

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

VICKIE RUSH,

Appellant,

vs.

OFFICE OF THE ATTORNEY GENERAL,

Respondent.

CASE NO. R-DEMO-06-005

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

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, MARSHA TADANO LONG, Chair, and LARRY GOODMAN, Vice Chair. The hearing was held on March 14 and 15, 2007, in the Personnel Resources Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Vickie Rush represented herself *pro se*. Laura Wulf, Assistant Attorney General, represented Respondent Office of the Attorney General (ATG).

1.3 **Nature of Appeal.** This is an appeal from a disciplinary action of demotion for failing to achieve key results or demonstrate key competencies identified in the employee's Performance and Development Plan.

II. FINDINGS OF FACT

2.1 Appellant Vickie Rush was a permanent employee for Respondent Office of the Attorney General (ATG). 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 September 29, 2006.

2.2 By letter dated August 31, 2006, Shirley Battan, Deputy Attorney General, notified Appellant of her demotion. Ms. Battan alleged that Appellant had been assessed as not achieving

1 key results nor demonstrating key competencies identified in her Performance and Development
2 Plan (PDP). Ms. Battan also alleged that Appellant's supervisor had worked with Appellant
3 since June 2005 and had provided her with on-the-job training, one-on-one feedback, and a work
4 plan yet Appellant's overall work performance as a Legal Secretary was unacceptable.

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6 2.3 Appellant began employment with ATG in December 2000 as a Legal Assistant 1 in the
7 Labor and Industries Division (LNI) where she provided support to two attorneys. While
8 employed in LNI, Appellant's performance evaluations as a Legal Assistant 1 reflected that her
9 work was acceptable; however, Appellant's December 2000 to December 2001 evaluation
10 indicated that she needed to work on her proofreading skills. Appellant's April 2003 to April
11 2004 Employee Development and Performance Plan indicated that she needed to continue to
12 attend training in proofreading, editing and writing and suggested that she use a task list to help
13 coordinate scheduling and confirmation for her attorneys and that she assemble a list of steps for
14 less common procedures. In the April 2003 to April 2004, plan, Appellant indicated, in part, that
15 she needed "hands on training with the paralegal duties."

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17 2.4 During her employment in LNI, Appellant was promoted from a Legal Assistant 1 to a
18 Legal Assistant 2.

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20 2.5 On May 6, 2005, Appellant engaged in an angry confrontation with one of the LNI
21 attorneys regarding a closed filed. When Appellant met with her supervisor to discuss the
22 incident, Appellant indicated that she was going to transfer to another division. Appellant's
23 supervisor directed Appellant to apologize to the attorney with whom she had the confrontation.
24 As an apology, Appellant sent the attorney an e-mail with the subject line "[y]our royal
25 highness" and the text "I apologies (sic) to you. . I guess I will always have to do the work
26 around here you can't get your own assistant to do. ." Subsequently, Appellant met with the
27 attorney and apologized appropriately.

1 2.6 In June 2005, Appellant transferred to a Legal Assistant 2 position in the Social and
2 Health Services (SHS) Division. As a Legal Assistant 2, Appellant's Job Description expected
3 her to perform 75 percent legal assistant duties and 25 percent paralegal duties. The work
4 performed in SHS is very fast-paced. The clients SHS serves includes children and vulnerable
5 adults who frequently have critical needs requiring very short turnaround times for work
6 products from the SHS Division.

7
8 2.7 Appellant was the legal assistant for three attorneys in SHS. Two of the attorneys
9 worked primarily with Dependency cases involving children and the other worked primarily with
10 Adult Protective Services cases involving vulnerable adults. Heather Gigliotti Maehren was
11 Appellant's supervisor in SHS.

12
13 2.8 The outcome of Dependency and Adult Protective Services cases could have serious
14 consequences for the clients, for the Department of Social and Health Services and to the well-
15 being of a child or vulnerable adult. Errors such as missing court deadlines or parties not being
16 properly notified or served, could negatively impact the case thereby negatively impacting a
17 vulnerable member of the public. Attention to detail, organization and calendaring are critical
18 for SHS cases to assure cases are adequately and timely prepared and that the legal
19 responsibilities are met.

20
21 2.9 In the future performance expectations section of Appellant's June 20, 2005 to September
22 20, 2005, Employee Development and Performance Plan, it was noted, in part, that Appellant
23 needed to check and re-check her work and use spell check and grammar check on all her work
24 products. It was also noted that Appellant needed to focus on attention to detail, be proficient in
25 the case management system, and apply knowledge of the critical events mail review and
26 calendar procedures.

