

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

RANDALL ASHCRAFT,

Appellant,

vs.

WASHINGTON STATE UNIVERSITY,

Respondent.

CASE NO. R-DISM-08-001

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

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, LAURA ANDERSON, Chair, and JOSEPH PINZONE, Member. The hearing was held on May 7, 2008, at the Office of the Attorney General in Spokane, Washington. Closing arguments were submitted in writing on May 29, 2008. Subsequent to the hearing but prior to issuing this decision, the Board's titles changed. The signatures on this document reflect the Board's current titles.

1.2 **Appearances.** Appellant Randall Ashcraft was present and was represented by Howard Neill, Attorney at Law. Donna Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal from a dismissal for engaging in threatening workplace behavior and inappropriate conduct and failing to follow workplace policies and standards.

II. FINDINGS OF FACT

2.1 Appellant Randall Ashcraft was a permanent employee for Respondent Washington State University (WSU). Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder, Title 357 WAC. Appellant filed a timely appeal with the Personnel Resources Board on January 9, 2008.

1 2.2 By letter dated November 27, 2007, Lawrence Davis, Associate Vice President for
2 Facilities Operations, notified Appellant of his dismissal, effective December 11, 2007. Mr.
3 Davis alleged that Appellant engaged in threatening behavior toward his fellow workers, failed
4 to exhibit appropriate conduct toward his fellow workers, failed to follow departmental and
5 university policy, and failed to adhere to reasonable workplace standards.

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7 2.3 Appellant began permanent employment with WSU in 2003. Prior to employment with
8 WSU, he ran his own recycling business for eight years. At the time of the action giving rise to
9 this appeal, Appellant was a Truck Driver 1 in the Waste Management Recycling division of
10 WSU's Facilities Operations.

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12 2.4 Appellant credibly testified that he has a bipolar disorder but he is able to do the work of
13 his position. Appellant also credibly testified that he works hard and takes pride in his job. He
14 becomes frustrated and upset when he perceives others are not reporting to work on time or are
15 not doing their work.

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17 2.5 Prior to becoming a truck driver, Appellant worked in the recycling warehouse. At one
18 point, Appellant felt that the students assigned to the night crew were not doing their jobs and
19 that the work was not getting done. Appellant's managers allowed Appellant to move to the
20 night crew to oversee the work of the students, but Appellant testified that he could not get
21 anything accomplished. Appellant then moved to "running routes" for housing and resident halls.
22 Subsequently, he became a truck driver. In addition, Appellant is a certified forklift operator.

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24 2.6 During his employment at WSU, Appellant requested leave under the Family Medical
25 Leave Act on more than one occasion. His requests were always granted. Appellant testified that
26 he never provided a doctor's note requesting reasonable accommodation.

1 2.7 The credible testimony establishes that the atmosphere among the staff in the Waste
2 Management Recycling division included mutual joking and teasing. Various witnesses
3 described the interactions between staff. These descriptions established that the work crew was
4 mutually antagonistic toward one another. Comments made during oral exchanges between
5 coworkers were not reported to management and no specific complaints were filed based on the
6 day-to-day repartee that occurred in and around the break room. The comments and oral
7 exchanges were sometimes of a personal nature.

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9 2.8 On September 1, 2006, Appellant received a letter from Rick Finch, Manager for Waste
10 Management Recycling. The letter confirmed an oral reprimand Mr. Finch had given Appellant
11 on July 13, 2006, for making a threatening statement about a coworker. In the letter, Mr. Finch
12 noted that he had had several discussions with Appellant regarding his inappropriate behavior,
13 specifically when Appellant became stressed or frustrated in the workplace and reacted in an
14 agitated manner. Mr. Finch put Appellant on notice that WSU policy prohibits violent or
15 threatening behavior and that such behavior could lead to disciplinary action, up to and including
16 dismissal. In addition, Mr. Finch provided Appellant with a copy of WSU's Workplace Violence
17 policy and referred Appellant to the Employee Assistance Program. Appellant testified that he
18 did not dispute the accuracy of the letter and he understood that such actions would not be
19 tolerated and could lead to dismissal.

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21 2.9 WSU's Workplace Violence policy defines workplace violence as "any physical assault,
22 threatening, or intimidating behavior, or verbal abuse occurring in the work setting." The policy sets
23 forth the procedure employees should follow to report incidents in the workplace.

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25 2.10 On October 4, 2007, Appellant reported to work and began performing his duties driving a
26 forklift to deposit material on the baler conveyor for recycling. At approximately 7:15 a.m., Josh
27 Dahman and Doug Wickman came out of the break room into the work area near the baler.
28 Appellant commented to Mr. Dahman and Mr. Wickman that they were late. Appellant then drove
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1 the loaded forklift up to the baler at a rapid speed, coming within 1-2 feet of Mr. Dahman. Appellant
2 testified that at the time of this incident, he was upset.

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4 2.11 Mr. Wickman told Appellant that he had come close to hitting Mr. Dahman and told him to
5 slowdown. Appellant and Mr. Wickman then exchanged words. During the exchange Appellant
6 stated something to the effect that if Mr. Dahman was standing in the way, it was not his fault if Mr.
7 Dahman got hit.

