BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

SURINDER GILL, Appellant, vs. UNIVERSITY OF WASHINGTON, Respondent.	CASE NO. R-DISM-10-008 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Personnel Resources Board, DJ MARK, Chair, and JOSEPH PINZONE, Vice Chair. The hearing was held on October 20, and 21, 2011, in the Personnel Resources Board hearing room in Olympia, Washington. LAURA ANDERSON, Personnel Resources Board Member, recused herself from this appeal and did not participate in the hearing or in the decision due to a possible conflict of interest.

1.2 **Appearances.** Appellant Surinder Gill was present and represented himself. Respondent University of Washington was represented by Jessica Russell, Assistant Attorney General.

1.3 **Nature of Appeal.** This is a dismissal appeal for disrupting the workplace, engaging in inappropriate and unprofessional workplace behavior, insubordination, and violation of policy.

II. PRELIMINARY MOTIONS

2.1 At the outset of the hearing, Respondent made two Motions in Limine.

2.2 In regard to the first motion, Respondent asked for the exclusion of Appellant's proposed exhibits and witnesses. Respondent argued that Appellant failed to follow the prehearing cutoff dates and failed to provide a list of his exhibits and witnesses prior to the hearing. Appellant argued that he had difficulty retrieving his exhibits from the University and that his witnesses had just recently come forward.

2.3 The Board denied the motion noting that Appellant is appearing *pro se* and that the Board may waive procedural rules for *pro se* Appellants. (See WAC 357-52-005). The Board commented that when Appellant offered his exhibits, Respondent could object at that time. The Board also directed Appellant to provide the names and contact information for his proposed witnesses so that Respondent could have an opportunity to talk to the witnesses before they were called to testify.

2.4 In regard to the second motion, Respondent asked the Board to exclude evidence of whether Appellant was discriminated against under state laws and federal regulations. Respondent argued that matters of discrimination were not within the Board's jurisdiction. Appellant argued that the Human Rights Commission had already taken care of his claims and that he was offering the emails in question to give a deeper insight into his years of employment at the University of Washington.

2.5 The Board denied the motion and reminded Appellant that the Board has jurisdiction over the disciplinary action and cautioned him to keep his presentation and information related to the discipline.

III. FINDINGS OF FACT

3.1 Appellant Surinder Gill was a Polysomnographic Technician 2 and permanent employee for Respondent University of Washington (UW) at Harborview Medical Center (HMC). Appellant worked in the HMC Sleep Disorders Unit. 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 August 26, 2010.

3.2 Appellant began his permanent employment at Harborview Medical Center in April 2004. During his employment, he received counseling and was given specific expectations and action plans regarding appropriate communication and behaving in a professional manner. He also

received counseling for other behaviors such as tardiness, using excessive leave and sleeping on the job.

3.3 A preponderance of the credible evidence establishes that there was some friction among the employees in the sleep clinic. The evidence also establishes that other employees were counseled or disciplined for inappropriate behaviors, including some of the same behaviors for which Appellant was counseled.

3.4 The counseling memos that Appellant received that are most relevant to the events that led to his dismissal are discussed below.

3.5 On November 17, 2004, Appellant was given a counseling memo for unprofessional conduct that included using a loud and abusive tone of voice and body language that appeared threatening. The memo put Appellant on notice that, "[f]ailure to demonstrate immediate and sustained improvement will result in further disciplinary action, which could include suspension, reduction in pay, demotion, and/or dismissal." Attached to the memo was a written action plan. The action plan stated, in part:

> . . .
>
> Will resolve differences in a professional manner i.e., keeping voice calm, being an attentive listener, not demonstrating negative non-verbal and verbal actions, and respecting other's opinions.
>
> . . .
>
> Will encourage and demonstrate a team a building atmosphere . . . by refraining from negative comments, bringing other staff into conflicts, refusing to speak or work with other staff, and not following or promoting conflict resolution.
>
> . . .
>
> Will not demonstrate any behavior that jeopardizes the welfare of the patient.

3.6 In addition, on September 26, 2005, Appellant participated in a meeting during which communication difficulties in the sleep clinic were discussed. During the meeting, expectations were clarified including the expectation that staff communicate in a professional manner. A

memo dated September 30, 2005, was issued by Human Resources staff as a follow-up to the meeting. The memo put Appellant on notice that "[e]ffective workplace communications must continue, regardless of any other issues."

