



2828 Capitol Blvd.
PO Box 40911
Olympia, WA 98504-0911

STATE OF WASHINGTON
PERSONNEL APPEALS BOARD

(360) 586-1481
FAX (360) 753-0139

September 25, 1996

Robert F. Spaulding
Attorney at Law
P.O. Box 7846
Olympia, WA 98507-7846

RE: Donna L. Evans v. Department of Corrections, Dismissal Appeal,
Case No. DISM-96-0005

Dear Mr. Spaulding:

Enclosed is a copy of the order of the Personnel Appeals Board in the above-referenced matter.
The order was entered by the Board on September 25, 1996.

Sincerely,

Kenneth J. Latsch
Executive Secretary

KJL:tmp
Enclosure

cc: Donna L. Evans
Valerie B. Petrie, AAG
Jennie Adkins, PO
Kirk Hanson, REP



BEFORE THE PERSONNEL APPEALS BOARD
STATE OF WASHINGTON


DONNA L. EVANS,)
)
 Appellant,) NO. DISM 96-0005
 v.)
)
 DEPARTMENT OF CORRECTIONS,) MOTION AND ORDER OF DISMISSAL
 Respondent.)

MOTION

The appellant hereby notifies the Personnel Appeals Board that she wishes to withdraw the above-entitled appeal.

DATED this 30th day of August, 1996.

SWANSON, PARR, CORDES,
YOUNGLOVE & PEEPLES, P.S.


Robert Frank Spaulding, WSBA#17323
Attorney for Appellant

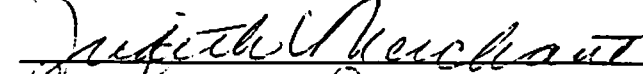

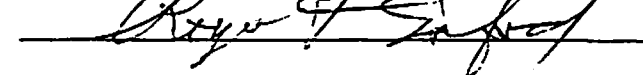
ORDER

This matter came on regularly before the Personnel Appeals Board on the consideration of the request of the appellant to withdraw her appeal. The Board having reviewed the files and records herein, being fully advised in the premises, and it appearing to the Board that the appellant has requested to withdraw her appeal, now, therefore,

IT IS HEREBY ORDERED that the appellant's request to withdraw her appeal is granted and the appeal is dismissed.

DATED this 25th day of September, 1996.

WASHINGTON STATE PERSONNEL APPEALS BOARD

SWANSON, PARR, CORDES,
YOUNGLOVE & PEEPLES, P.S.
ATTORNEYS AT LAW
EASTSIDE PROFESSIONAL PLAZA, SUITE A
924 EAST SEVENTH AVENUE
P.O. BOX 7848
OLYMPIA, WASHINGTON 98507-7848
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2828 Capitol Blvd.
PO Box 40911
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STATE OF WASHINGTON
PERSONNEL APPEALS BOARD

(360) 586-1481
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June 5, 1996

Robert F. Spaulding
Swanson, Parr, Cordes, et al
P.O. Box 7846
Olympia, WA 98507-7846

Valerie B. Petrie
Assistant Attorney General
P.O. Box 40145
Olympia, WA 98504-0145

Re: Donna L. Evans v. Department of Corrections, Dismissal Appeal,
Case No.: DISM-96-0005

Dear Counsel:

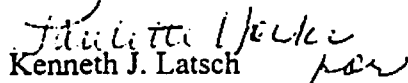
This confirms that a settlement/pre-hearing conference has been scheduled on *June 21, 1996 at 10:00 a.m.*, at the offices of *Swanson, Parr, Cordes, et al, 924 East Seventh Avenue, Olympia WA.*

The reason for the conference is to attempt to settle the issue on appeal to the mutual satisfaction of the parties without the need for a hearing on the matter.

If the settlement efforts are unsuccessful, we will attempt to narrow the scope of the issues to go before the Board for hearing. We will discuss such things as witness lists, possible stipulations, briefing schedules, and a hearing date.

If you have any questions, please call me.

Sincerely,


Kenneth J. Latsch
Executive Secretary

KJL:py

cc: Donna L. Evans
Jennie Adkins
Kirk Hanson





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STATE OF WASHINGTON
PERSONNEL APPEALS BOARD

(360) 586-1481
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April 5, 1996

CERTIFIED P 334 178 357
P 334 178 358

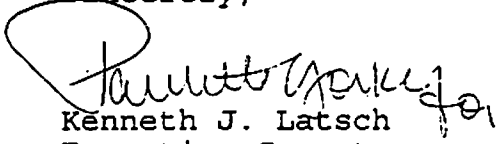
Robert F. Spaulding
P.O. Box 7846
Olympia, Washington 98507-7846

Re: Donna L. Evans v. Department of Corrections, Dismissal
Appeal, Case No. DISM-96-0005

Dear Mr. Spaulding:

Enclosed is a copy of the Order Denying Appellant's Motion To
Set Aside Disciplinary Action of the Personnel Appeals Board
in the above-referenced matter. The order was entered by the
Board on April 5, 1996.

Sincerely,


Kenneth J. Latsch
Executive Secretary

KJL/gmh

Enclosure

cc: Donna L. Evans, APP
Valerie B. Petrie, AAG
Jennie Adkins, DOC
Kirk Hanson, WFSE

1 BEFORE THE PERSONNEL APPEALS BOARD

2 STATE OF WASHINGTON

3
4 DONNA L. EVANS,

5 Appellant,

6 v.

7 DEPARTMENT OF CORRECTIONS,

8 Respondent.

)
)
) Case No. DISM-96-0005

)
) ORDER DENYING APPELLANT'S
) MOTION TO SET ASIDE
) DISCIPLINARY ACTION

9
10 I. INTRODUCTION

11 1.1 **Hearing on Motion.** This matter came before the Personnel Appeals Board, CHARLES
12 ALEXANDER, Chair, and ART WANG, Member, for hearing oral argument on Appellant's
13 Motion to Set Aside Disciplinary Action. The hearing was held at the office of the Personnel
14 Appeals Board in Olympia, Washington, on March 18, 1996. NORA REYNOLDS, Vice Chair, did
15 not participate in the hearing or in the decision in this matter.

16
17 1.2 **Appearances.** Appellant Donna L. Evans was represented by Robert Frank Spaulding,
18 Swanson, Parr, Cordes, Younglove & Peeples, P.S. Respondent Department of Corrections was
19 represented by Valerie B. Petrie, Assistant Attorney General.

20
21 1.3 **Documents Considered.** The Board considered the files and documents in this matter,
22 including:

- 23 (a) [Appellant's] Motion to Set Aside Disciplinary Action, including attached
24 disciplinary letter, filed February 6, 1996;
25 (b) [Appellant's] Memorandum of Authorities, filed February 6, 1996;
26 (c) Department of Corrections' Response to Motion to Set Aside Disciplinary
Action, filed March 8, 1996;

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- 1 (d) Declaration of Belinda D. Stewart, filed March 8, 1996; and
2 (e) Declaration of Jacqueline Campbell, filed March 8, 1996.

3 **II. SUMMARY**

4 2.1 **Facts.** Appellant Donna L. Evans was dismissed from her position as a Licensed Practical
5 Nurse 3 with Respondent Department of Corrections by disciplinary letter signed by a designee
6 "for" the appointing authority, the Superintendent of McNeil Island Corrections Center. The
7 handwritten signature was in the name of the person the superintendent had designated to be in
8 charge of the institution while she was on holiday leave. The handwritten word "for" appeared over
9 the typed signature block containing the name and title of the appointing authority. The terms of the
10 disciplinary letter make it clear that the superintendent conducted the predisciplinary hearing and
11 made the decision to terminate Appellant. The superintendent's affidavit provides that she reviewed
12 and approved the letter, directed that it be processed, and directed that it be signed by her designee.
13 The designee had not participated in the personnel decisions involved here. It is undisputed that the
14 superintendent's appointing authority could not be delegated to her designee.

