

BEFORE THE PERSONNEL RESOURCES BOARD  
STATE OF WASHINGTON

PETER TRAN,

Appellant,

vs.

DEPARTMENT OF AGRICULTURE,

Respondent.

CASE NO. R-SUSP-07-002

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** This matter came before the Washington Personnel Resources Board, LAURA ANDERSON, Chair; MARSHA TADANO LONG, Vice Chair; and JOSEPH PINZONE, Member. The hearing was held on March 20, 2008, in the Personnel Resources Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Peter Tran represented himself. Stewart Johnston, Senior Assistant Attorney General, represented Respondent Department of Agriculture.

1.3 **Nature of Appeal.** This is an appeal from a fifteen-day suspension for failing to complete required testing for Avian Influenza and for failing to test or initiate action following a high bird death loss at a private game farm.

**II. PRELIMINARY MATTERS**

2.1 Appellant chose not to appear at the hearing. Instead, he submitted a written pleading with attached exhibits which he asked the Board to accept in lieu of his appearance at the hearing.

2.2 At the outset of the hearing, the Board heard Respondent's arguments objecting to consideration of Appellant's written pleading. In addition, the Board heard Respondent's arguments objecting to two of the exhibits Appellant wished to have admitted into the record.

2.3 After considering Respondent's arguments, the Board admitted Appellant's written pleading and stated the document would be given its due weight. Following Respondent's case in chief, the Board admitted Appellant's exhibits with the exception of exhibits E-1 and E-10. The Board determined that E-1 and E-10 were not relevant to matter under appeal. Therefore, E-1 and E-10 were not admitted.

### III. FINDINGS OF FACT

3.1 Appellant Peter Tran was a permanent employee for Respondent Department of Agriculture (Agriculture). Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder at Title 357 WAC. Appellant filed a timely appeal with the Personnel Resources Board on September 12, 2007.

3.2 By letter dated August 8, 2007, Leonard Eldridge, State Veterinarian for the Animal Services Division of Agriculture, notified Appellant of his fifteen-day suspension. Dr. Eldridge alleged that Appellant failed to properly investigate a high bird death at Clyde and Wendy Greateorex (C&W) Game Birds farm and failed to conduct Avian Influenza (AI) testing for the AI program. Appellant's suspension was effective August 16, 2007 through August 30, 2007.

3.3 Appellant began employment with Agriculture in April 1989. At all times relevant to this appeal, Appellant was an Epidemiologist 2 and was certified as a Foreign Animal Disease Diagnostician (FADD).

3.4 For purposes of work assignments, Agriculture divided Washington State into five WSDA Field Veterinarian Regions. An Epidemiologist was assigned to each region. Appellant was assigned to Region 4. In part, Appellant was responsible for the control, detection and prevention of diseases at game farms in his assigned region.

3.5 As indicated in Appellant's Position Description form and Performance and Development Plan, Appellant's duties include collecting field samples to support programs and cooperative agreements and using competent disease investigation skills to obtain samples where

1 indicated. By his signature on each of these forms, Appellant indicated that he was aware of the  
2 duties, responsibilities and expectations of his position.

3 **Failure to conduct Avian Influenza (AI) testing:**

4 3.6 At the time of the actions giving rise to this appeal, Agriculture was participating in a  
5 cooperative agreement with the United States Department of Agriculture. The agreement was for  
6 Avian Influenza surveillance work which involved testing birds for AI. As part of the agreement,  
7 Epidemiologists were to contact volunteer participants in their assigned regions and take samples  
8 of eggs or swab live birds for testing.  
9

10 3.7 By email dated January 8, 2007, the Epidemiologists were informed that the AI testing  
11 was beginning. By email dated February 27, 2007, the Epidemiologists received an initial list of  
12 volunteer participants for the testing program. Appellant received subsequent emails in March  
13 and April regarding the flocks to be tested as part of the program. By email dated April 27, 2007,  
14 Appellant indicated that he would finish testing within a few weeks.  
15

16 3.8 As of May 9, 2007, Appellant had sampled 1 out of the 30 flocks assigned to him. By  
17 email dated May 16, 2007, the Epidemiologists were notified that the testing must be finished by  
18 June 8, 2007. By email dated May 17, 2007, Appellant told his supervisor that while his  
19 timesheets indicated that he had been conducting AI surveillance, he was actually conducting  
20 visual observation. In the email, Appellant said that he would finish collecting AI samples by the  
21 end of the quarter. On June 4, 2007, Appellant again indicated that he would do a round of  
22 sampling the following week.

23 3.9 As a result of Appellant's failure to timely conduct the AI testing, on June 5, 2007,  
24 Agriculture distributed Appellant's AI surveillance work to other employees to assure that the  
25 testing in Appellant's region was completed on time.  
26  
27  
28  
29

1 3.10 In his written pleading and during the pre-disciplinary process, Appellant admitted his  
2 tardiness in conducting the AI testing. In his written pleading, Appellant stated that he took full  
3 responsibility and would not contest the disciplinary sanction on the basis of this charge.