3.7 Further, on February 10, 2010, Appellant was given a formal counseling memo for unprofessional behavior that included engaging in an argumentative discussion with a co-worker, including negative comments in a subsequent email to the co-worker, and continuing to use an angry tone and berate the co-worker during a follow-up meeting. The memo quoted a portion of the HMC Professional Conduct Policy and on again put Appellant on notice that "[f]ailure to demonstrate immediate and sustained improvement will result in further disciplinary action, which could include suspension, reduction in pay, demotion, and/or dismissal." In addition, the memo included an action plan that stated, in part:

> . . .
>
> Will resolve differences in a professional manner i.e., keeping voice calm, being an attentive listener, not demonstrating negative non-verbal and verbal actions, and respecting other's opinions.
>
> . . .
>
> Will encourage and demonstrate a team a building atmosphere . . . by refraining from negative comments, bringing other staff into conflicts, refusing to speak or work with other staff, and not following or promoting conflict resolution.
>
> . . .

3.8 The February 10, 2010 memo also included a copy of the UW Policy and Procedure on Violence in the Workplace and a copy of the Harborview Medical Center's Professional Conduct Policy.

3.9 The UW Policy and Procedure on Violence in the Workplace states, in part:

> The University of Washington is committed to providing a safe, healthful workplace that is free from violence or threats of violence. The University does not tolerate behavior, whether direct or through the use of university facilities, property or resources that:
>
> - Is violent;

- Threatens violence;
- Harasses or intimidates others;
- . . .
- Disrupts the workplace, ...

Violent or threatening behavior can include: physical acts, oral or written statements, harassing email messages, harassing telephone calls, gestures and expressions or behaviors such as stalking.

Individuals who engage in violent behavior may be removed from the premises, and may be subject to dismissal or other disciplinary action, arrest and/or criminal prosecution.

. . . .

3.10 Harborview Medical Center's Professional Conduct Policy, Policy Number 105.12, states in part:

Harborview Medical Center (HMC) values professionalism. . . . Professionalism includes demonstrating . . . respect. . . .

It is the policy and expectation of HMC that . . . staff . . . will conduct themselves in a professional manner in all of their interactions. . . . The purposes of this policy are to . . . assure that all persons are treated with respect, dignity and courtesy; and to promote constructive communications and collaborative teamwork.

. . .

Unprofessional behavior means behavior that: . . . violates rules of professional ethics. . . ; or is disrespectful, retaliatory or disruptive.

. . . .

Disrespectful, retaliatory, or disruptive behavior includes, but is not limited to behaviors that in the view of reasonable people impact the integrity of the health care team, the care of patients . . . such as:

- Shouting or using profane or otherwise offensive language;
- Degrading or demeaning comments;
- . . .
- Threats or similar intimidating behavior, as reasonably perceived by the recipient;
- . . . .

3.11 A preponderance of the credible evidence establishes that Appellant was aware of the workplace expectations to behave in a professional manner and to refrain from using a raised voice and inappropriate language. Appellant was also aware of the policies regarding work place behavior and violence in the workplace.

3.12 At the beginning of each night's shift in the sleep clinic, staff had a short huddle to exchange general work information and information about the work for that shift. On June 1, 2010, Appellant was scheduled to work the night shift. At 7 pm, staff gathered for the huddle in the control room which was near the patient rooms.

3.13 During the meeting, Clinic Manager Ron Chisholm, shared information about two upcoming in-service trainings that would be provided to staff. Appellant was seated inside the room by the door and the door was partially open. At some point during the meeting, Appellant closed the door. While Mr. Chishom was discussing the in-services, Appellant interrupted him and expressed his view that it was more important for staff to receive training on the equipment they currently used rather than the information Mr. Chisholm planned to have presented during the in-services. Mr. Chisholm tried to redirect the conversation but Appellant continued to voice his opinion.

3.14 Appellant testified that he has a loud voice but a preponderance of the credible testimony establishes that during the meeting on June 1, his voice became progressively louder and he began expressing his frustration over an event that occurred in the clinic on May 26, 2010. As Appellant's voice became louder, he began pointing his finger at Clinic Lead, Heather Beseler, and accusing her of not taking care of equipment on May 26, 2010 and of lying. He then began to criticize Mr. Chisholm and Ms. Beseler for not taking action on another employee. When Ms. Beseler and Mr. Chisholm again tried to redirect the conversation, Appellant expressed he was leaving the shift due to medical issues.

3.15 During the course of the meeting and in response to Appellant's escalating agitation, other staff left the room. During the investigation that followed the meeting, staff reported that Appellant yelled loud enough that patients could hear him. Several staff also reported that Appellant's manner was threatening, that they felt unsafe or uncomfortable remaining in the room, and that Appellant's yelling disturbed some of the patients who then needed extra time to fall asleep.

3.16 By email dated June 3, 2010, Mr. Chisholm reported Appellant's behavior during the June 1, 2010 meeting to Sue Manfredi, the Assistant Administrator for a number of patient units including the Sleep Disorders Unit. Ms. Besler reported the conduct to Ms. Manfredi by email dated June 8, 2010. Ms. Manfredi contacted the violence prevention unit and she notified the Human Resources (HR) office. HR began an investigation which included interviewing staff and Appellant. Ms. Manfredi then met with Director of HR.