15
16 2.2 **Nature of Appeal.** Appellant moved to set aside the disciplinary sanction of dismissal
17 based on the lack of signature by the appointing authority.

18
19 2.3 **Summary of Appellant's Argument.** Appellant contends that the disciplinary letter was
20 not valid because it lacked the appointing authority's signature, pursuant to Carrell.

21
22 2.4 **Summary of Respondent's Argument.** Respondent contends that no signature is required,
23 pursuant to Georgian, and that the designee's signature was merely a ministerial act, pursuant to
24 David.

1 2.5 **Primary Issue.** Whether a disciplinary sanction is valid when it is imposed in a disciplinary
2 letter which is not personally signed by the appointing authority.

3
4 2.6 **Citations Discussed.** RCW 41.06.170(2), 42.23.005, 42.23.100; WAC 356-34-020, 356-34-
5 045; Nichols v. Dep't of Agriculture, PAB No. D82-65 (1982), rev'd Thurston Co. Super. Ct. No.
6 82-2-01501-3 (1984); Carrell v. Dep't of Social & Health Services, PAB No. D90-116 (1991),
7 appeal dismissed as moot, Thurston Co. Super. Ct. No. 91-2-02786-9 (1992) [Carrell is overruled
8 insofar as it is inconsistent with this decision]; Georgian v Dep't of Social & Health Services, PAB
9 No. S91-002 (1993); David v. Dep't of Corrections, PAB No. D92-008 (1993); Burkett v.
10 Washington State Patrol, PAB No. L93-051 (1995), appeal filed Thurston Co. Super. Ct. No. 95-2-
11 01534-1).

12
13 2.7 **Summary of Board's Decision.** The Board traces the history of precedents on the issue of
14 disciplinary letters not personally signed by the appointing authority. In Nichols, the Board's
15 approval of the signature of a deputy director was reversed on other grounds in Superior Court. In
16 Carrell, a majority of the Board ruled that the handwritten signature "for" the superintendent by a
17 person who lacked appointing authority voided the disciplinary action. It is unclear from the record
18 whether the Board was aware that the designee had merely signed for the superintendent without
19 otherwise participating in the decision. In Georgian, a majority of the Board held that a signature
20 was not required by an appellant or union representative in filing an appeal. In David, the Board
21 upheld discipline in which the appointing authority made the disciplinary decisions and a
22 subordinate signed the letter as an authorized ministerial act.

23
24 The requirements in RCW 41.06.170(2) and in WAC 356-34-020 et seq. are for "specified charges
25 in writing," not for a specific personal signature by the appointing authority. Moreover, in contrast
26

1 to the decision-making function which initiates, directs, and is responsible for the contents of the
2 letter, the act of signing "for" the appointing authority is merely a ministerial act. Carrell is
3 overruled insofar as it is inconsistent with this decision.

4
5 2.8 **Conclusion.** Appellant's motion to set aside the disciplinary action is denied

6
7 **III. DISCUSSION**

8 3.1 This motion presents the Board squarely with the issue of whether a disciplinary sanction is
9 valid when it is imposed in a disciplinary letter which is not personally signed by the appointing
10 authority.

11
12 By disciplinary letter dated January 3, 1996, Appellant Donna L. Evans was notified of her
13 immediate suspension and dismissal as a Licensed Practical Nurse 3 with Respondent Department
14 of Corrections at the McNeil Island Corrections Center. The letter concluded with the typed
15 signature block:

16 Belinda D. Stewart, Superintendent
17 McNeil Island Corrections Center

18
19 Above the signature block in handwritten script appear the words "for - Jacqueline Campbell."
20 Jacqueline Campbell, who was designated to be in charge of the institution while Stewart was on
21 holiday leave, signed the letter "for" Belinda D. Stewart, but otherwise was not involved with the
22 disciplinary action. (Declaration of Campbell). Although not personally signed by her, the terms of
23 the letter make it explicitly clear that Stewart conducted the predisciplinary hearing in this matter
24 and made the decision to terminate Appellant. Moreover, her affidavit further provides that she
25 reviewed and approved the letter, directed that it be processed, and directed that it be issued under

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1 her signature while she was on holiday leave by the person she left in charge. (Declaration of
2 Stewart).

3
4 It is undisputed that Stewart was the appointing authority and that appointing authority could not be
5 delegated to Campbell.

6
7 This issue has come before the Personnel Appeals Board on several occasions, although not as
8 clearly and directly as here. We take this opportunity to attempt to clarify our interpretation.

9
10 3.2 In Nichols v. Dep't of Agriculture, PAB No. D82-65 (1982), rev'd Thurston Co. Super. Ct.
11 No. 82-2-01501-3 (1984), the appellant moved to set aside a suspension on the basis that the Deputy
12 Director had signed the letter while the Director was out of state. The Board denied the motion. It
13 considered RCW 42.23.005, which authorized the Director to appoint a Deputy Director to have
14 general supervision over the department in the Director's absence. The Board simply stated: "In the
15 absence of the Director, the signature of the Deputy Director on the notice of suspension was
16 appropriate." However, the Board's decision was reversed on appeal. The Thurston County
17 Superior Court reinstated the Appellant "for the reason that neither the Director . . . nor the Deputy
18 Director, in the Director's absence, is the appointing authority of the appellant for purposes of
19 appointment or discipline." Instead, the court held that, under former RCW 43.23.100, the
20 supervisor of grain was the appointing authority, although discipline may require the approval of the
21 Director.

22
23 3.3 In Carrell v. Dep't of Social & Health Services, PAB No. D90-116 (1991), appeal dismissed
24 as moot, Thurston Co. Super. Ct. No. 91-2-02786-9 (1992), the disciplinary letter for a reduction in
25
26

1 pay had a typed signature block for Thomas Fritz, Superintendent of Eastern State Hospital, but the
2 handwritten signature was "Alden H. Miller, M.D. for Thomas Fritz, Superintendent."

3
4 Appellant moved to dismiss for failure of the Respondent to perfect the disciplinary action because
5 Dr. Miller was not the appointing authority. The Hearings Examiner granted the motion, ruling that
6 "[t]he failure of DSHS to exercise the disciplinary authority through a proper subdelegate voids its
7 action." (Disposition of Motion, Disposition of Case on Motion, Disposition of Motion to
8 Reconsider, slip op. at 4 (Vache', Hrgs. Exam.)(1991)).

9
10 Respondent moved for reconsideration and provided an affidavit from Fritz that he personally
11 conducted the Personnel Conduct Report hearing, determined that misconduct had occurred,
12 determined the level of discipline, directed the disciplinary letter to be prepared, reviewed the letter,
13 and approved its content. The affidavit also stated that Acting Superintendent Miller was not
14 involved in the matter in any way except that he was Fritz's "official designee only for the purpose
15 of signature," because Fritz was gone that day.

16
17 The Hearings Examiner acknowledged the "close question," but denied the motion to reconsider: "I
18 conclude that the attempt to delegate even the signing authority is improper; under WAC 356-34-
19 010, 011. I am guided by Judge Doren's [sic] decision in Nichols . . . reversing the Personnel
20 Appeals Board on a strikingly similar set of facts." Id. at 5-6. We assume that the Hearings
21 Examiner was aware of the result in the Nichols appeal, but did not have the benefit of knowing that
22 the court's reasoning was significantly different.

23
24 Following a hearing on exceptions to the Board, the majority affirmed the Hearings Examiner's
25 ruling on the original motion without reference to the motion for reconsideration. The Board ruled:

26
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Olympia, Washington 98504

1 One motion dealt with the failure of the Appointing Authority to sign the disciplinary
2 letter. The Hearings Examiner ruled that the failure of Department of Social and
3 Health Services (DSHS) to exercise disciplinary authority through as [sic] proper
4 subdelegation voids its action. For this reason, he granted the Appellant's motion
5 and set aside the Respondent's disciplinary action against the Appellant. We affirm,
6 however we make no ruling regarding the ability of the Appointing Authority to take
7 action.

