BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

KARINE ORMOND, Appellant, v. DEPARTMENT OF RETIRMENT SYSTEMS, Respondent.	)	Case No. R-RED-13-001 FINDINGS, CONCLUSIONS AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, DJ MARK, Vice Chair, and NANCY HOLLAND YOUNG, Member. The hearing was held on March 6, 2014, in the Personnel Resources Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Karine Ormond was present and represented herself. Gina L. Comeau, Assistant Attorney General, represented Respondent Department of Retirement Systems.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a five percent, one month reduction in salary for failing to respond to customer complaints within twenty-four hours.

II. FACTS

2.1 Appellant Karine Ormond is a permanent employee for Respondent Department of Retirement Systems (DRS). Appellant and Respondent are subject to Chapters 41.06 RCW and the rules promulgated thereunder, Title 357 WAC. Appellant filed a timely appeal with the Personnel Resources Board on December 4, 2013.

2.2 Appellant began her employment with DRS in 2006. At the time of the action giving rise to this appeal, Appellant was employed as a Retirement Systems Analyst 2 in DRS's Death and

Disability Unit (DDU). The DDU provides services to customers who must retire as a result of a disability and customers who have lost a loved one or are executors of a deceased member's estate. When dealing with customers, the unit prescribes to the "three Rs" to be respectful, responsive and right. A preponderance of the credible testimony established that complaints from customers are considered a priority. Appellant's supervisors made Appellant aware of the expectation that she resolve or process customer complaints within twenty-four hours of receipt.

2.3 Appellant's work history contains a variety of corrective actions including various counseling sessions during which Appellant's performance expectations were discussed, a June 5, 2013 memo of concern regarding her performance, a July 3, 2013 Performance and Development Plan, and an August 5, 2013 letter of reprimand for failing meet performance expectations.

2.4 A preponderance of the credible testimony shows that when Appellant was counseled or corrective action was taken, her performance would improve for a period of time. However, Appellant was unable to sustain her improved performance on an ongoing basis.

2.5 Respondent took numerous steps to help Appellant be successful and meet the expectations set for her. For example, the July 3, 2013, Performance and Development Plan (PDP) set forth specific expectations for the amount of work she would complete each day to help her become current on her workload. The PDP also included the timelines for Appellant to respond to customers as follows:

- Calls answered within 30 seconds
- Respond to estimate requests in 5 days or less;
- Walk in customers will be served within 4 minutes or less;
- Respond to routine correspondence in 5 days or less.

The PDP was effective July 1 through September 30, 2013. Appellant never indicated to her supervisor that she did not understand the expectations.

2.6 The August 5, 2013, letter of reprimand laid out the steps previously taken to help Appellant address and complete her backlog of work. The letter also describes the impact of Appellant's failure to meet expectations and stay current on her workload. The letter stated:

> The amount of time these accounts have aged is an unacceptable level of service to our customers. Our customers have been waiting for information or funds that did not arrive as expected or promised. As a result, they continue to contact us to receive a status update which in turn creates more work for your fellow team members. Of an even greater concern is the negative impact this has on our customers. We pride ourselves on providing responsive service to our customers and your actions continue to degrade the timeliness of this service. The impact your actions have on our customers cannot be tolerated.

The letter put Appellant on notice that failure to adhere to expectations may result in further corrective or disciplinary action.

2.7 By letter dated August 12, 2013, Appellant provided a written response to the letter of reprimand. Appellant indicated that she continued to have interruptions from other staff that hindered her ability to complete her work. Appellant committed to work on meeting her performance standards but stated that she did not have the supported environment needed to help her meet the performance standards.

2.8 On August 19, 2013, Jennifer Dahl, Assistant Director for the DDU, met with Appellant to discuss the expectations for managing Appellant's workload. By letter dated August 19, 2013, Ms. Dahl noted that a large percentage of Appellant's workload was outside of acceptable customer service levels. Ms. Dahl also put strategies in place to help Appellant avoid distractions. Ms. Dahl informed Appellant that it was important for Appellant to keep current on new work while also working through her backlog in a timely manner. Ms. Dahl also notified Appellant that failure to adhere to the expectations may result in further corrective or disciplinary action.

2.9 Ms. Dahl met with Appellant on September 13, 2013 to again address concerns about Appellant's performance and her backlog of work. Ms. Dahl summarized the meeting in a memo dated September 18, 2013. Ms. Dahl noted that between August 19 and September 13, 2013,

Appellant's lead worker, Jennifer Goss, received nine complaints from customers on Appellant's workload. Ms. Dahl explained that a complaint is anytime a customer calls because DDU had not done what they expected or followed through as promised. Ms. Dahl also noted that after Appellant received the August 19, 2013 letter of expectations, the first week she met all expectations, the second week she met some of the expectations and the third week she failed to meet any of the expectations. Appellant explained that she continued to get a lot of interruptions and special requests during the workday.

2.10 By letter dated September 30, 2013, Appellant was given expectations for October 1, 2013 through December 31, 2013. The letter included specific expectations for the evaluation period including that "[a]ny complaints received from customers on workload items that are not processed with the established turnaround times (e.g. five days) will be resolved or processed by you within 24 hours of receiving the complaint."

2.11 While the evidence establishes that there was history of concerns about Appellant's performance, the disciplinary action that is the subject of this appeal was based on two specific customer complaints.

