, and BUSSE NUTLEY, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on April 16, 2002 and April 17, 2002. GERALD L. MORGEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Steffanie Chau was present and was represented by Michael Hanbey, Attorney at Law. Mark Anderson, Assistant Attorney General, represented Respondent Employment Security Department.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, incompetence, insubordination, and gross misconduct. Respondent alleges that Appellant prepared accounting records that did not accurately reflect her cash draw transactions, attempted to

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conceal incorrect transactions by preparing misleading documents, and failed to comply with process instructions provided by her supervisors.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Plaisance v. Dep't of Social and Health Services, PAB No. D86-75 (Kent, Hrg. Exam.), aff'd by Board (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Harper v. WSU, PAB No. RULE-00-0040 (2002); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant was a permanent employee of Respondent Employment Security Department. 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 May 10, 2002.

2.2 At the time of her dismissal, Appellant was a Financial Analyst 2 in the Treasurer's Office of the Employment Security Department (ESD). As a Financial Analyst 2, Appellant was an experienced professional accountant. Incumbents in Financial Analyst 2 positions are expected to be well versed in accounting principles; exercise independent judgment with moderate to low supervision; inform supervisors of situations requiring immediate attention; and possess analytical, investigative, and research skills.

2.3 By letter dated April 12, 2002, Paul Trause, Deputy Commissioner, informed Appellant that she was suspended effective April 12, 2002 through April 29, 2002, inclusive, followed by her

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immediate dismissal at the end of her regularly scheduled shift on April 29, 2002. Mr. Trause charged Appellant with neglect of duty, incompetence, insubordination, and gross misconduct. Respondent alleged that Appellant prepared accounting records that did not accurately reflect her cash draw transactions, attempted to conceal incorrect transactions by preparing misleading documents, and failed to comply with process instructions provided by her supervisors.

2.4 Appellant has been the subject of prior formal disciplinary action. Appellant's salary was reduced for two months effective March 16, 2001 through May 15, 2001 for accessing confidential information. Appellant's performance evaluations from 1996 through 2001 refer to various problems with the accuracy of her work, attendance problems, conflict with co-workers, and inappropriate use of state resources.

2.5 The ESD obtains a majority of its funding for operations and payroll in the form of grants from the federal government. When the federal government provides grants, the ESD does not receive all the money at one time. Rather, cash draws are prepared in increments as the money is needed and spent by the ESD. The ESD, under federal law, must follow instructions as to when funds can be drawn. Failure to comply with that law can result in an audit finding against the department and the funds being frozen.

2.6 As a Financial Analyst 2, Appellant performed accounting duties that included processing cash draws from various grant accounts for payroll use. Appellant had a duty to accurately record those transactions and create a clear audit trail. The ESD has three different accounting systems: the federal system (PMS), the state system (AFRS), and the agency system (FARS). When Appellant did a cash draw, she was responsible for processing the draw in the federal system and recording that transaction in the state and agency systems so that all ledgers matched.

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2.7 Mr. Tim Hanson, a co-worker of Appellant, submitted requests to Appellant for cash draws from federal funds. A division of duties such as having one employee make the request and another employee do the actual cash draw is a common accounting practice for internal control. This kind of internal control prevents any one person from having control of funds and reduces the risk of mistakes or embezzlement. It is very important to maintain fiscal integrity, especially when handling millions of dollars in federal grant monies.

2.8 After receiving a cash draw request from Mr. Hanson, Appellant had a duty to determine whether the funds were available in the accounts listed on the request. Appellant was instructed by her supervisor, Fely Meixsel, not to process Mr. Hanson's requests if there were insufficient funds in the accounts. Mr. Hanson did not have access to the information in the computer accounting system to know whether funds were available in the various grant accounts. If there were insufficient funds available, Appellant had a duty to suspend the draw until she resolved the problem with her supervisor and Mr. Hanson. Ms. Meixsel directed Appellant numerous times, verbally and by e-mail, to notify her immediately whenever she encountered problems with cash draws.

2.9 From August 2000 through March 2001, Appellant made repeated errors on numerous accounting transactions. For example, on November 13, 2000, Mr. Hanson sent a memo to Appellant asking her to order cash in the total amount of $1,454,722.97. He specifically asked that it be transferred from two federal accounts as follows:

U.I.	Acct. 2000 F98 (20098)	$1,178,325.61
Wagner-Peyser	Acct. 2050 P99 (20599)	$ 276,397.36

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2.10 The PMS records for Appellant's transaction show that she withdrew $1,454,722.97 on November 14, 2000, however, according to the record of the sub-account activity, Appellant withdrew funds as follows:

Sub Accounts	Amounts
20599	$276,397.36
2101	27,078.13
21098	151,289.00
21099	207,777.00
5321002K	792,181.48

2.11 Appellant withdrew cash in the federal (PMS) system from four sub-accounts in Account 2100, rather than from Account 2000, sub-account 20098 as Mr. Hanson requested. Appellant erroneously recorded the entire transaction in both the agency (FARS) system and the state (AFRS) system exactly as the original request from Mr. Hanson, not as she had actually withdrawn the cash from the federal (PMS) system.

