BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

RORY FAIDLEY, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. DISM-04-0083 ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

1.1 **Consideration of Motion.** This appeal came before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; BUSSE NUTLEY, Vice Chair; and GERALD L. MORGEN, Member, on March 7, 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 is not represented, and did not respond to the Motion.

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including Respondent's Motion to Dismiss and attached exhibits, filed February 11, 2005.

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II. BACKGROUND AND FACTS

2.1 Appellant Rory Faidley was employed as a Locksmith by the University of Washington from May 16, 1983, until his termination effective July 30, 2004. His duties included the repair, installation and construction of locks, locking devices and keys. The Locksmith position at the University requires an extraordinary level of integrity, honesty and trustworthiness because of the access the position allows to locks, keys and buildings.

2.2 At some time during the early morning of April 14, 2004, Appellant entered Room 182 in the Intercollegiate Athletics Building without authorization. Two storage rooms are accessible from Room 182. Room 182 and each of the two storage rooms were locked prior to Appellant's entry. At approximately 6:30 a.m. Gary McGuire, an employee of the Intercollegiate Athletics Department, entered Room 182 with his key and found both storage rooms open, with lights on in each storage room. Mr. McGuire observed Maintenance and Construction Coordinator Ricky Ritter, a coworker of Appellant's, in one of the storage rooms. Mr. McGuire entered the second storage room and found Appellant rummaging through boxes of track shoes. Appellant left without explaining to Mr. McGuire why he was there.

2.2 When Mr. Haglund, Mr. McGuire's co-worker, arrived at work, Mr. McGuire asked him to see if anything was out of place in the second storage room. Mr. Haglund examined the first storage room and found a bag out of place on the floor. In or next to the bag were various sporting goods, which were not in their normal storage areas.

2.3 When questioned by police, Appellant and Mr. Ritter gave different explanations for why they were in the Intercollegiate Athletics Building, naming different door locks they were there to

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repair. However, there was no work order for any lock needing repair in the Intercollegiate Athletics Building. There is no evidence that either Appellant or Mr. Ritter had any work-related reason for entering locked Room 182 or either locked storage room.

2.4 Following an investigation, Appellant was terminated effective July 30, 2004, by Associate Vice President Jeraldine McCray for neglect of duty, misuse of University property to gain entry to secured areas without authorization, and attempted theft.

2.5 Appellant filed a timely appeal of his termination with the Personnel Appeals Board on August 2, 2004.

2.6 As a result of the activities of April 14, 2004, Appellant was criminally charged with Burglary in King County. In a plea agreement entered on November 10, 2004, Appellant pled guilty to First Degree Criminal Trespass in *State v. Rory Faidley*.

2.7 Respondent filed its Motion for Summary Judgment on February 11, 2005. Respondent argues that Appellant neglected his duty to be honest and trustworthy, that his actions were consistent with a theft that was interrupted by the unexpected arrival of Mr. McGuire, and that his guilty plea to Criminal Trespass committed during working hours and against University property is conclusive evidence justifying his termination from a position which demands an extraordinary level of integrity and trustworthiness. Respondent argues that his dismissal from employment was proper, and that summary judgment dismissing the appeal is appropriate.

2.8 Appellant did not provide a response to Respondent's motion.

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III. DISCUSSION

3.1 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).

3.2 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).

3.4 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).

3.5 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances including the seriousness and circumstances of the offense. 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).

3.6 Appellant has failed to set forth any specific facts to 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 University. When Appellant entered a locked area where he had no legitimate work reason to be present, Appellant violated his obligation to perform his duties as a Locksmith with honesty and integrity. Appellant's acts constitute neglect of duty. Further, we find the use of his

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keys to access the storage room constitutes misuse of University property. However, Respondent provided insufficient evidence to prove the charge of attempted theft.

3.7 Moreover, the facts are undisputed that Appellant committed Criminal Trespass in the First Degree against University, which provides a further basis for the appropriateness of Appellant's termination.

3.8 Based on the uncontroverted facts, Appellant's actions warrant dismissal. Therefore, Respondent's motion should be granted, and the appeal of Rory Faidley should be denied.

Having reviewed the file and record in this matter and being fully advised in the premises, the Board enters the following:

IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion for Summary Judgment is granted, and the appeal of Rory Faidley is denied.

DATED this _____ day of March, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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