

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

MICHELE DEMOSS,)
)
 Appellant,) Case No. R-DISM-08-006
)
 v.) ORDER OF DISMISSAL
)
 WASHINGTON STATE UNIVERSITY,)
)
 Respondent.)

I. INTRODUCTION

1.1 Consideration of Motion. This matter came before the Personnel Resources Board, JOSEPH PINZONE, Vice Chair; LAURA ANDERSON, Member; and DJ MARK, Member, for dismissal of the appeal.

1.2 Representation. Appellant Michele DeMoss represented herself. Donna J. Stambaugh, Assistant Attorney General, represented Respondent Washington State University (WSU).

1.3 Documents Considered. The Board considered the files and documents in this matter including the Board's order compelling Appellant to respond to Respondent's discovery requests.

II. FACTS

2.1 Appellant was dismissed from her position as a Program Assistant at WSU. On April 2, 2008, she filed an appeal of her dismissal.

2.2 On July 30, 2008, Respondent mailed to Appellant Respondent's First Set of Interrogatories Propounded to Appellant and Requests for Production of Documents. Respondent's counsel mailed the request both certified and regular mail. The certified copy was returned to Respondent's counsel unclaimed. The regular mail copy was not returned.

1 2.3 On September 12, 2008, Appellant filed a request to continue the hearing date so that she
2 could engage an attorney to represent her in this matter. On October 1, 2008, the Board issued their
3 Order Granting Appellant's Request for Continuance. In the order, the Board established February 9,
4 2009 as the new date for completion of discovery and set the hearing for March 11 and 12, 2009.

5 2.4 Respondent's counsel communicated several times with Appellant by telephone and by mail
6 in an attempt to confer with her regarding her responses to Respondent's discovery request. As of
7 February 9, 2009, Appellant had not answered Respondent's discover request.

8 2.5 Respondent filed a Motion to Dismiss on February 9, 2009. Appellant did not file a response
9 to the motion.

10 2.6 The Board considered Respondent's motion on March 9, 2009. On March 17, 2009, the
11 Board issued an order denying the motion and compelling Appellant to provide responses to
12 Respondent's discovery requests by no later than 5 p.m. on Friday, March 27, 2009. The Board's
13 order stated that if Appellant failed to provide her responses, the appeal would be dismissed.

14 2.7 Appellant failed to comply with the Board's order.
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16 III. DISCUSSION

17 3.1 The Board may decide an appeal by motion if the documents on file, depositions and
18 affidavits show there is no genuine issue as to any material fact and the appeal should be dismissed as
19 a matter of law. WAC 357-52-140. All facts and reasonable inferences therefrom are to be
20 determined in favor of the nonmoving party. *See, Hall v. University of Washington*, PAB No. 3863-
21 V2 (1995).

22 3.2 The issue here is whether Appellant's appeal should be dismissed based on her failure to
23 comply with the Board's order to respond to Respondent's discovery requests.
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1 3.3 WAC 357-52-255 provides for “discovery procedures in a manner consistent with the civil
2 rules for superior courts of the state of Washington and as provided in any prehearing statement of
3 results or other order of the board.”

4 3.4 In this case, Respondent properly served Appellant with Interrogatories and Requests for
5 Production of Documents. In addition, the Board granted Appellant’s request for continuance and
6 extended the discovery deadlines so that she would have ample time to participate in the process.
7 Furthermore, on March 17, 2009, the Board ordered Appellant to provide response to Respondent’s
8 discovery request. Appellant has had more than a reasonable opportunity to provide Respondent
9 with her answers to the discovery request but has failed to do so.

10 3.5 Appellant has had ample opportunity to provide a response to Respondent’s discovery
11 request, yet she failed to do so. Therefore, we find there are no disputed facts to be resolved or
12 inferences that need to be drawn to decide this issue. Even when viewing all facts in the light most
13 favorable to Appellant there is no question that she failed to comply with her duty to cooperate with
14 the discovery process.

15 3.6 Therefore, the appeal should be dismissed.

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17 **IV. ORDER**

18 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Michele DeMoss is dismissed.

19 DATED this ____ day of _____, 2009.

20
21 WASHINGTON PERSONNEL RESOURCES BOARD

22 _____
JOSEPH PINZONE, Vice Chair

23 _____
LAURA ANDERSON, Member

24 _____
DJ MARK, Member