2.12 Also, in this example, Appellant apparently discussed the problem of cash availability in fund 2000 with Mr. Hanson, who at some point made a note (undated) to "order from 2100." However, she still recorded her transactions in the state (AFRS) system and in the agency (FARS) system in accordance with the original memo from Mr. Hanson, requesting the cash from fund 2000 F98.

2.13 Between August 2001 and March 2001, Appellant made repeated errors, apparently in an attempt to correct her mistakes, that included:

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- processing transactions in the incorrect accounts
- reporting cash draws from funds that had not occurred
- not reporting cash draws from funds that had occurred
- the actual transactions had no relationship to what was reported
- transactions were done in the federal system that were not accurately reported to the state and agency systems

2.14 According to basic accounting principles, if it is known that an original accounting entry was incorrect, then a "correcting entry" must be prepared. First a "reversing entry" must be made to bring the account back to its original dollar amount. Next, a new entry that correctly reflects the accounting activities should be prepared. In addition, there should be explanations attached or notations on the accounting documents for any entries that are made to correct previous errors. Appellant made no such explanations or notations.

2.15 Appellant failed to seek the advice of her supervisor as instructed, repeatedly violated basic accounting principles, and did not follow proper procedures to correct her errors. Further, Appellant provided her supervisor with misleading documents. She obtained approval from her supervisor for account coding which made it appear that she complied with Mr. Hanson's requests. However, she failed to provide a computer screen printout of the transactions she actually completed within the federal (PMS) system.

2.16 In April 2001, Treasury Manager, Lee Rolle, discovered many irregularities relating to Appellant's cash draws that resulted in discrepancies among various account ledgers. As Mr. Rolle researched these irregularities, he uncovered a frequent "pattern" consisting of numerous errors made by Appellant over a number of months. Mr. Rolle determined that Appellant drew funds from accounts other than the ones requested by Mr. Rolle on the original cash draw requests, and then tried to make the transactions look as if she had done them as requested. Mr. Rolle concluded that

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Appellant's activities were not simply mistakes because they appeared to be done intentionally to conceal her errors. Mr. Rolle compiled a report to document all Appellant's accounting errors.

2.17 Mr. Rolle reported Appellant's errors to Mary Kristofferson, Deputy Assistant Commissioner. Ms. Kristofferson and Mr. Rolle met with Appellant to ask for explanations about these accounting errors. Appellant admitted to making some mistakes, but insisted that she had done what Mr. Hanson had instructed her to do. Ms. Kristofferson and Mr. Rolle did not find Appellant's explanation to be credible because Mr. Hanson was her peer rather than her supervisor. Further, Mr. Hanson did not have authorization to instruct Appellant on how to do cash draws. In addition, the accounting documentation demonstrated that she had not processed the cash draws as requested by Mr. Hanson.

2.18 Ms. Kristofferson and Mr. Rolle asked Appellant if she had discussed these accounting transactions with her supervisor, Ms. Meixsel, and Appellant replied, "yes."

2.19 Ms. Kristofferson and Mr. Rolle later met with Appellant's supervisor to confirm Appellant's claim that she had discussed the erroneous cash draws with Ms. Meixsel. Ms. Meixsel reported that Appellant had never discussed these transactions with her. Ms. Meixsel also stated that she had at no time advised or given permission to Appellant to process the draws in such an incorrect manner because doing so violated basic accounting principles.

2.20 Appellant later provided an explanation by e-mail. Ms. Kristofferson and Mr. Rolle found that Appellant's explanations completely failed to explain why she had processed the cash draws differently from what she reported in the documentation to her supervisor.

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2.21 Due to the frequency and severity of Appellant's incorrect cash draws and Appellant's insufficient explanations, Ms. Kristofferson reported the erroneous transactions to Paul Trause, Deputy Commissioner.

2.22 Appellant's errors totaled in excess of $12 million, creating inaccurate and unreliable financial records for the agency. As a result of Appellant's actions, the ESD violated the federal Cash Management Improvement Act that governs the agency's cash handling activities. Some of the agency accounts were over-drawn and other accounts were under-drawn. In addition, the federal government temporarily froze the ESD's cash draw privileges for a period of one or two days due to cash draws that Appellant processed prematurely. Also, the State Auditor issued an audit finding against the ESD. The audit finding confirmed that improper accounting had occurred and a cover-up attempt had been made to conceal some of the accounting entries. It took Mr. Rolle approximately 100 hours and five months to reverse and correct Appellant's inappropriate transactions. Until the agency's records could be corrected, employees could not depend on the agency's accounting reports to be accurate in making financial decisions.

2.23 To determine whether misconduct occurred, Mr. Trause reviewed Mr. Rolle's report detailing Appellant's numerous errors and attempts to conceal those errors.

