

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

IM CONG DO,

Appellant,

vs.

UNIVERSITY OF WASHINGTON,

Respondent.

CASE NO. R-DISM-06-001

ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING APPEAL

I. INTRODUCTION

1.1 Consideration of Motion. This matter came before the Personnel Resources Board, LAURA ANDERSON, Chair, and LARRY GOODMAN, Member, on August 14, 2006, for consideration of written argument on Respondent's Motion for Summary Judgment.

1.2 Representation. Jeffery W. Davis, Assistant Attorney General, represented Respondent University of Washington. Appellant was 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 for Summary Judgment and attached exhibits, filed June 29, 2006. Appellant did not file a response to this motion.

II. BACKGROUND

2.1 Appellant Im Cong Do was employed as an Animal Technician in the Department of Comparative Medicine at the University of Washington. His primary duty was to care for the daily needs of mice used in medical research. These duties included performing health checks of research mice, checking food and water levels, and changing cages.

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1 2.2 Appellant was hired on July 30, 2001, as an Animal Technician 1 and reclassified as an
2 Animal Technician 2 on October 25, 2002. He received a number of verbal counselings regarding
3 his job performance and his ability to take directions from the weekend lead.
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5 2.3 In addition, on February 17, 2004 and June 8, 2004, Appellant received verbal and written
6 counseling for separate incidents. Appellant was counseled for failing to follow the standard of care
7 established by the department, for failing to take directions from the weekend lead, and for claiming
8 to have worked times when he was not physically present in the lab.
9

10 2.4 Despite the repeated counselings, Appellant continued to provide seriously inadequate care
11 for the mice. On June 29, 2005, Appellant received verbal counseling for yet another incident of
12 substandard care of the research mice.
13

14 2.5 In each of three counseling, Appellant was advised that further problems in his work
15 performance could lead to suspension, demotion or termination.
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17 2.6 In addition, Appellant was provided a list of specific daily, weekly and monthly duties. This
18 list of expectations is dated July 10, 2005.
19

20 2.7 In August 2005, Appellant was assigned to care for additional mice while his co-worker was
21 on vacation. Appellant was given a list of specific duties he was to perform in his co-worker's area
22 during her absence from August 16 – 24, 2005. The co-worker returned to find 15 dead and partially
23 decomposed mice in the cages that Appellant was responsible for. Mold had grown on food in
24 another group of cages housing an expensive breed of transgenic mice; these cages were also under
25 the care of Appellant.
26

27 2.8 On Friday, September 2, 2005, a dead mouse was found in a cage under Appellant's care,
28 shortly after the end of his shift. Management documented this incident and waited for Appellant to
29

1 report it. Appellant finally reported the incident several days later on Tuesday, September 6, even
2 though he worked on September 3, 4, and 5 in that area.

3
4 2.9 On September 26, 2005, Appellant was asked by the Program Coordinator to check a room
5 for a sick co-worker. Appellant refused and walked away.

6
7 2.10 By memorandum dated December 19, 2005, Appellant's supervisor recommended to the
8 Director of Personnel Policy and Faculty Administration, School of Medicine, that Appellant be
9 dismissed.

10
11 2.11 On January 6, 2006, Judy L. Mims, Associate Director of Personal Policy and Faculty
12 Administration, School of Medicine, held a pre-determination meeting with Appellant. Ms. Mims
13 considered Appellant's response to the recommendation and by letter dated January 10, 2006, she
14 notified Appellant of his dismissal, effective January 24, 2006.

15
16 2.12 Appellant filed a timely appeal with the Personnel Resources Board on January 31, 2006.

17
18 2.13 Appellant was served Requests for Admission by Respondent. He did not respond to them.

19
20 2.14 On June 29, 2006, Respondent filed a Motion for Summary Judgment. Appellant did not
21 respond to the motion.

22
23 2.15 On June 30, 2006, the Personnel Resources Board issued a notice scheduling
24 Respondent's Motion for Summary Judgment on Monday, August 14, 2006. The notice was
25 mailed to Appellant by both certified and regular mail. The notice also contained the timelines
26 for responding to the motion, as provided in WAC 357-52-120.

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III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that all Requests for Admissions served on Appellant are deemed admitted because Appellant did not respond to them. Respondent argues that Appellant failed to follow departmental procedures, neglected his duty, and was insubordinate. Therefore, Respondent argues that Appellant's termination was appropriate and that summary judgment dismissing the appeal is appropriate.

3.2 Appellant did not provide a response to the Motion for Summary Judgment.

IV. DISCUSSION

4.1 The Board may decide an appeal by motion if the documents on file, depositions and affidavits show there is no genuine issue as to any material fact and the appeal should be dismissed as a matter of law. WAC 357-52-140. All facts and reasonable inferences therefore are to be determined in favor of the nonmoving party. For purposes of Respondent's motion to dismiss, we must assume any disputed facts in favor of Appellant. *See, 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 one upon which the outcome of the litigation depends. *Hudemand v. Foley*, 73 En.2d 880, 886, 441 P.2d 532 (1968).

4.3 Requests for Admissions are deemed admitted when not responded to within thirty days or within any shorter or longer period established by the Board, or when the responses do not fairly meet the substance of the requested admission. CR 36; *Melby v. Hawkins Pontiac, Inc.*, 13 Wn. App. 745, 537 P.2d 807 (1975) In this case, Appellant has not responded Respondent's Requests for Admissions, therefore, all are deemed admitted.

1 4.4 It is undisputed that Appellant engaged in the actions which were the basis of his dismissal.
2 Appellant actions led to the unavoidable death of valuable research animals and fell far below the
3 standard of care that he was expected follow and he failed to follow both written and oral directives
4 given to him by his supervisor and by a program coordinator.

5
6 4.5 Respondent has shown just cause for Appellant's dismissal. Appellant was aware of the
7 duties and responsibilities of his position. He had a history of corrective actions for similar behavior
8 and was given an adequate opportunity to improve his performance. Furthermore, Appellant was
9 aware of his duty to comply with the written and oral directives given to him by his supervisor and
10 the Program Coordinator. Appellant was informed that failure to correct his performance could
11 result in disciplinary action, including termination. Appellant provided no response to the motion
12 and did not contest the facts as presented by Respondent.

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14 4.6 Based on the uncontroverted facts, Respondent's motion should be granted, and the appeal
15 of Im Cong Do should be denied.
16

17 **V. ORDER**

18 NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion for Summary
19 Judgment is granted, and the appeal of Im Cong Do is denied.
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21 DATED this ____ day of _____, 2006.

22 WASHINGTON PERSONNEL RESOURCES BOARD

23
24 _____
25 LAURA ANDERSON, Chair

26
27 _____
28 LARRY GOODMAN, Member
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