8 Findings, Conclusions and Order of Board Following Hearing on Exceptions, at 1-2.

9 It is unclear from the record whether the Board was aware that Dr. Miller had merely signed for the
10 Superintendent without otherwise participating in the decision. A dissenting opinion cited RCW
11 41.06.170(2), WAC 356-34-020, and WAC 356-34-045 that there must be "specified charges in
12 writing," but that there was no requirement for a signature. It also argued that the statute required
13 the employee's appeal to be in writing, but that the Board accepted appeals signed by an employee's
14 representative and had never required a signature from the employee. Id. (Wilson, dissenting).

15 3.4 In an Intermediate Order Denying Motion to Dismiss in Georgian v. Dep't of Social &
16 Health Services, PAB No. S91-002 (1993), the Board considered a converse scenario suggested by
17 the dissent in Nichols, in which neither the appellant nor a union representative signed the appeal.
18 A majority of the Board held that "there is no rule which requires any signature." The majority
19 distinguished Carrell, stating: "It was not the fact that Dr. Miller signed the action letter which was
20 determinative of the outcome, but rather that Dr. Miller took the disciplinary action." This
21 statement appears to be based on the majority decision in Carrell, but not on the underlying decision
22 of the Hearings Examiner in that case. A concurring opinion in Georgian recommended overruling
23 Carrell. Id. (Wilson, concurring).

1 3.5 In David v. Dep't of Corrections, PAB No. D92-008 (1993), the disciplinary letter for a
2 reduction in pay was signed in handwriting "D.A. Dunnington for" over the typewritten signature
3 block "Richard Bosse, Superintendent." The Superintendent testified that he made the finding of
4 misconduct, determined which sanction to impose, and reviewed preliminary drafts of the
5 disciplinary letter. He delegated, in writing, appointing authority to Associate Superintendent
6 Dunnington in his absence. The Hearings Examiner denied Appellant's motion to set aside the
7 discipline, concluding that the delegation and exercise of the appointing authority by the Associate
8 Superintendent was proper. Findings of Fact, Conclusions of Law and Recommended Decision
9 (Woods, Hrgs. Exam.). After a hearing on exceptions, the Board modified the decision, concluding
10 that the Superintendent did not have authority to delegate his appointing authority. However, the
11 Board upheld the discipline, noting only that the signature was "an authorized ministerial act."
12 There is no indication in the record that Nichols, Carrell, or Georgian were brought to the Board's
13 attention. The Board's decision merely states:

14 In this case, it was the appointing authority who determined that misconduct
15 occurred and instructed that the Appellant should be reduced in pay. The subsequent
16 signing of the disciplinary letter "for Richard Bosse" (emphasis added) in
Superintendent Bosse's absence was an authorized ministerial act.

17 Id. (emphasis in original).

18
19 In Burkett v. Washington State Patrol, PAB No. L93-051 (1995), appeal filed Thurston Co. Super.
20 Ct. No. 95-2-01534-1, a reduction in force notice was signed by the Deputy Chief, who had
21 appointing authority, although the agency policy provided that "[n]otification shall be signed by the
22 Chief." The Board denied Appellant's motion for summary reinstatement because the Deputy Chief
23 had delegated authority, as opposed to being only the Chief's designee. Again, none of the
24 precedents discussed above were brought to the Board's attention.

1 3.6 We conclude that Appellant's motion should be denied. As noted in the dissenting opinion
2 in Carrell and in the majority opinion in Georgian, the requirements in RCW 41.06.170(2) and in
3 WAC 356-34-020 et seq. are for "specified charges in writing," not for a specific personal signature
4 by the appointing authority. Moreover, in contrast to the decision-making function which initiates,
5 directs, and is responsible for the contents of the letter, the act of signing "for" the appointing
6 authority is merely a ministerial act. David. Carrell is overruled insofar as it is inconsistent with
7 this decision.

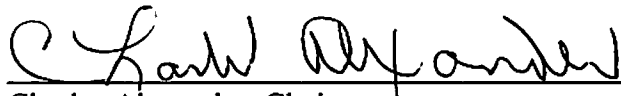
8
9 Having reviewed the files and records in this matter and being fully advised in the premises, the
10 Board enters the following:

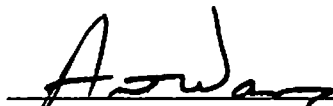
11
12 **IV. ORDER**

13 NOW, THEREFORE, IT IS HEREBY ORDERED that Appellant's Motion to Set Aside
14 Disciplinary Action is denied.

15
16 DATED this 5th day of April, 1996.

17
18 WASHINGTON STATE PERSONNEL APPEALS BOARD

19 
20 _____
Charles Alexander, Chair

21 
22 _____
Art Wang, Member

23
24
25
26
Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504



Christine O. Gregoire

ATTORNEY GENERAL OF WASHINGTON

Labor & Personnel Division

905 Plum Street SE, Building 3 • PO Box 40145 • Olympia WA 98504-0145

March 8, 1996

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MAR 08 1996

PERSONNEL
APPEALS BOARD

Kenneth Latsch, Executive Secretary
Personnel Appeals Board
Mail Stop 40911
Olympia, WA 98504-0911

Re: *Donna L. Evans v. Department of Corrections*
Personnel Appeals Board No. DISM 96-0005

Dear Mr. Latsch:

Enclosed for filing in the above-entitled case are the originals of the following documents:

- Department of Corrections' Response to Motion to Set Aside Disciplinary Action
- Declaration of Belinda D. Stewart
- Declaration of Jacqueline Campbell

A copy of each of these documents have been sent to Robert F. Spaulding, appellant's attorney.

Thank you for your assistance in this matter.

Very truly yours,

SHARON J. KOZAR
Legal Secretary to
VALERIE B. PETRIE
Assistant Attorney General

/sjk
Enclosure

cc: Robert F. Spaulding



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MAR 08 1996

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BEFORE THE PERSONNEL APPEALS BOARD
STATE OF WASHINGTON

DONNA L. EVANS,)	
)	
Appellant,)	NO. DISM 96-0005
)	
v.)	DEPARTMENT OF CORRECTIONS'
)	RESPONSE TO MOTION TO SET
DEPARTMENT OF CORRECTIONS,)	ASIDE DISCIPLINARY ACTION
)	
Respondent.)	

TO: WASHINGTON STATE PERSONNEL APPEALS BOARD; and
ROBERT F. SPAULDING, Appellant.

I. PROCEDURAL BACKGROUND AND FACTS

Appellant was a Licensed Practical Nurse 3 at McNeil Island Corrections Center. Sometime between June 28, 1995 and July 14, 1995, appellant was involved in improperly dispensing medication, constituting neglect of duty, gross misconduct and willful violation of published employing agency rules. This incident was further documented in an Employee Conduct Report completed on December 5, 1995.

An administrative review was held on November 17, 1995, resulting in a finding of misconduct. A Loudermill hearing was convened on November 20, 1995 to discuss the specific charges with the appellant. Belinda Stewart, Superintendent of McNeil Island Corrections Center, conducted both meetings. See Declaration of Belinda D. Stewart (hereinafter Stewart Declaration). On or about January 3, 1996, a disciplinary letter was served upon the appellant, notifying her of her suspension effective January 8, 1996 through January 22, 1996, followed by her dismissal effective January 23, 1996.

1 Superintendent Belinda Stewart reviewed and approved the letter before its issuance, and
2 the signature block contained Ms. Stewart's name and title. See Stewart Declaration. As
3 Ms. Stewart was not available to sign the letter when it went out, Ms. Jacqueline Campbell
4 signed it instead, noting that she was signing the letter "for" Ms. Stewart. See Declaration
5 of Jacqueline Campbell (hereinafter Campbell Declaration); see also Stewart Declaration.

6 II. ISSUE

7 Whether a disciplinary action, taken by the appointing authority, and accompanied
8 by written notice from the appointing authority, is valid without the signature of the
9 appointing authority?