2.24 Mr. Trause considered Appellant's responses to the allegations and decided that Appellant did not provide any mitigating or convincing reasons to explain her behavior. Mr. Trause did not find Appellant credible in claiming that she had done what Mr. Hanson instructed her to do because Mr. Hanson was not her supervisor and had no authority to direct Appellant to make incorrect draws or instruct her to create records that inaccurately reflected the actual transactions. Further, Mr. Trause did not find Appellant credible in claiming that she had conferred with her supervisor

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Ms. Meixsel about the transactions because Appellant attempted to conceal the transactions. Rather, Mr. Trause found Ms. Meixsel's response to be credible.

2.25 Mr. Trause determined that Appellant's behavior was unacceptable, and she clearly engaged in misconduct. Based on Appellant's responses to the allegations, he was concerned that she was not willing to take responsibility for her actions. Mr. Trause concluded that Appellant neglected her duty, was incompetent, insubordinate, and had engaged in gross misconduct.

2.26 In determining the level of discipline, Mr. Trause reviewed Appellant's personnel file and her performance evaluations. Mr. Trause concluded that there was no place in the accounting system for an employee who engaged in this level of basic accounting violations that resulted in such severe consequences to the agency. Mr. Trause determined that the agency could not employ an accountant who lacked an understanding of basic accounting practices and refused to follow instructions. Mr. Trause concluded that termination was the appropriate sanction based on Appellant's history and the serious nature of her misconduct.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant had a duty to accurately record her accounting transactions. Respondent asserts that Appellant created records that did not reflect her actual transactions in an attempt to conceal her errors. Respondent contends that Appellant's deliberate and deceitful behavior continued over a period of eight months. Respondent argues that Appellant's claim that she did what Mr. Hanson told her to do is not credible. Respondent also argues that Appellant's claim that she conferred with her supervisor is not credible. Respondent asserts that Appellant's behavior resulted in severe consequences for the agency. Respondent argues that

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Appellant's claim that her supervisor signed off and approved all cash draws is not credible because her supervisor's signature only affirmed the coding that Appellant wrote down. Respondent asserts that the supervisor, by approving the written coding, did not give Appellant authorization to process a cash draw differently than what was written. Respondent asserts that termination was the appropriate sanction in this case.

3.2 Appellant argues that she was made a scapegoat for systems problems within the ESD and her supervisor constantly scrutinized her work. Appellant asserts that she followed Mr. Hanson's instructions and sought the advice of her supervisor. Appellant admits that she made some errors, but she was the only employee disciplined for making errors. Appellant contends that it was not her job to reconcile accounts. Appellant argues that all cash draw documents were provided to her supervisor for review and authorization. Appellant contends that her supervisor was not being truthful in claiming otherwise. Appellant asserts that Mr. Rolle did not meet with her again to gather additional information after determining that her explanation for the transactions was not adequate. Appellant contends that termination was not appropriate and asks the Board to reinstate her to her former position at the ESD.

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).

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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 that Appellant neglected her duty when she failed to comply with the proper procedures, federal laws, and regulations for making cash draws from federal funds and when she prepared inappropriate cash draws and incorrectly recorded her transactions. Further, Appellant neglected her duty to submit accurate documents for her supervisor's approval. Appellant attempted to conceal her incorrect transactions by providing documents to her supervisor that did not reveal her actual accounting activities. Rather, Appellant reported that cash was drawn from other funding sources and in different amounts than the actual transactions she made.

4.5 Incompetence presumes a lack of ability, capacity, means, or qualification to perform a given duty. Plaisance v. Dep't of Social and Health Services, PAB No. D86-75 (Kent, Hrg. Exam.), aff'd by Board (1987).

4.6 Respondent has met its burden of proving that Appellant's behavior constituted incompetence because she violated fundamental principles of basic accounting by failing to keep her accounts in balance, to properly document accounting entries, and to inform her supervisor of the problems with her accounts. Therefore, Appellant failed to perform her duties accurately and lacked the competence to perform as a Financial Analyst 2.

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4.7 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).

4.8 Respondent has met its burden of proving that Appellant was insubordinate when she willfully disregarded her supervisors repeated instructions to notify her of problems with cash draws. If Appellant was unable to process the cash draws as requested due to insufficient funds, she should have reported the problem to her supervisor and sought advice for a resolution. Further, Appellant failed to inform her supervisor of how she had chosen to solve the problems, and then attempted to conceal her errors.

4.9 Gross misconduct is flagrant misbehavior that 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).

4.10 Respondent has met its burden of proving that Appellant's behavior constituted gross misconduct when her actions caused the agency's accounting reports to be inaccurate, which resulted in an audit finding issued by the State Auditor. In addition, the federal government temporarily suspended the agency's ability to draw cash as a result of Appellant's errors.

4.11 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

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program. An action does not necessarily fail if one cause is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

4.12 In light of Appellant's egregious behavior, Respondent has established that the disciplinary sanction of dismissal was not too severe and was appropriate under the circumstances presented here. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Steffanie Chau 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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