1 2.10 Appellant's October 1, 2005 to September 30, 2006, Performance and Development Plan
2 listed the key results and key competencies expected for Appellant's position. In summary,
3 these included calendaring dates appropriately, filing and distributing documents appropriately,
4 independently and accurately performing paralegal duties, mastering computer skills such as
5 word processing software, proofreading to assure accuracy, and maintaining files. In the training
6 and development portion of plan, it was noted that Appellant was expected to pay close attention
7 to detail.

8
9 2.11 On October 4, 2005, Appellant and her supervisor agreed to a training plan for Appellant.
10 The purposes of the plan was "to provide a structural agenda, set expectations for, encourage and
11 train [Appellant] to understand and be able to independently complete work assignments. . . ."
12 The plan covered the period of October 4, 2005 through November 4, 2005. The goal of the plan
13 stated, "[a]t the successful completion of this period [Appellant] will be able to provide full,
14 independent support to three attorneys in the SHS Division, including one APS AAG."
15 Appellant did not complete the training plan.

16
17 2.12 An interim review was conducted for the period of October 1, 2005 through January 31,
18 2006. The interim review noted concerns about Appellant's work and about errors she made in
19 all dimensions of the key results and key competencies of her position. Appellant's overall
20 performance was rated as not satisfactory. Appellant refused to sign the performance feedback
21 report but she did provide handwritten comments on the assessment.

22
23 2.13 On March 10, 2006, Noella Rawlings, Division Chief for SHS, issued Appellant a letter
24 of reprimand regarding Appellant's unsatisfactory work performance during the period of the
25 interim review. Ms. Rawlings put Appellant on notice that failure to improve her work
26 performance could result in disciplinary action. Nonetheless, the concerns about Appellant's
27 unsatisfactory work performance in SHS continued.

1 2.14 In the March 10, 2006 letter of reprimand, Ms. Rawlings also noted that Appellant's
2 interactions with her supervisor and attorneys on occasion fell below what would be considered
3 acceptable professional behavior and cautioned Appellant to pay close attention to the manner,
4 both verbal and nonverbal, in which she interacted with others at work.

5
6 2.15 Appellant's supervisor, Ms. Maehren, credibly testified that she had to exercise detailed,
7 close supervision over Appellant and that she was never able to assign Appellant 25 percent
8 paralegal level duties because she felt that Appellant had not demonstrated that she could
9 satisfactorily perform her legal assistant duties. Ms. Maehren credibly testified that she provided
10 specific training, including examples of work, to Appellant on her SHS legal assistant duties.
11 When Appellant continued to have problems performing these duties, Ms. Maehren provided
12 additional training including a one-on-one review of all the jobs assigned to Appellant, a number
13 of specific checklists, and a work plan for Appellant to follow in performing the duties of her
14 position. However, Appellant continued to make errors and to make repeated errors in spite of
15 the training and feedback Appellant received from Ms. Maehren and the feedback she received
16 from the attorneys for whom she worked.

17
18 2.16 Ms. Battan first became aware of the concerns about Appellant's performance in
19 February 2006 after Appellant refused to sign the interim review. She was also aware of the
20 letter of reprimand that Ms. Rawlings issued to Appellant. Ms. Battan was concerned about the
21 magnitude of the ongoing issues with Appellant's performance including her inattention to
22 details, significant errors and voluminous mistakes in her work products, errors in processing
23 and timeliness of mail, problems with logging and calendaring critical events, errors with
24 Statements of Evidence and Notices of Appearance, and her inability to perform the paralegal
25 duties assigned to her position.

26
27 2.17 On August 4, 2006, Ms. Battan issued a pre-disciplinary letter to Appellant. Ms. Battan
28 indicated that Appellant's supervisor assessed Appellant's overall work performance as
29

1 unacceptable. Ms. Battan also listed the key results and competencies that Appellant failed to
2 fulfill and listed 25 cases with examples in which Appellant had made one or more errors in
3 either case processing or work products.

4
5 2.18 Ms. Battan met with Appellant on August 14, 2006. Appellant provided Ms. Battan with
6 information and indicated that she would like a second chance because she had been going
7 through some personal problems that were now resolved. Appellant also stated that everyone
8 makes mistakes and provided examples of mistakes that others had made. Ms. Battan did not
9 feel that the examples Appellant provided rose to the magnitude or had the potential for risk as
10 the mistakes made by Appellant. Ms. Battan was concerned that Appellant did not grasp the
11 scope and seriousness of the problem. Ms. Battan felt that Appellant had 15 months in which to
12 learn her job and she had been provided on-the-job training, on-going feedback, instruction and
13 guidance but she continued to make repeated mistakes. Ms. Battan did not feel that the agency
14 could continue to carry the risk created by Appellant's mistakes.