8
9 2.12 Appellant, Mr. Dahman and Mr. Wickman testified that Appellant was upset. Following the
10 incident, Appellant reported to his lead, Jim Parvin, and then left for the day. Initially, Mr. Wickman
11 continued to work but then left for the day without reporting to his lead or supervisor. Mr. Wickman
12 told Mr. Dahman that he felt threatened by Appellant. Mr. Dahman described Mr. Wickman as
13 shaken by the incident.

14
15 2.13 After meeting with Appellant, Mr. Parvin informed Mr. Finch of the incident and that he had
16 given Appellant permission to go home. Later that afternoon, Appellant contacted Mr. Finch and
17 told him that he had met with human resource staff and requested a transfer. Appellant also told him
18 about the incident and indicated that he worked hard but it did not seem like others put forth as much
19 effort as he did. Appellant informed Mr. Finch that he would be applying for FMLA and that he did
20 not know when he would be back to work.

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22 2.14 The following morning, October 5, 2007, Mr. Finch met with Mr. Wickman and counseled
23 him about leaving work without permission. During the meeting, Mr. Wickman raised concerns
24 about prior statements made by Appellant. Mr. Wickman perceived the statements as threats. Mr.
25 Wickman described an argument he had with Appellant two days prior to the October 4th incident.
26 The argument occurred outside of the break room. During the argument, Appellant indicated that he
27 was going to mention Mr. Wickman's name to his "shrink." Mr. Wickman testified that there were
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occasions in the break room when comments of a personal nature were made. Mr. Wickman stated that those comments might have upset Appellant.

2.15 Dennis Rovetto, Director of Plant Services and Waste Management, reported to work on October 7, 2007. He heard about the forklift incident in a voice mail from Mr. Finch. He talked to Mr. Parvin about the incident and subsequently, Mr. Rovetto and Mr. Finch conducted an investigation. Mr. Rovetto forwarded the results of the investigation to Pam Hilliard, Executive Director for Facilities Support Services. He also met with Associate Vice President Davis.

2.16 A pre-disciplinary meeting was held on November 14, 2007. During the meeting, Appellant denied making any threatening statements or comments about or to anyone in the workplace.

2.17 Following the pre-disciplinary meeting, Mr. Davis determined that discipline was warranted. In determining the level of discipline, he considered the information Appellant provided at the pre-disciplinary meeting, the findings from the investigation, Appellant's length of service and employment history, and the seriousness of Appellant's offenses. Mr. Davis concluded that dismissal was appropriate.

2.18 Mr. Davis concluded that Appellant's actions represented a disregard of his fellow workers and workplace policies. Mr. Davis found that Appellant failed to maintain non-threatening behavior towards his fellow workers and failed to treat them with respect and dignity. In light of Appellant's threatening comments and behavior, Mr. Davis determined that he could not risk the safety and well being of Appellant's fellow employees by maintaining Appellant's employment. By letter dated November 26, 2007, Mr. Davis notified Appellant of his dismissal effective December 11, 2007.

III. ARGUMENTS OF THE PARTIES

3.1 First, Respondent argues that Appellant endangered his co-workers by driving a WSU forklift at an excessive rate of speed. Respondent further argues that Appellant's comment about the

1 fact that if Mr. Dahman were in the way and he got hit, it was not Appellant's fault, was
2 inappropriate. Second, Respondent argues that Appellant made threatening statements about
3 physically hurting someone at the workplace, about having a hit list and about getting ready to take
4 someone out at any time. Respondent contends that Appellant's threatening behavior and comments
5 were inappropriate and rose to the level of workplace violence. Respondent asserts that WSU had a
6 duty to respond to Appellant's threats and inappropriate behavior promptly and seriously and to
7 provide a safe and secure work environment to its employees. Respondent asserts that steps needed
8 to be taken to prevent harm to employees and to remove the threat to staff. Respondent argues that
9 given all the facts and circumstances, dismissal was the only appropriate discipline.

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11 In response to Appellant's assertion regarding a lack of reasonable accommodation, Respondent
12 argues that the claim is unfounded and that it does not excuse Appellant's behavior. Respondent
13 asserts that Appellant did not raise the issue of reasonable accommodation until he filed his appeal.
14 Respondent acknowledges that Appellant was on medical leave for seven days in October 2004 and
15 for five days in May 2006, but argues that Appellant was released to return to work with no
16 restrictions. Therefore, Respondent asserts that Appellant asked for and was granted medical leave
17 as an accommodation in the past and that he was aware of his ability to request a reasonable
18 accommodation if he needed one. Respondent argues that WSU had no reason to believe that
19 Appellant could not perform the essential functions of his position or that he needed
20 accommodation. Furthermore, Appellant's doctors indicated that Appellant's bipolar condition was
21 mild and he was not a threat because of that condition. Consequently, Respondent contends that
22 there is no evidence to suggest that Appellant's violent threats and behavior were attributable to his
23 medical condition.

