BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GUYLIN JOHNSTON, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. DISM-04-0082 ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

1.1 **Consideration of Motion.** This matter came before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; BUSSE NUTLEY, Vice Chair; and GERALD L. MORGEN, Member, for consideration of Respondent's Motion for Summary Judgment. This matter was considered on written documents without oral argument.

1.2 **Representation.** Appellant Guylin Johnston was represented by Christopher J. Coker, of Parr, Younglove, Lyman & Coker, P.L.L.C. Donna Stambaugh, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including:

- Respondent's Motion for Summary Judgment, with attachments, filed November 2, 2005.
- Appellant's Response to Respondent's Motion for Summary Judgment, with attachments, filed December 9, 2005.
- Respondent's Reply Brief, filed December 13, 2005.

II. FACTS

2.1 Appellant began his employment as a Mental Health Licensed Practical Nurse 2 with the Department of Social and Health Services (DSHS), Eastern State Hospital (ESH), in January 1992. Upon his employment, Appellant was made aware of DSHS and ESH policies and procedures.

2.2 DSHS has adopted Administrative Policy 6.04, which requires employees to perform their duties in a manner that promotes "public trust, faith, and confidence." DSHS has also adopted Administrative Policy 8.02, which prohibits client abuse and defines sexual abuse as "[a]ny sexual contact between staff . . . and client, whether or not it is consensual . . . ." ESH has adopted Policy 1.21 (Staff-Patient Relationships), which defines a therapeutic relationship as "a planned, purposeful interaction between the employee and the patient." Policy 1.21 further states, "establishing other than a therapeutic relationship with a patient of the hospital violates ethical standards [and] . . . violates the public trust and confidence that is delegated to ESH employees . . ." In addition, ESH Policy 2.29 (Patient Rights) states that ESH employees will treat patients with dignity and respect.

2.3 On or about June 14, 2004, Appellant was arrested and charged with Second Degree Rape for engaging in sexual intercourse with patient A. M., a resident of ESH. Appellant had patient A. M. perform oral sex on him while she was under his direct care.

2.4 By letter dated June 23, 2004, Harold Wilson, Executive Officer of Eastern State Hospital, notified Appellant of his immediate suspension, effective June 24, 2004, followed by his

termination, effective July 9, 2004, from his position as a Mental Health Practical Nurse 2 at ESH. Mr. Wilson charged Appellant with neglect of duty, gross misconduct, and willful violation of published employing agency personnel rules for compelling patient A. M. into performing oral sex on him while she was under his direct care on June 10, 2004, in the laundry room of ward 1N1 of ESH. In addition, Appellant's arrest caused him to be on an unauthorized absence.

2.5 Mr. Wilson was Appellant's appointing authority at the time the disciplinary action was imposed. In determining the level of discipline, Mr. Wilson reviewed Appellant's personnel file, which included a substantial history of absenteeism but no previous disciplinary actions. However, Mr. Wilson also considered the egregious nature of Appellant's misconduct and the serious impact his actions had on the hospital and its patients. Consequently, Mr. Wilson determined that Appellant's immediate suspension followed by dismissal was the appropriate sanction. Appellant was offered a pre-termination review which was to be conducted on June 22, 2004. On June 21, 2004, Appellant submitted a statement via fax; however, he did not provide any information that convinced Mr. Wilson to take any action other than termination.

2.6 On July 22, 2004, Appellant appealed his termination to the Personnel Appeals Board.

2.7 Subsequently, Appellant stood trial for the charge of Second Degree Rape, stemming from his interaction with patient A. M. On October 28, 2004, a jury found Appellant guilty beyond a reasonable doubt of the crime of Second Degree Rape. Appellant is currently incarcerated in the Spokane County Jail.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues a jury found Appellant guilty beyond a reasonable doubt and convicted him of Second Degree Rape for the same conduct charged in the disciplinary letter. Therefore, Respondent argues the department has met its burden based on a preponderance standard. Respondent asserts summary judgment is appropriate because there is no question Appellant engaged in the misconduct described in the disciplinary letter and that termination is the appropriate sanction.

3.2 Appellant argues there are significant material issues of fact which are disputed between the parties regarding the alleged incident. Appellant asserts he has maintained his innocence throughout the criminal process and is seeking representation for an appeal of his conviction. Appellant further asserts that despite his conviction of Second Degree Rape, the Board still has the role of determining whether or not the facts giving rise to the disciplinary action actually occurred and whether those actions support the level of discipline imposed. Therefore, Appellant argues he has a right to a full hearing on the merits.

IV. DISCUSSION

4.1 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. Hall v. University of Washington, PAB No. 3863-V2 (1995).

4.2 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 on upon which the outcome of the litigation depends. Hudeman v. Foley, 73 Wn.2d 880, 886, 441 P.2d 532 (1968).

4.3 Appellant has failed to establish that any genuine issues of material fact exists here. Rather, the undisputed facts establish that a jury found Appellant guilty beyond a reasonable doubt and convicted him for the crime of Second Degree Rape, resulting from his actions toward a patient under his direct care at ESH. Considering his long tenure with the department, Appellant should have known that engaging in any sexual interaction with a resident of ESH was expressly prohibited, and that his actions with A.M. violated the hospital's expectations that he treat patients with dignity and respect and in a therapeutic manner. Clearly, he should have understood that his interactions with the client were cause for termination. The undisputed facts of Appellant's criminal conviction prove Appellant neglected his duty and willfully violated agency policy, and the egregiousness of Appellant's misconduct constituted gross misconduct and warrants termination. Therefore, Respondent's motion should be granted, and the appeal should be denied.

V. ORDER

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

DATED this _____ day of _____, 2006.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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