10 III. ARGUMENT

11 For Department of Corrections disciplinary actions, the superintendent of the
12 particular institution is the appointing authority, and has the authority to take personnel
13 action such as a dismissal. See RCW 72.02.045. In this case, Belinda Stewart is the
14 Superintendent of McNeil Island and thus the appointing authority. This fact has been
15 conceded by the appellant. See Appellant's Memorandum of Authorities at 1-2.

16 RCW 41.06.170 requires that when an employee is dismissed, the employee must be
17 furnished with the specific charges, in writing. See also WAC 356-34-040,-050. Written
18 notice of the specified charges was sent to the appellant from Ms. Stewart, the appointing
19 authority. The letter was issued under Ms. Stewart's authority, and ended with her typed
20 name; as Ms. Stewart was unavailable to sign the letter at the time it was issued, the letter
21 was signed by Jacqueline Campbell, for Belinda Stewart. See Stewart Declaration. Ms.
22 Campbell did not initiate or take the disciplinary action; she merely signed the letter for
23 administrative purposes. It was clearly Belinda Stewart, the appointing authority, who took
24 the action in this case. See Campbell Declaration. After an administrative review, Ms.
25 Stewart determined that misconduct had occurred. Ms. Stewart then convened a Loudermill
26 hearing with the appellant and discussed the charges and consideration of dismissal as a

1 sanction. It was Ms. Stewart who determined that termination was appropriate and
2 authorized the notice of dismissal, and it was Ms. Stewart's name typed at the end of the
3 letter. See Stewart Declaration.

4 Appellant claims that the present case is similar to Carrell v. DSHS, PAB no. D90-
5 116 (1991), where the board upheld a hearing examiner's finding that a doctor who took
6 disciplinary action and signed a disciplinary letter for the institution superintendent was not
7 authorized to exercise such disciplinary authority. However, this Board has subsequently
8 distinguished Carrell. "It was not the fact the Dr. Miller signed the action letter which was
9 determinative of the outcome, but rather that Dr. Miller took the disciplinary action."
10 Georgian v. DSHS, PAB No. S91-002 (1993) (emphasis added). Likewise, in the present
11 case Ms. Campbell did not take the action, but merely signed the letter.

12 Georgian involved an appeal that was not signed by the Appellant or the union
13 representative. Instead, the name of the union representative was signed by a union staff
14 person with her initials "LS." Georgian at 4. The Board looked to the language of WAC
15 358-20-040 which requires that an appeal be in writing, and concluded that "there is no rule
16 which requires any signature." Id. Since no signature was required, the board determined
17 that "it makes no difference whether an appeal is signed by the Appellant, a union
18 representative, a friend or a union staff person." Id.

19 The phrase "in writing," which the Board in Georgian held not to require a
20 signature, is the identical phrase used in both RCW 41.06.170(2) and WAC 356-34-040,-
21 050. Here, the notification of dismissal was given in writing and no signature was
22 required. As in Georgian, because no signature is required, the identity of who signed the
23 letter for administrative or ministerial purposes is irrelevant.

24 When authority is properly exercised by the appointing authority, signing in the
25 stead of the appointing authority is simply an administrative task. In David v. DOC, PAB
26 No. 92-008 (1993), a superintendent directed that a disciplinary letter be drafted. The

1 superintendent reviewed drafts of the letter, but did not review the final draft, and did not
2 sign the final draft. The final draft was signed by an associate superintendent, "for" the
3 superintendent. Id. at 2. The Board looked to the fact that it was the appointing authority
4 who had determined that misconduct had occurred and that disciplinary action should be
5 taken. Signing the letter "for" the superintendent was simply a "ministerial act." Id. at 3.

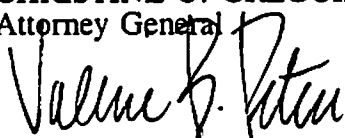
6 A similar situation exists here. Stewart noted the misconduct, and determined that
7 disciplinary action was appropriate. Stewart directed that a disciplinary letter be drafted,
8 and reviewed the letter before it was sent. However, because Stewart was unavailable to
9 sign the letter when it was to be served, this "ministerial act" was performed by Campbell.

10 IV. CONCLUSION

11 The disciplinary action was taken by Belinda Stewart, the appointing authority. The
12 written notice of dismissal bore the typed name of Belinda Stewart, McNeil Island
13 Superintendent. Because Ms. Stewart was unavailable at the time of sending, Ms.
14 Jacqueline Campbell signed on her behalf, noting that she was signing "for" Ms. Stewart.
15 The appellant was notified in writing of the disciplinary action taken by the appointing
16 authority, and therefore this disciplinary action should proceed.

17 DATED this 6 day of March, 1996.

18 CHRISTINE O. GREGOIRE
19 Attorney General

20 
21 VALERIE B. PETRIE
22 WSBA #21126
23 Assistant Attorney General

24 
25 JOEL KAUTH
26 Rule 9 Intern

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MAR 08 1996

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BEFORE THE PERSONNEL APPEALS BOARD
STATE OF WASHINGTON

DONNA L. EVANS,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

NO. DISM 96-0005

DECLARATION OF
BELINDA D. STEWART

BELINDA D. STEWART, hereby declares as follows:

I am the Superintendent of McNeil Island Corrections Center (MICC). In that capacity, I have personal knowledge of the matters stated herein.

I am also the Appointing Authority for MICC and make the final determinations as to what disciplinary action should be taken against MICC employees, up to and including termination from employment.

I acted as the Appointing Authority in the disciplinary matter of Donna L. Evans. I initially directed the fact-finding investigation into the allegations of misconduct. On November 17, 1995, I conducted the administrative hearing to discuss the allegations of misconduct against Ms. Evans. At the conclusion of that meeting, I verbally informed Ms. Evans, her union representative and her attorney that I had determined that misconduct had occurred. Also at that time, I scheduled a pre-termination hearing and verbally notified all parties that it would be held on November 20, 1995.

On November 20, 1995, I conducted a pre-termination meeting regarding the finding of misconduct and the consideration of termination as a sanction. Subsequent to the meeting,

DECLARATION OF
BELINDA D. STEWART -1

ATTORNEY GENERAL OF WASHINGTON
Labor & Personnel Division
905 Plum St. SE, Bldg. 3
PO Box 40145
Olympia, WA 98504-0145
(360) 664-4267

1 I determined that termination was appropriate and that a disciplinary letter should be prepared
2 notifying Ms. Evans that she would be dismissed. I then reviewed the letter, gave my
3 approval, directed that it be processed pursuant to Department of Corrections (DOC) practice
4 and that it be issued upon its return from DOC Headquarters.

5 I was aware at that time that I would be out of state for the holidays and that the letter
6 may be ready for issuance while I was away. I therefore directed that the letter be issued
7 under my signature and that the person I had left in charge sign for me. On January 3, 1996
8 I had not returned from my holiday leave, so pursuant to my direction, Jacqueline Campbell,
9 who was in charge in my absence, signed the letter for me.

10 I declare under penalty of perjury under the laws of the state of Washington that the
11 foregoing is true and correct.

12 DATED at Steilacoom, Washington on the 8th day of March, 1996.

13 
14 BELINDA D. STEWART
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RECEIVED

MAR 08 1996

BEFORE THE PERSONNEL APPEALS BOARD
STATE OF WASHINGTON

PERSONNEL

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DONNA L. EVANS,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

NO. DISM 96-0005

DECLARATION OF
JACQUELENE CAMPBELL

JACQUELENE CAMPBELL, hereby declares as follows:

I am employed at McNeil Island Corrections Center (MICC) and have personal knowledge of the matters stated herein. I am the Minimum Custody Annex/Work Ethic Camp Superintendent and report directly to Superintendent Belinda D. Stewart.