24
25 Respondent argues that WSU made every effort to assist Appellant in his position. Respondent
26 asserts Appellant's supervisors had many discussions with Appellant to assist him adjusting to his
27 workplace expectations; they allowed him to change shifts when Appellant complained that the
28 work was not getting done; and they changed his assigned work area when he complained that he
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1 did not like the route he was assigned. In addition, Respondent asserts that WSU provided Appellant
2 with leave as needed, approved him for Family and Medical Leave and shared leave, referred him to
3 Employee Advisory Services, and referred him to human resources for assistance in pursuing a
4 transfer to another position. Respondent contends that in spite of the many attempts to assist
5 Appellant and to address his continued complaints, there was no reason to believe that he was unable
6 to perform the essential function of his position.

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8 3.2 First, Appellant admits that he whipped into the recycling conveyor too fast and that he
9 operated the forklift in an inappropriate manner. Second, Appellant denies making threatening
10 statements to his co-workers. Appellant argues that if his co-workers felt threatened, consistent with
11 WSU's Workplace Violence policy, they were required to report the incident to their supervisors and
12 complete the appropriate forms, which did not happen. Appellant also argues that in accordance with
13 the Forklift Safety Manual, the remedy for unsafe operation of a forklift would be refresher training,
14 not termination.

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16 Appellant contends that Respondent was aware of his bipolar disorder but that the only
17 accommodation allowed was medical leave for treatment of his disorder. Appellant argues that
18 Respondent explored no other possible accommodations for his condition. Appellant asserts that
19 Respondent was aware that his condition was exacerbated by stress, yet no effort was made to
20 accommodate the stress brought on by what Appellant perceived as inefficient operation of the
21 recycling department. Appellant contends that a reasonable accommodation would be to place him
22 in a different position or to transfer him to a different area.

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24 Appellant asserts that in spite of the many discussions in the break room, he made no threats. He
25 further asserts that during the incident outside the baler, he made no threats. Appellant contends that
26 since no workplace violence incident reports were filed, his coworkers and supervisors did not
27 consider the incidents threats. Appellant admits that he came close to Mr. Dahmen with the forklift
28 but contends that the incident did not constitute workplace violence and that the remedy, as
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1 addressed in WSU's policy, should be refresher training. Appellant asserts that Respondent failed to
2 transfer him to another position as he requested and therefore failed to reasonably accommodate his
3 bipolar disorder. Finally, Appellant asserts that Respondent violated WSU's Equal Employment
4 Opportunity Policy by terminating his employment rather than transferring him to another position.

5 6 **IV. CONCLUSIONS OF LAW**

7 4.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.
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9 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
10 the charges upon which the action was initiated by proving by a preponderance of the credible
11 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
12 sanction was appropriate under the facts and circumstances. WAC 357-52-110.
13

14 4.3 Respondent has failed to meet its burden of proof that Appellant made threatening
15 statements to his co-workers. Rather, a preponderance of the credible testimony establishes that it
16 was not uncommon for the employees in Appellant's work area to engage in mutual repartee that
17 included banter and joking of a personal nature. This chitchat was inappropriate and antagonistic.
18 However, Respondent has failed to show by a preponderance of the credible evidence, that during
19 these mutual exchanges or at other times, Appellant made overt or covert threats of violence toward
20 his co-workers.
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22 4.4 Respondent has met its burden of proof that on October 4, 2007, Appellant operated the
23 forklift in an unsafe and threatening manner. Appellant was aware of the expectations and standards
24 for safe operation of the forklift and maintaining a safe workplace. Yet, Appellant admits that he
25 whipped into the recycling area coming close to Mr. Dahman. Appellant's actions were intentional,
26 deliberate and calculated. Appellant's actions were not a result of a lack of training and would not be
27 resolved by providing him with refresher training. Rather, Appellant's actions were a result of his
28 frustration with his co-workers. Appellant acted out his frustration by knowingly putting his co-
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workers in harms way. Appellant's actions were egregious and should not be tolerated. When an employee deliberately engages in unsafe and threatening behavior in the workplace, an employer cannot wait until someone is injured or worse before taking action. Likewise, when an employee engages in unsafe and threatening behavior in the workplace, failure to strictly follow the reporting procedures laid out in policy does not negate the seriousness of the incident or management's obligation to protect its employees.

4.5 Nothing in the record shows that Appellant's medical condition was the cause his behavior. In fact, the record establishes that Appellant's bipolar disorder was mild and that he was not a threat because of his disorder. Nothing in the record shows that Appellant was unable to perform the essential functions of his position. Therefore, the record does not support Appellant's claim that he should have been given an accommodation. Appellant was not disciplined because of his bipolar disorder or discriminated against because of it.

4.6 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness and circumstances of the offenses. 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. An action does not necessarily fail if one cause is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

4.7 Under the totality of the proven facts and circumstances, dismissal is appropriate. The appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Randall Ashcraft is denied.

DATED this ____ day of _____, 2008.

WASHINGTON PERSONNEL RESOURCES BOARD

JOSEPH PINZONE, Vice Chair

LAURA ANDERSON, Member