4 **Failure to properly investigate a high bird death at C&W Farm:**

5 3.11 Appellant's activity reports indicate that he visited C&W farm numerous times between  
6 April 2006 and May 2007. His activity reports indicate that on November 14, 2006, he reported a  
7 high death loss of about 200 birds at C&W due to a wind storm. The report does not indicate  
8 when the storm occurred or that he tested any birds. On November 17, 2006, Appellant indicated  
9 that he was conducting ongoing surveillance at C&W due to high death loss. The report does not  
10 indicate that he tested any birds. Between November 22, 2006 and December 7, 2006, Appellant  
11 indicated that C&W had an on-going problem of high death loss. Again, the report does not  
12 indicate that he tested any birds.

13  
14 3.12 In his written pleading, Appellant alleges that the high death loss was due to a wind  
15 storm that occurred in 2004, not in 2006. Appellant asserts that neither the 2004 event nor the  
16 subsequent reports of high or multiple death losses warranted testing, because they were due to  
17 environmental conditions. However, Dr. Eldridge credibly testified that considering the history  
18 of reports of high and multiple death losses at C&W farm, Appellant should have tested birds. In  
19 November 2006, Appellant reported high death losses at C&W on three separate dates. Dr.  
20 Eldridge credibly testified that Appellant should have initiated testing in November 2006.

21  
22 3.13 Although Appellant's activity reports indicate business reasons for his visits to C&W  
23 farm, Dr. Eldridge credibly testified that during the pre-disciplinary meeting, Appellant told him  
24 the visits were "social" in nature.

25 3.14 Furthermore, during the investigation into this charge, Appellant denied writing a  
26 prescription to C&W farm. However, during the pre-disciplinary meeting with Dr. Eldridge,  
27 Appellant provided a prescription he wrote on November 27, 2006 to C&W. The prescription  
28 was for 800mg Tylan per ton of feed. Credible testimony establishes that administering this drug  
29

1 to sick birds masks various illnesses and as a result, sick birds could appear to be healthy. Dr.  
2 Eldridge credibly testified that the bird diseases of Coryza and Mycoplasma Gallisepticum (MG)  
3 have similar symptoms and the only way to positively diagnose the illness is through testing.  
4 There is no evidence in the record to show that Appellant tested any bird at C&W prior to  
5 prescribing the Tylan.

6  
7 3.15 Subsequently, Cook Canyon Farm bought seemingly healthy birds from C&W. In  
8 Appellant's activity report entry for May 16, 2007, Appellant indicated that the Allen Widman  
9 (Cook Canyon Farm) reported sick pheasants bought from C&W. On May 21, 2007, Appellant  
10 indicated in his activity report that he discussed potential options with C&W for the chronic  
11 condition suspected to be either Coryza or MG. Appellant further indicated that samples would  
12 be collected the following day.

13 3.16 Approximately May 18 or 19, 2007, the Epidemiologist assigned to the region in which  
14 Cook Canyon Farm is located learned of the sick birds at the farm. The Epidemiologist  
15 immediately had the birds tested and the test results revealed that the birds were infected with  
16 MG. As a result, Cook Canyon Farm was required to destroy more than 1,000 birds. Agriculture  
17 did a "trace out" of the birds purchased by Cook Canyon Farm and determined that the birds  
18 were purchased from C&W.

19  
20 3.17 Prior to determining the level of discipline to impose, Dr. Eldridge considered the  
21 information Appellant provided during the investigation and pre-disciplinary process and  
22 reviewed Appellant's personnel file. Dr. Eldridge found that Appellant's personnel file  
23 documented several concerns about Appellant's performance. In addition, the file revealed that  
24 on July 12, 2005, Appellant was orally reprimanded for failing to conduct a thorough and timely  
25 investigation on a reactor horse which resulted in over 70 horses in 9 states and throughout the  
26 state of Washington being exposed to Equine Infectious Anemia. Dr. Eldridge credibly testified  
27 that the July 2005 reprimand was for behavior similar to Appellant's failure to conduct AI  
28 testing and failure to conduct a thorough and timely investigation into the bird death losses at  
29 C&W farm.