On January 3, 1996, Ms. Stewart was on holiday leave and I was designated to be in charge of the institution in her absence. On that day, a disciplinary letter to MICC employee Donna L. Evans was presented to me from Personnel to sign for Ms. Stewart. It was my understanding at that time that if Ms. Stewart was unavailable to sign the letter, the person in charge was to sign it so that it could be issued in a timely manner. I signed the letter for Ms. Stewart, above her name, by specifically indicating that it was "for" Ms. Stewart. I did not assume any authority, nor was it given to me when I signed the letter. Providing my signature was the extent of my involvement with the letter and the disciplinary process.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED at Stella.com, Washington, on the 6th day of March, 1996.


JACQUELENE CAMPBELL

1 BEFORE THE PERSONNEL APPEALS BOARD

2 STATE OF WASHINGTON

3

4 DONNA L. EVANS,) Case No. DISM 96-0005
)
 5 Appellant,) NOTICE OF SCHEDULING APPELLANT'S
) MOTION TO SET ASIDE DISCIPLINARY
 6 vs.) ACTION
) (ORAL ARGUMENT REQUESTED)
 7 DEPARTMENT OF CORRECTIONS,)
)
 8 Respondent.)

9 Notice is hereby given of scheduling the hearing on Appellant's Motion to Set Aside
 10 Disciplinary Action. The hearing will be held in the Personnel Appeals Board Hearing Room,
 11 2828 Capitol Boulevard, Olympia, Washington, on Monday, March 18, 1996, beginning at
 12 1:30 p.m.

13 Pursuant to WAC 358-30-060(4) any affidavits to be filed in support of a motion shall be
 14 served with the motion at least twenty-one days prior to the date scheduled for consideration of
 15 the motion. Responses to the motion and any opposing affidavits shall be filed and served at least
 16 ten days prior to the date scheduled. Any reply and any counter affidavits by the moving party
 shall be filed and served at least three days prior to the date scheduled.

17 If the services of an interpreter are needed, notify Personnel Appeals Board staff at least
 18 two weeks prior to the hearing. The hearing site is barrier free and accessible to the disabled.

19 DATED this 9th day of February, 1996.

20 WASHINGTON STATE PERSONNEL APPEALS BOARD

21
 22 Kenneth J. Latsch
 23 Kenneth J. Latsch, Executive Secretary (MA)
 (360) 586-1481

24 cc: Donna L. Evans, Appellant
 25 Robert F. Spaulding, Attorney
 26 Kirk Hanson, Area Rep.
 Valerie Petrie, AAG

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BEFORE THE PERSONNEL APPEALS BOARD FEB 06 1996
STATE OF WASHINGTON

PERSONNEL
APPEALS BOARD

4	DONNA L. EVANS,)	
5)	
6	Appellant,)	PAB NO. DISM-96-0005
7	v.)	NOTE FOR SETTING MOTION
8	DEPARTMENT OF CORRECTIONS,)	ORAL ARGUMENT REQUESTED
9	Respondent.)	

10 Please note the attached motion on the Board's motions calendar.

11 The attached motion is a:

- 12 XX Dispositive or summary motion (WAC 358-30-060)
- 13 _____ Motion for more definite statement (WAC 358-30-015)
- 14 _____ Motion for continuance (WAC 358-30-015)
- 15 _____ Other motion _____ (WAC 358-30-042)

16 Please schedule the motion for: Date: 3/18/96 Time: 1:30 p.m.

17 This motion is noted by Appellant by and through his/her attorney.

18 XX For dispositive or summary motions, I have made a good faith effort to consult the opposing party as to scheduling the motion and have scheduled it for at least 21 days from the date this is filed. I understand that responses are due 10 days prior to the date scheduled and any reply is due 3 days prior to the date scheduled.

19 XX For dispositive or summary motions, I request oral argument on the motion.

20 XX For all motions, I have provided an original and three copies to the Board and one copy to each opposing party. (WAC 358-30-042(4)).

21 DATED this 6th day of February, 1995.

22 SWANSON, PARR, CORDES,
23 YOUNGLOVE & PEEPLES, P.S.

24 *Robert Frank Spaulding*
25 Robert Frank Spaulding, WSBA #17323
26 Attorney for Appellant

SWANSON, PARR, CORDES,
YOUNGLOVE & PEEPLES, P.S.
ATTORNEYS AT LAW
EASTSIDE PROFESSIONAL PLAZA, SUITE A
924 EAST SEVENTH AVENUE
P.O. BOX 7848
OLYMPIA, WASHINGTON 98507-7848
FACSIMILE (360) 754-9288
(360) 357-7791

MOTION TO SET ASIDE
DISCIPLINARY ACTION

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BEFORE THE PERSONNEL APPEALS BOARD
STATE OF WASHINGTON

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FEB 06 1996
PERSONNEL
APPEALS BOARD

DONNA L. EVANS.)
)
 Appellant,)
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 v.)
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 DEPARTMENT OF CORRECTIONS)
)
 Respondent.)

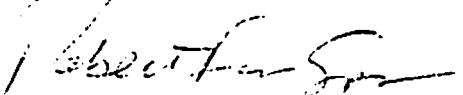
NO. DISM 96-0005
MOTION TO SET ASIDE
DISCIPLINARY ACTION

Comes now Appellant DONNA L. EVANS by and through her attorney Robert Frank Spaulding, and hereby moves the Personnel Appeals Board for an order setting aside the disciplinary action with prejudice in the above-captioned cause.

This motion is based upon the civil service law, merit system rules, prior decisions of the Board as cited in Appellant's Memorandum of Authorities and WAC 358-30-060.

DATED this 6th day of February, 1996.

SWANSON, PARR, CORDES,
YOUNGLOVE & PEEPLES, P.S.



Robert Frank Spaulding, WSBA #17323
Attorney for Appellant

MOTION TO SET ASIDE
DISCIPLINARY ACTION

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FEB 06 1996

PERSONNEL
APPEALS BOARD
BEFORE THE PERSONNEL APPEALS BOARD
STATE OF WASHINGTON

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6 DONNA L. EVANS,)
7 Appellant,) NO. DISM-96-0005
8 v.) MEMORANDUM OF AUTHORITIES
9 DEPARTMENT OF CORRECTIONS,)
10 Respondent.)

11 I. PROCEDURAL BACKGROUND AND FACTS

12 On or about January 3, 1996, a disciplinary letter was personally
13 served upon Appellant notifying her of her immediate suspension at
14 12:01 a.m. on January 8, 1996 through 12:00 midnight on January 22,
15 1996 followed by her dismissal effective at 12:01 a.m. on January 23,
16 1996.¹ The signature block on page five (5) of the letter indicates
17 that "Belinda D. Stewart" is the Superintendent of McNeil Island
18 Corrections Center. (Id.) As the Superintendent, Ms. Stewart is also
19 the appointing authority. However, Ms. Stewart did no sign the
20 letter. (Id.) Instead, an employee named "Jacqueline Campbell"
21 signed "for" the Superintendent.

22 Appellant does not dispute that Belinda D. Stewart, as the
23 Superintendent of McNeil Island Corrections Center has the delegated
24

25 _____
26 ¹A copy of the letter, with the specific charges redacted, is
attached hereto and incorporated herein as Attachment A for
purposes of this motion only.

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YOUNGLOVE & PEEPLES, P.S.
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(206) 357-7791

1 authority to take personnel actions as the appointing authority.
2 However, there is no evidence that Ms. Steward exercised her
3 delegated authority.

4 II. ISSUE

5 Did the Appointing Authority, by her failure to sign the
6 disciplinary letter, fail to take the discipline outlined in the
7 letter of discipline dated January 3, 1996?

8 III. ARGUMENT

9 The Appointing Authority failed to take the discipline
10 outlined in the letter of discipline dated January 3, 1996
11 in violation of RCW 41.06.170; WAC 356-34-010; WAC 356-34-
12 011; WAC 356-34-040.