15
16 2.19 Ms. Battan was concerned by the repeated and continual nature of the mistakes made by
17 Appellant. The letter of discipline lists some of these as:

- 18 • Problems routing mail in a timely fashion;
- 19 • Problems ensuring new case information is entered into the Case Management
- 20 System (CMS) and consistently making errors in CMS entries;
- 21 • Missing court filing deadlines, failing to utilize a system to ensure that she stay on
- 22 top of her workload and deadlines;
- 23 • Making basic mistakes, including repeated formatting errors, spelling and
- 24 typographical errors, excluding appropriate information from finished work
- 25 products such as proposed orders and Statements of Evidence, inability to
- 26 complete work on time, and failing to advise her supervisor or attorneys in
- 27 advance or not at all;
- 28 • In ability to meet deadlines for setting up new cases and getting new cases to the
- 29 assigned attorney within the standard SHS deadlines or the deadlines set by her
- supervisor; and

- Difficulty meeting deadlines for filing documents with appropriate courts and distributing copies in a timely, efficient and appropriate manner and difficulty prioritizing documents in order of importance.

2.20 In determining the level of discipline, Ms. Battan considered Appellant's work history including her history with the LNI Division and concluded that Appellant had been instructed to improve her performance in regard to her attention to detail and proofreading for quite some time. While Appellant had previously worked as a Legal Assistant 1 and a Legal Assistant 2 in LNI, Ms. Battan did not feel that she demonstrated the ability to work at the Legal Assistant 1 or 2 level in SHS since she had been unable to produce accurate and error free work. Ms. Battan felt that the letter of reprimand did not result in Appellant improving her performance and she did not believe that a reduction in pay or a suspension would result in Appellant's improved performance. She felt that Appellant had some skills and abilities that the department needed but not at the Legal Assistant level. Therefore, Ms. Battan determined that a demotion to an Office Assistant 3 was appropriate. By letter dated August 31, 2006, Ms. Battan notified Appellant of her demotion effective September 15, 2006.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant's work in SHS affected the lives of children and vulnerable adults in very significant ways and that it was very important that Appellant do her work well, because if she did not, the client suffered. Respondent argues that Appellant needed to do her work efficiently and with quality, that she needed to work as part of the team so that her work supported rather than caused problems for her assigned attorneys and her supervisor. Respondent contends that Appellant's supervisor worked with her for over a year but that Appellant was unable to produce the level of reliable, accurate, timely, and quality work needed from a Legal Assistant 2 in the SHS Division. Respondent asserts that Appellant was provided extensive training materials, including examples of work products, one-on-one training, coaching, feedback, checklists, and a work plan but she was still unable to perform at the level required for her position. In addition, because Appellant was unable to produce the quality of legal assistant work needed by SHS, she was never able to take on her additional paralegal responsibilities. Because Appellant was unable to

1 successfully perform her basic legal assistant duties and responsibilities, Respondent asserts that a
2 demotion to an Office Assistant 3 position was appropriate.

3
4 3.2 Appellant argues that the training she received in SHS was inadequate and that neither her
5 supervisor nor her attorneys had the time to show her what needed to be done for the type of
6 litigation handled by the SHS Division. Appellant acknowledges that the work done in LNI is
7 different than the work of SHS but asserts that because of this difference, she should have been
8 given more training and guidance. Appellant contends that she is qualified for and capable of doing
9 the Legal Assistant 2 job and that she got along with the attorneys to whom she was assigned but she
10 asserts that she was not given an adequate chance to learn and to do the job in SHS. Appellant asks
11 that her entire career, including her 5 years in the LNI division, be considered and that she be
12 returned to a legal assistant position outside of SHS.

13 14 **IV. CONCLUSIONS OF LAW**

15 4.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.

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17 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
18 the charges upon which the action was initiated by proving by a preponderance of the credible
19 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
20 sanction was appropriate under the facts and circumstances. WAC 357-52-110.

21
22 4.3 Respondent has met its burden of proof. Appellant was provided notice of the need to
23 improve her performance and she was provided ample opportunity to do so. Respondent has
24 established that in spite of the extensive efforts of Appellant's supervisor and others to provide
25 training and guidance in the work of SHS, Appellant was unable to perform the basic legal assistant
26 duties assigned to her position. Furthermore, Appellant's work history in LNI shows that she
27 experienced similar problems and challenges in that division as a Legal Assistant 1. While
28 Appellant has provided documentation that she has the education needed for the position, she has not
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1 demonstrated an ability to apply her learning in a work environment at the level of quality and
2 responsibility needed by the SHS Division.

3
4 4.4 Under the totality of the proven facts and circumstances, the demotion should be upheld.
5 The appeal should be denied.

6
7 **V. ORDER**

8 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Vickie Rush is denied.

9
10 DATED this ____ day of _____, 2007.

11 WASHINGTON PERSONNEL RESOURCES BOARD

12
13 _____
14 MARSHA TADANO LONG, Chair

15
16 _____
17 LARRY GOODMAN, Vice Chair