1 3.18 After considering Appellant's history, Dr. Eldridge felt that formal discipline was  
2 necessary to impart to Appellant the severity of his admitted procrastination in regard to the AI  
3 testing, as well as his lack of action in testing birds at C&W farm. Dr. Eldridge relies on the  
4 Epidemiologists in the field to be his "eyes and ears" in all matters occurring in the regions.  
5 Therefore, Dr. Eldridge felt formal disciplinary action would also impart to Appellant the  
6 importance of reporting concerns to his supervisors in a timely manner, the importance of  
7 conducting timely, complete and thorough investigations, and the importance of being honest  
8 and trustworthy in reporting his actions to his supervisors. After weighing the available levels of  
9 discipline, Dr. Eldridge concluded that a fifteen-day suspension was appropriate because it  
10 would demonstrate to Appellant the seriousness of his inactions while retaining an otherwise  
11 good person and valuable employee.  
12

13 3.19 By letter dated August 8, 2007, Dr. Eldridge notified Appellant of his suspension  
14 effective August 16, 2007 through August 30, 2007.  
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#### 16 **IV. ARGUMENTS OF THE PARTIES**

17 4.1 Respondent asserts that it is undisputed that Appellant was aware of the AI testing  
18 expectations, that he was aware of his responsibility to complete the AI testing, and that he sent  
19 several emails indicating he was proceeding with testing. Yet, Appellant admittedly failed to  
20 meet expectations and to complete the assignment. Respondent asserts that Appellant was aware  
21 of his responsibility to timely diagnose diseases by testing or by initiating action to have birds  
22 tested. Yet, he failed to test the sick birds at C&W farm which resulted in the birds being sold to  
23 another farm where that farm's flock was infected and had to be destroyed. Respondent argues  
24 that the fundamental mission of Agriculture is to contain the spread of diseases. In order to fulfill  
25 this mission, Respondent contends that is fundamental for Epidemiologists to test sick birds.  
26 Respondent asserts that in spite of having visited C&W farm on numerous occasions, Appellant  
27 did not test the sick birds, thereby failing to meet his expectations and fulfill his responsibility to  
28 prevent the spread of disease. Respondent asserts that Appellant demonstrated a continued  
29 pattern of procrastination; that he said he was completing his work when he was not; that based

1 on the events he reported in his activity reports, he should have reported concerns to his  
2 supervisors and tested birds at C&W farm; that as an Epidemiologist, he did not have authority  
3 to prescribe medication to C&W farm; and that he was not forthright or honest in reporting his  
4 actions or lack of actions to his supervisors. Respondent contends that as highly trained  
5 veterinarian, Appellant is aware of his responsibility to apply a high standard of professional  
6 judgment to his work in the field. Respondent argues that Appellant failed to meet the standard  
7 of professional judgment expected of his position. Respondent asserts that in consideration of  
8 Appellant's past history of similar misconduct, a fifteen day suspension was the appropriate  
9 sanction.

10 4.2 Appellant admits he was tardy in conducting the AI testing. However, he asserts that he  
11 could have finished the testing in the time remaining if he had been allowed to do so. Appellant  
12 denies the allegation that he failed to properly investigate a high bird death loss at C&W. He  
13 further denies that he was dishonest. Appellant contends that he never saw or received a report of  
14 any unusual or disease-related high death loss at C&W. Appellant suggests that because his daily  
15 reports did not contain detailed comments, some wrong assumptions may have been made or  
16 misunderstandings happened concerning the bird deaths at C&W. Appellant argues that there  
17 was no reason to conduct testing of the birds at C&W because some loss is normal due to  
18 adverse environmental conditions. Appellant denies saying that the birds at C&W probably had  
19 Corysa. Appellant admits that he prescribed antibiotics for C&W but asserts that this was done  
20 on his own time, as a licensed practitioner, to reduce the stress effects on young birds, not as  
21 treatment.  
22

## 23 **V. CONCLUSIONS OF LAW**

24 5.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.  
25

26 5.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
27 the charges upon which the action was initiated by proving by a preponderance of the credible  
28 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
29 sanction was appropriate under the facts and circumstances. WAC 357-52-110.

1 5.3 Respondent has met its burden of proof. On the basis of Appellant's admitted failure to  
2 conduct the AI testing, the disciplinary sanction is warranted. Furthermore, the preponderance of the  
3 credible evidence establishes that Appellant failed to properly investigate the high bird death at  
4 C&W farm. Appellant was aware of his responsibility to timely collect field samples for testing  
5 and to use competent disease investigation skills. Appellant failed to fulfill these responsibilities  
6 when he failed to complete the AI testing and based on his own activity report entries, when he  
7 failed to investigate and collect samples for testing at C&W following the ongoing, multiple bird  
8 deaths.

10 5.4 As a highly trained, professional Epidemiologist for Washington State, Appellant has a  
11 high degree of responsibility to protect farms, wildlife and members of the public from the  
12 spread of infectious diseases. Appellant's lack of action and failure to fulfill the responsibilities  
13 of his position violated the trust placed in him by Agriculture and the citizens of Washington  
14 State. Under the proven facts and circumstances of this case, a fifteen-day suspension was a minimal  
15 sanction and the appeal should be denied.

17 **VI. ORDER**

18 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Peter Tran is denied.

19 DATED this \_\_\_\_ day of \_\_\_\_\_, 2008.

21 WASHINGTON PERSONNEL RESOURCES BOARD

23 \_\_\_\_\_  
LAURA ANDERSON, Chair

25 \_\_\_\_\_  
MARSHA TADANO LONG, Vice Chair

27 \_\_\_\_\_  
JOSEPH PINZONE, Member