13 RCW 41.06.170(2) provides that "[t]he employee shall be furnished
14 with specific charges in writing when a reduction, dismissal,
15 suspension or demotion actions is taken." See Johnson v. DSHS, PAB
16 No. D91-025; Byrnes v. DSHS, PAB No. D91-038; Gray v. Human Rights
17 Commission, PAB No. D91-042; Carrell v. DSHS, PAB No. D90-166 (1991)
18 (Hearing Examiner Vache as upheld by full Board).

19 This present case is remarkably similar to that in the Carrell
20 case. In that case, the appellant moved to dismiss the case for the
21 failure of DSHS to perfect the disciplinary action. The record, in
22 Carrell, revealed that the disciplinary letter was signed by Alden H.
23 Miller, M.D. "for Thomas Fritz, Superintendent." Id. It was argued
24 by Mr. Carrell that Dr. Miller was not delegated responsibility to be
25 an appointing authority. Id. Appellant argued that WAC 356-34-010
26 and -011 require the appointing authority to be the "head of the

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1 agency" or his delegate, as limited either by WAC 356-34-011 or some
2 other statutory authority. Hearing Examiner Vache held that

3 "[t]here is no doubt that Dr. Miller is not the
4 head of the agency, that he is not one of the
5 class of persons to whom authority could be
6 delegated under WAC 356-34-011, and that he is
not recognized as an appointing authority under
specific statutory provision (RCW 74.04.011) for
DSHS, as implemented under DSHS policy 4.05."

7 Furthermore, Hearing Examiner Vache held that "WAC 356-34-040 states
8 that only the '[a]ppointing authorities may dismiss a permanent
9 employee for cause as specified in these rules.'" Id. WAC 356-34-011
10 allows the "head of an agency to delegate the responsibilities and
11 duties of an appointing authority including authority to ... dismiss
12 ... employees within their agency." WAC 346-34-011 limits delegation
13 "to persons in positions reporting directly to the head of the agency
14 or the deputy, if any, or persons who are heads of major divisions of
15 the agency." Id.

16 As was the case in Carrell, the Appointing Authority in Ms.
17 Evans' case attempted to subdelegate her authority to take the
18 disciplinary action. In this case the subdelegation was to a Ms.
19 Campbell. Such sub-delegation is impermissible and therefore the
20 disciplinary action should be set aside as it was in Carrell.

21 Additionally, Appellant's motion to set aside the disciplinary
22 action stays any administrative action the Department might take on
23 this case pending a ruling by the Board on Appellant's motion. Ford
24 v. DSHS, PAB No. D94-001, p. 10, (1995). The rationale behind the
25 decision in Ford would also support a ruling by the Board in the
26 present case that the discipline be set aside with prejudice. In

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1 Ford, DSHS attempted to withdraw and reissue the discipline of Mr.
2 Ford after the appellant moved to set aside the discipline. The Board
3 held:

4 Respondent is not entitled to unlimited bites at
5 the apple. It cannot keep going back to rewrite
6 a disciplinary letter in response to a challenge
7 from Appellant until it finally gets it right,
8 especially when there is no statute of limitation
9 on taking disciplinary action.

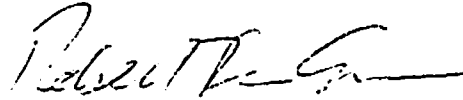
10 Ford at 10-11. While the Board did not specifically rule on the issue
11 of "with prejudice", the Ford rationale applies here. The Department
12 should be prevented from reissuing a disciplinary letter correcting
13 the mistake it made by not having Ms. Stewart take the disciplinary
14 action. If the Department is allowed to re-do the discipline after
15 the Board has set aside the discipline for failure of the appointing
16 authority to sign the disciplinary letter the Department will have
17 unlimited "bites at the apple" which the Board found improper in Ford.

18 IV. CONCLUSION

19 This disciplinary action was, on the face of the disciplinary
20 letter, taken by Jacqueline Campbell "for Belinda D. Stewart", the
21 appointing authority. Ms. Campbell was not delegated to take
22 disciplinary action. As such, the action of the Department is void
23 and the disciplinary action must be set aside with prejudice.

24 Respectfully submitted this 6th day of ^{February} January, 1996.

25 SWANSON, PARR, CORDES,
26 YOUNGLOVE & PEEPLES, P.S.


Robert Frank Spaulding, WSBA #17323
Attorney for Appellant

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YOUNGLOVE & PEEPLES, P.S.
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CHASE RIVELAND
Secretary



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
McNEIL ISLAND CORRECTIONS CENTER
P. O. Box 900 • Steilacoom, Washington 98398-C900

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JAN - 5 1996
WFSE/TAC

January 3, 1996

Donna L. Evans
P. O. Box 125
Dupont, WA 98327

PERSONAL SERVICE ---
CONFIDENTIAL

Ms. Evans:

This is official notification of your immediate suspension, at 12:01 a.m. on January 8, 1996 through 12:00 midnight on January 22, 1996, followed by your dismissal effective at 12:01 a.m. on January 23, 1996, from your position as a Licensed Practical Nurse 3 with the Department of Corrections (DOC), McNeil Island Corrections Center (MICC).

This disciplinary action is taken pursuant to the authority of the Civil Service Laws of Washington State, Chapter 41.06, RCW, and the Merit System Rules, Title 356 WAC (MSR), Section 356-34-010 Disciplinary actions -- Causes for demotion--Suspension--Reduction in salary--Dismissal. (1) (a) Neglect of duty, (h) Gross misconduct and (i) Willful violation of published employing agency or Department of Personnel rules and regulations, RCW 356-34-040 Dismissal -- Notification and RCW 356-34-050 Suspension -- Followed by dismissal:

Specifically, you neglected your duty, committed act(s) of gross misconduct and willfully violated published employing agency rules when you, by your own admission during the administrative review of this incident, accessed and dispensed medication inappropriately, and without proper documentation (i.e., Primary Encounter Report, PER), from the MICC mini-pharmacy tackle box when you removed 10 Furosemide 40 mg tablets sometime between June 28, 1995, and July 14, 1995, without having been directed or ordered to do so by a PA or Physician. This incident is described in detail in the Employee Conduct Report (ECR) completed on December 5, 1995 (Attachment 1).

The mini-pharmacy is a restricted area, providing accessibility to narcotics and prescription/legend drugs on an emergency basis for appropriately licensed health services staff from 6 p.m. to 6 a.m. (during off duty hours for pharmacy staff). Pharmacy staff began tracking medications, that were not documented with an associated PER, beginning in May, 1995. Specifically, Pharmacy Assistant Jan White was tasked with daily checking of the tackle box, that was located in the mini pharmacy, documenting when the tamper-evident seal was broken. When the seal was broken, she checked the

ATTACHMENT A

enclosed vials for replenishment of medications as needed. She also noted and reported to her supervisor, any discrepancies in the number of tablets that were undocumented (i.e., no PER was completed). On June 27, 1995, Ms. White found the tamper-evident seal broken and found that seven Furosemide tablets were missing (between June 5, 1995 and June 27, 1995). No PER's were written during this time for the drug. On June 28, 1995, Ms. White restocked the tackle box in Vial No. 2 with 25 tablets of Furosemide 40mg. On July 14, 1995, Ms. White found the tamper-evident seal on the tackle box broken. She counted the tablets and found only 15 of the 25 that had been placed in the vial. No PER's were written for the missing 10 tablets.

Vial No. 2, when the final discrepancy was discovered on July 14, 1995, was properly stored and delivered to James Cooper of the MICC Intelligence and Investigations office. When checked, it yielded clear fingerprints that were identified as your own.

There is no documentation establishing the medication that you removed was dispensed appropriately to the MICC inmate population, nor have you provided any supporting documentation of legitimate reasons you would have taken the tablets. In fact, you admitted to me that you failed to follow procedure by preparing the PERS for signature when you gathered medications upon the direction of a PA or Physician.

A Pharmacy In-Service Memorandum, dated March 3, 1994, (Attachment 2), which you admit having knowledge of, states, in pertinent part:

"A PER must be written for any item issued from the after-hours Pharmacy (or ER) and signed by a PAMMD.

