BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

KENNETH OWENS,	)	
	)	
Appellant,	)	Case No. R-DISM-11-007
	)	
v.	)	ORDER OF DISMISSAL
	)	
WASHINGTON STATE UNIVERSITY,	)	
	)	
Respondent.	)	

I. INTRODUCTION

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

1.2 **Representation.** Appellant Kenneth Owens represented hinself. 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 Respondent's Motion to Dismiss filed January 18, 2012, Affidavit of Counsel, and Respondent's Memorandum in Support of Motion to Dismiss.

II. FACTS

2.1 Appellant was dismissed from his position as a Custodian 1 at WSU, effective July 7, 2011. On July 13, 2011, he filed an appeal of his dismissal.

2.2 On August 23, 2011, the Board sent a Notice of Scheduling to the parties setting the hearing for February 8 and 9, 2011. The Notice of Scheduling also set the telephone status conference for October 18, 2011. Appellant and a representative for the Assistant Attorney General participated in the call during which the parties agreed to the cutoff dates for discovery.

2.3 On October 18, 2011, the Board's staff issued the Statement of Results of the Pre-hearing Conference. The Statement of Results directed that all discovery be completed by January 9, 2012.

2.4 On October 5, 2011, Respondent mailed to Appellant Respondent's First Set of Interrogatories Propounded to Appellant and Requests for Production of Documents.

2.5 When Appellant did not respond to Respondent's discovery request, Respondent's counsel communicated several times with Appellant by telephone and by mail in an attempt to confer with him regarding his responses to Respondent's discovery request. As of December 12, 2011, Appellant had failed to answer Respondent's discovery request or to respond in any way to repeated attempts by Respondent's counsel to communicate with him.

2.6 Respondent filed its Motion to Compel Responses to Discovery on December 15, 2011. On January 3, 2012, the Board issued an Order Compelling Appellant to Provide Discovery Responses by no later than 5 pm January 13, 2012. Appellant failed to comply with the Board's order.

2.7 Respondent filed a Motion to Dismiss on January 18, 2012. Appellant did not file a response to the motion.

III. DISCUSSION

3.1 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 therefrom are to be determined in favor of the nonmoving party. *See*, Hall v. University of Washington, PAB No. 3863-V2 (1995).

3.2 The issue here is whether Appellant's appeal should be dismissed based on his failure to comply with the Board's order to respond to Respondent's discovery requests.

3.3 WAC 357-52-255 provides for "discovery procedures in a manner consistent with the civil rules for superior courts of the state of Washington and as provided in any prehearing statement of results or other order of the board."

3.4 In this case, Respondent properly served Appellant with Respondent's First Set of Interrogatories Propounded to Appellant and Requests for Production of Documents. Appellant failed to respond. Therefore, on January 3, 2012, the Board ordered Appellant to provide responses to Respondent's discovery request. Appellant once again failed to respond.

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

3.6 Therefore, Respondent's motion should be granted and the appeal should be dismissed.

IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is granted and the appeal of Kenneth Owens is dismissed.

DATED this _____ day of _____, 2012.

WASHINGTON PERSONNEL RESOURCES BOARD

_____
DJ MARK, Chair

_____
JOSEPH PINZONE, Vice Chair

_____
LAURA ANDERSON, Member