2.12 In regard to the first complaint, Appellant had been notified of the death on September 11, 2013. The complaint was received by Ms. Goss on September 30, 2013 indicating that the customer had not received the letter and forms expected. Ms. Goss notified Appellant of the complaint by email on September 30, 2013. She reminded Appellant by email of the complaint on October 4, 2013. On October 9, 2013, Ms. Goss once again emailed Appellant about the complaint and asked her to process the letter. Appellant responded to the complaint on October 10, 2013, more than five days after she was made aware of the complaint and well outside the twenty-four hour expectation Appellant had been given to respond to complaints.

2.13 In regard to the second complaint, Appellant had been notified of the death on September 17, 2013. The complaint was received by Ms. Goss on October 8, 2013 indicating that the customer

had not received the forms expected. Ms. Goss notified Appellant by email of the complaint on October 8, 2013. She reminded Appellant by email of the complaint on October 11, 2013. Appellant responded to the complaint on October 17, 2013, more than five days after she was made aware of the complaint and well outside the twenty-four hour expectation Appellant had been given to respond to complaints.

2.14 By letter dated October 18, 2013, Ms. Dahl scheduled a pre-disciplinary meeting. The letter included the attempts made to help Appellant with her workload from May 2013 through September 30, 2013. The letter also described the two customer complaints described above. The pre-disciplinary meeting was held on October 24, 2013. During the meeting, Appellant confirmed that she understood her performance expectations and indicated that she did not have a reason for failing to address the complaints within twenty-four hours of receipt and admitted that she had difficulty managing and responding to her emails. Ms. Dahl considered Appellant's responses, reviewed her personnel file and her history of receiving informal corrective actions addressing performance concerns. Ms. Dahl determined that despite all the attempts to help Appellant manage her workload, she continued to fail to provide information to her customers in a timely manner. Ms. Dahl concluded that Appellant's actions demonstrated a continuing pattern of failure to meet expectations, that previous corrective actions had not caused Appellant to make a lasting improvement to her performance and that disciplinary action was warranted.

2.15 Ms. Dahl considered the available disciplinary sanctions, including termination, and determined that a reduction in salary was most appropriate and would impart to Appellant the importance of improving her performance and eliminating her backlog. By letter dated November 13, 2013, Ms. Dahl informed Appellant of her five percent, one month reduction in pay for failing to respond to two customer complaints within twenty-four hours.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant neglected her duty to respond to complaints within twenty-four hours and that she failed to respond in a timely manner even when reminded to do so.

Respondent asserts that failure to respond to customers in a timely manner has a negative impact on customers and the agency. Respondent explains that Appellant's problem with meeting performance expectations was not new and that the agency had been addressing this issue with Appellant as far back as January 2012. Respondent contends that management made numerous attempts to set expectations and to help Appellant be successful. Respondent asserts that Appellant was given every opportunity to remedy her performance deficiencies. Yet, despite of these efforts, Appellant failed to meet expectations which had a negative impact on customers and Appellant's co-workers and resulted in customer complaints. Respondent argues that the agency needed to impress upon Appellant the impact of her actions on customers. Respondent further argues that the disciplinary sanction given to Appellant is the lowest level of formal discipline the agency could have taken and is the next appropriate step in a course of progressive discipline. Therefore, Respondent contends that a reduction in salary is appropriate to impart to Appellant that her performance has negative financial ramifications for customers as well as for herself.

3.2 Appellant argues that she is a dedicated and loyal employee whose unit has gone through many changes in leadership and lacks a supportive environment in which she can be successful. Appellant asserts that she owns up to her mistakes and shortcomings and recognizes them as the only way she can improve. While Appellant recognizes that she is still struggling, she contends that her performance is improving and moving in the right direction. Appellant argues that the agency has failed to establish that formal disciplinary action was warranted, asserts that the discipline is unfair, and contends that the agency failed to comply with the rules governing discipline. Appellant asks that her appeal be granted and the disciplinary action overturned.

IV. CONCLUSIONS

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

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence

that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 357-52-110.

4.3 Appellant argues that Respondent lacked just cause to impose discipline in this matter. When considering whether there was just cause for a disciplinary action, we consider factors such as whether the employee was aware of the expectations, rules, or policies allegedly violated, whether the employee was aware of the need to comply with the rule or policy or to improve performance, whether the employee had an opportunity to demonstrate compliance or improvement, whether the discipline was imposed for good reason, whether the disciplinary process and procedures followed were appropriate, and whether the sanction imposed was sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. In addition, this Board and its predecessor have historically held employers to a preponderance of evidence standard. See Oliver v. Dept. of Social and Health Service, PRB Case No. R-DEMO-08-006 (2009).

4.4 Respondent has established that Appellant was aware of her performance expectations and the need to comply with them and Appellant had ample opportunity to improve her performance. Respondent followed an appropriate course of informal and formal corrective actions yet Appellant failed to demonstrate sustained improvement. The discipline in this case was imposed for good reason. Respondent has met its burden of proof that Appellant failed to respond to two customer complaints within twenty-four hours of receiving the complaints.

4.5 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. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

4.6 While we recognize that Appellant is a caring person and is clearly dedicated to the work of her unit and to providing service to customers, it is also clear that she needs to improve her ability to prioritize work and produce work products, including responding to all customer complaints within the timelines set forth in the expectations she is given. A one-month, five percent reduction in salary is a minimal disciplinary sanction. However, this sanction should be sufficient to impress upon Appellant the importance of meeting established performance expectations.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Karine Ormond is denied.

DATED this _____ day of _____, 2014.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Vice Chair

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NANCY HOLLAND YOUNG, Member