Leave a PER for anything that was removed from the tackle box and the bottle that was used in the refill box under the pill line cart along with the broken seal."

WAC 246-838-030 Standards of conduct for discipline, which outlines the level of standards of professional conduct for licensed practical nurses, (Attachment 3) states, in pertinent part:

"The licensed practical nurse assumes a measure of responsibility, trust and the corresponding obligation to adhere to the standards of conduct, which include, but are not limited to the following:

(1) . . . shall be responsible and accountable for his or her own nursing judgements, actions . . .

(5) The licensed practical nurse shall not abide, abet or assist any other person in violating or circumventing the laws or rules pertaining to the conduct and practice of licensed practical nursing.

"CODE OF ETHICS

High moral and ethical standards among correctional employees are essential for the success of the department's programs. The Department of Corrections subscribes to a code of unfailing honesty, respect for dignity and individuality of human beings, and a commitment to professional and compassionate service."

DOC Policy 801.001 Ethics (Attachment 8) states, in pertinent part:

"POLICY

Restrictions:

Additional restriction placed upon employees include, but are not limited to the following:

2. Employees shall not use state resources for personal benefit or to benefit another except as may be required during the execution of their official duties.

Responsibilities

Violations of the State Ethics Law and/or this policy may lead to corrective or disciplinary action up to and including dismissal."

You have a duty to follow the licensing standards and uphold the professional conduct entrusted to you as a licensed practical nurse. You also have a duty to follow procedure that is designed to support you in accomplishment of your professional service to the DOC inmate population, using resources properly and not for your personal use.

Your actions in this matter were irresponsible, unprofessional, unethical and counterproductive to achieving the Department's mission to provide fair and equitable treatment to inmates while they are under our supervision. You neglected your duty to follow the professional standards of your licensure which includes honest and responsible execution of your duties and the expectations of your employer. By your actions you did not properly complete associated paperwork when you accessed drugs in the mini-pharmacy tackle box and lied about accessing the medications. Your behavior was a willful violation of published agency rules and regulations as identified, a neglect of your duty as outlined in the licensing guidelines cited and rises to the level of gross misconduct.

As a result of the administrative review held on November 17, 1995, I determined, and verbally notified you and your representatives at that time, that misconduct had occurred. We convened in a Loudermill hearing on November 20, 1995, to discuss your possible

Donna L. Evans
January 3, 1996
Page 5 of 5

termination. You were allowed an opportunity to fully discuss and refute the charges and/or to present reasons why your termination was not appropriate. Throughout that meeting you demonstrated that you do not accept your responsibilities in this matter, stating that everyone was lax and that's just the way it was done. By your actions and your repeated failure to recognize your lack of responsibility in this matter, you have lost my trust in your ability to honestly and professionally perform your duties. I find your attitude and defense of your actions and admitted failure to follow procedure intolerable and unprofessional. This is not the standard of professional performance that I expect of staff, especially staff with access to controlled substances and who are responsible for the medical health and welfare of the inmate population.

In addition, you provided no defense or plausible explanation for your fingerprints to be on Vial No. 2, when the 10 missing Furosemide tablets were discovered. I can only conclude that you have lied about your contention that you did not access the vial, and you stole the tablets and used them inappropriately. Therefore, I find that your immediate suspension, followed by termination is fully warranted.

Attachments one through eight are attached hereto and by this reference, made a part of as though fully set forth herein.

Under the provisions of WAC 358-20-010 and 358-20-040, you have the right to appeal this action OR to file a grievance per Article 10 of the Collective Bargaining Agreement between the Department of Corrections and the Washington State Corrections Employee Association. If you file an appeal, it must be filed in writing at the Office of the Personnel Appeals Board, 2828 Capitol Boulevard, Olympia, Washington 98501, within thirty (30) days after the effective date stated in the first paragraph of this letter.

The Merit System Rules, WAC's, Department of Corrections policies and the Collective Bargaining Agreement are available for your review upon request.

for - Jacqueline Campbell

Belinda D. Stewart, Superintendent
McNeil Island Corrections Center

Attachment(s)

cc: Tom Rolfs, Director, Division of Prisons
Jennie Adkins, Director, Division of Human Resources
Donna Grazzini, WWC Area Personnel Manager
Linda Dalton, Sr. Assistant Attorney General
Katherine Deuel, MICC Personnel Officer
Employee Personnel File



Christine O. Gregoire

ATTORNEY GENERAL OF WASHINGTON

Labor & Personnel Division

905 Plum Street SE, Building 3 • PO Box 40145 • Olympia WA 98504-0145

January 31, 1996

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FEB 01 1996

Kenneth Latsch, Executive Secretary
Personnel Appeals Board
Mail Stop 40911
Olympia, WA 98504-0911

Re: Donna L. Evans v. Department of Corrections
Personnel Appeals Board No. DISM 96-0005

Dear Mr. Latsch:

Enclosed for filing is the original of a Notice of Appearance in the above-entitled caption.

A copy of this document has been sent to Robert F. Spaulding, appellant's attorney.

Thank you for your assistance in this matter.

Very truly yours,

SHARON J. KOZAR
Legal Secretary to
VALERIE B. PETRIE
Assistant Attorney General

/sjk
Enclosure

cc: Robert F. Spaulding



CERTIFICATE OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on January 31, 1996 as follows:

- US Mail Postage Prepaid Robert F. Spaulding
- ABC/Legal Messenger _____
- State Campus Delivery _____
- Hand delivered by _____
- to _____

RECEIVE

FEB 01 1996

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
Dated: January 31, 1996 at Olympia, WA.

Sharon J. Kozan

BEFORE THE PERSONNEL APPEALS BOARD
STATE OF WASHINGTON

DONNA L. EVANS,

NO. DISM 96-0005

Appellant,

NOTICE OF APPEARANCE

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

TO: KENNETH LATSCH, Executive Secretary, Personnel Appeals Board;
ROBERT F. SPAULDING, Attorney for Appellant.

PLEASE TAKE NOTICE that the Respondent, Department of Corrections, without waiving objection as to the sufficiency of service of process or jurisdiction of this Board, does hereby enter its appearance in the above-entitled action, by and through its attorneys, CHRISTINE O. GREGOIRE, Attorney General, and VALERIE B. PETRIE, Assistant Attorney General, and requests that all further pleadings herein be served upon said Respondent at the Office of the Attorney General at the address given below.

DATED this 31 day of January, 1996.

CHRISTINE O. GREGOIRE
Attorney General

Valerie B. Petrie

VALERIE B. PETRIE
Assistant Attorney General
WSBA No. 21126
Attorney for Respondent



2828 Capitol Blvd.
PO Box 40911
Olympia, WA 98504-0911

STATE OF WASHINGTON
PERSONNEL APPEALS BOARD

(360) 586-1481
FAX (360) 753-0139

January 22, 1996

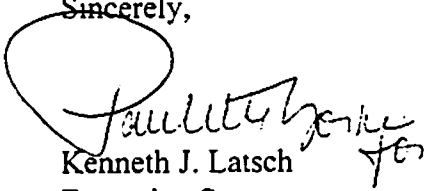
Mr. Kirk Hanson
Washington Federation of State Employees
10116 - 36th Avenue Ct. SW #205
Tacoma, WA 98499

RE: Donna L. Evans v. Department of Corrections, Dismissal Appeal,
Case No. DISM-96-0005

Dear Mr. Hanson:

This letter is to acknowledge receipt of the above entitled appeal by the Personnel Appeals Board on January 10, 1996.

Sincerely,


Kenneth J. Latsch
Executive Secretary

KJL:tmp

cc: Donna L. Evans
Swanson, Parr, Cordes, et. al.
Linda A. Dalton, AAG
Jennie Adkins, PO



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JAN 19 1996

PERSONNEL
BEFORE THE PERSONNEL APPEALS BOARD APPEALS BOARD
STATE OF WASHINGTON

DONNA L. EVANS,)
)
 Appellant,) NO.
)
 vs.)
) NOTICE OF APPEARANCE
 DEPARTMENT OF CORRECTIONS,)
)
 Respondent.)