3.17 After considering Appellant's history of progressive discipline and the information from the investigation, Ms. Manfredi determined that Appellant's behavior could not be tolerated. She found his behavior was disruptive, demonstrated poor judgment, and was impulsive. She determined his actions violated UW workplace policies and was threatening and intimidating. Ms. Manfredi felt that Appellant posed a risk to the health and safety of staff and patients and that a recommendation for termination was warranted. By memorandum dated June 18, 2010, to Eileen Whalen, Executive Director of HMC Administration, Ms. Manfredi recommended that Appellant be dismissed from employment. Ms. Manfredi's memorandum stated, in part:

> . . . Mr. Gill's behavior disrupted the workplace and created an unsafe environment that cannot be tolerated. Mr. Gill's continued poor judgment, impulsive action, disruptive behavior, and insubordination provide just cause to terminate his employment. Mr. Gill has a history of poor judgment which results in impulsive verbal outbursts that place both staff and patients at significant risk.
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> Despite previous counseling sessions regarding his behavior, Mr. Gill has failed to change his behavior on a consistent basis. Mr. Gill's behavior in this situation has escalated from previous situations. . . .

3.18 A predisciplinary meeting was schedule for Appellant to provide his input to Ms. Manfredi. However, the meeting was rescheduled at Appellant's request. Ms. Manfredi was not available on the rescheduled date so Paula Minton-Foltz, one of Ms. Manfredi's peers, was assigned to conduct the meeting. The meeting was again rescheduled and although Ms. Manfredi was available on the rescheduled date, she and her supervisor decided it would be best to allow Ms. Minton-Foltz to conduct the meeting because she had no prior history with the situation.

3.19 Ms. Minton-Foltz conducted the predisciplinary meeting on July 6, 2010. Eileen Whalen, Executive Director of HMC, considered the information provided by Ms. Minton-Foltz and by Appellant and determined that the facts supported the recommendation for dismissal. By letter July 29, 2010, Ms. Whalen notified Appellant of his immediate dismissal effective July 30, 2010.

IV. ARGUMENTS OF THE PARTIES

4.1 Respondent admits that there was a history of issues in the sleep clinic but contends that when management became aware of the problems, actions were taken to address them. Respondent explains that the employees involved in the pre-2010 incidents for which Appellant received counseling were not involved in the June 1, 2010 incident.

Respondent argues that Appellant had a history of progressive discipline and was given repeated opportunities to improve his workplace behavior and communication. Respondent asserts that in spite of prior counseling, on June 1, 2010, Appellant used a loud voice, placed himself in front of the closed door to the control room, and again disrupted the workplace. Respondent argues that Appellant engaged in inappropriate and unprofessional behavior, was insubordinate, and violated the UW's Workplace Violence Policy and Professional Conduct Policy. Respondent contends that Appellant's behavior was escalating and that his coworkers felt unsafe. Respondent asserts that given Appellant's history of misconduct, just cause exists to support dismissal as the appropriate level of discipline.

4.2 Appellant argues that throughout his employment at HMC he had been singled out and that when he tried to raise issues with management, management refused to meet with him. Appellant admits that he became frustrated during the June 1, 2010, meeting but argues that he closed the door to make sure that he could be seen by Mr. Chisholm. Appellant further argues that the witnesses to the June 1, 2010, meeting were untruthful and were not reliable. Appellant asserts that he is a well respected member of the community and he has a passion for working in the sleep clinic. Appellant argues that he does not lie and asks that his honor and dignity be restored.

V. CONCLUSIONS OF LAW

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

5.2 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.

5.3 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.

5.4 Appellant was aware of the expectations and policies regarding professional behavior and workplace violence. And, he was aware of his responsibility to comply with the expectations and policies, yet he failed to do so. Appellant had multiple opportunities to demonstrate compliance

or improvement, yet on June 1, 2010, he behaved in an unprofessional manner, raised his voice, disrupted the workplace, and cause concern for the staff and patients in sleep clinic. Past misconduct by prior employees does not excuse Appellant's misconduct on June 1, 2010.

5.5 Respondent has established that in light of Appellant's history of corrective actions, the discipline was imposed for a good reason. Further, Respondent followed an appropriate investigative and predisciplinary process. Under the totality of the proven facts and circumstances, dismissal was the appropriate sanction to prevent recurrence, deter others, and maintain the safety and security of the sleep clinic for its staff and patients.

5.6 Respondent has met its burden of proof and the appeal should be denied.

VI. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Surinder Gill is denied.

DATED this _____ day of _____, 2011.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Chair

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JOSEPH PINZONE, Vice Chair