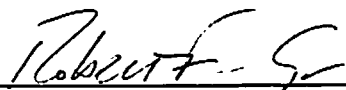
TO: Department of Corrections, by and through its Attorney: LINDA DALTON.

NOTICE IS HEREBY GIVEN that the firm of SWANSON, PARR, CORDES, YOUNGLOVE & PEEPLES, P.S., hereby makes its appearance for and on behalf of the appellant, above named, and a copy of all pleadings should be served upon said firm at the office address below stated.

You are not authorized to serve pleadings or papers by use of facsimile unless specifically negotiated with an attorney in the firm. Where authorized, service by facsimile will be accepted only Monday through Friday, 9 a.m. through 4:30 p.m., Pacific time, excluding holidays.

DATED this 17 day of January, 1996.

SWANSON, PARR, CORDES,
YOUNGLOVE & PEEPLES, P.S.


ROBERT FRANK SPAULDING, WSBA No. 17323
Attorney for Appellant

OFFICE AND POST OFFICE ADDRESS:
924 E Seventh Avenue
PO Box 7846
Olympia, Washington 98507

cc: Kirk Hanson

SWANSON, PARR, CORDES,
YOUNGLOVE & PEEPLES, P.S.
ATTORNEYS AT LAW
EASTSIDE PROFESSIONAL PLAZA, SUITE A
924 EAST SEVENTH AVENUE
P.O. BOX 7846
OLYMPIA, WASHINGTON 98507-7846
FACSIMILE (360) 754-9268
(360) 357-7791

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APPEAL FORM

WASHINGTON STATE PERSONNEL APPEALS BOARD
2828 Capitol Boulevard
P. O. Box 40911
Olympia, WA 98504-0911

PH: SCAN 321-1481
(206) 586-1481
FAX: (206) 753-0139

JAN 10 1996
PERSONNEL
APPEALS BOARD

This form will help you provide necessary information to the Personnel Appeals Board when you file an appeal. You are not required to use this form; however, appeals must be filed in accordance with the requirements set forth in Chapter 358-20 WAC.

If the space on the form is insufficient or if you wish to provide additional information, you may attach additional pages.

PRINT OR TYPE - SIGN ON PAGE 2

PART I APPELLANT IDENTIFICATION

NAME: Donna L. Evans (AKA Turner, Lake)
(Last name, first name, middle initial)

HOME ADDRESS: PO Box 125
(Number and street)

Dupont, WA 98327
(City, state and ZIP code)

PHONE NUMBERS: WORK: (SCAN): (Off-SCAN): (206)588-5281

HOME: (Include area code) (206) 964-4637

EMPLOYING AGENCY OR INSTITUTION: McNeil Island Corrections Center/DOC

Agency or institution that took action you are appealing: Department of Corrections

PART II REPRESENTATIVE'S NAME, ADDRESS AND TELEPHONE NUMBER

Kirk Hanson
10116 36th Ave Ct., Suite 205
Tacoma, WA 98499
(206)581-4402

Swanson, Parr, Cordes, Younglove, Peebles, P.S.
PO Box 7846
Olympia, WA 98507
(360)357-7791

An Appellant may authorize a representative to act on his/her behalf.
The Board must be notified of any change in representation.

PART III TYPE OF APPEAL

Check one of the following to indicate the type of appeal you are filing:

- x a. Disciplinary: (check applicable action(s)).
X Dismissal X Suspension Demotion Reduction in Pay.
b. Disability Separation
c. Rule or Law Violation (complete PART IV. of this form)
d. Reduction in Force/Layoff (complete PART IV. of this form)
e. Allocation (position classification) (complete PART V. of this form)
f. Declaratory Ruling (see WAC 358-20-050)
g. Exemption of Position

CHASE RIVELAND
Secretary



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
McNEIL ISLAND CORRECTIONS CENTER
P. O. Box 900 • Steilacoom, Washington 98388-0900

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JAN - 5 1996
WFSE/TAC

January 3, 1996

Donna L. Evans
P. O. Box 125
Dupont, WA 98327

PERSONAL SERVICE ---
CONFIDENTIAL

Ms. Evans:

This is official notification of your immediate suspension, at 12:01 a.m. on January 8, 1996 through 12:00 midnight on January 22, 1996, followed by your dismissal effective at 12:01 a.m. on January 23, 1996, from your position as a Licensed Practical Nurse 3 with the Department of Corrections (DOC), McNeil Island Corrections Center (MICC).

This disciplinary action is taken pursuant to the authority of the Civil Service Laws of Washington State, Chapter 41.06, RCW, and the Merit System Rules, Title 356 WAC (MSR), Section 356-34-010 Disciplinary actions -- Causes for demotion--Suspension--Reduction in salary--Dismissal. (1) (a) Neglect of duty, (h) Gross misconduct and (i) Willful violation of published employing agency or Department of Personnel rules and regulations, RCW 356-34-040 Dismissal -- Notification and RCW 356-34-050 Suspension -- Followed by dismissal.

Specifically, you neglected your duty, committed act(s) of gross misconduct and willfully violated published employing agency rules when you, by your own admission during the administrative review of this incident, accessed and dispensed medication inappropriately, and without proper documentation (i.e., Primary Encounter Report, PER), from the MICC mini-pharmacy tackle box when you removed 10 Furosemide 40 mg tablets sometime between June 28, 1995, and July 14, 1995, without having been directed or ordered to do so by a PA or Physician. This incident is described in detail in the Employee Conduct Report (ECR) completed on December 5, 1995 (Attachment 1).

The mini-pharmacy is a restricted area, providing accessibility to narcotics and prescription/legend drugs on an emergency basis for appropriately licensed health services staff from 6 p.m. to 6 a.m. (during off duty hours for pharmacy staff). Pharmacy staff began tracking medications, that were not documented with an associated PER, beginning in May, 1995. Specifically, Pharmacy Assistant Jan White was tasked with daily checking of the tackle box, that was located in the mini pharmacy, documenting when the tamper-evident seal was broken. When the seal was broken, she checked the

enclosed vials for replenishment of medications as needed. She also noted and reported to her supervisor, any discrepancies in the number of tablets that were undocumented (i.e., no PER was completed). On June 27, 1995, Ms. White found the tamper-evident seal broken and found that seven Furosemide tablets were missing (between June 5, 1995 and June 27, 1995). No PER's were written during this time for the drug. On June 28, 1995, Ms. White restocked the tackle box in Vial No. 2 with 25 tablets of Furosemide 40mg. On July 14, 1995, Ms. White found the tamper-evident seal on the tackle box broken. She counted the tablets and found only 15 of the 25 that had been placed in the vial. No PER's were written for the missing 10 tablets.

Vial No. 2, when the final discrepancy was discovered on July 14, 1995, was properly stored and delivered to James Cooper of the MICC Intelligence and Investigations office. When checked, it yielded clear fingerprints that were identified as your own.

There is no documentation establishing the medication that you removed was dispensed appropriately to the MICC inmate population, nor have you provided any supporting documentation of legitimate reasons you would have taken the tablets. In fact, you admitted to me that you failed to follow procedure by preparing the PERS for signature when you gathered medications upon the direction of a PA or Physician.

A Pharmacy In-Service Memorandum, dated March 3, 1994, (Attachment 2), which you admit having knowledge of, states, in pertinent part:

"A PER must be written for any item issued from the after-hours Pharmacy (or ER) and signed by a PAVMD.

Leave a PER for anything that was removed from the tackle box and the bottle that was used in the refill box under the pill line cart along with the broken seal."

WAC 246-838-030 Standards of conduct for discipline, which outlines the level of standards of professional conduct for licensed practical nurses, (Attachment 3) states, in pertinent part:

"The licensed practical nurse assumes a measure of responsibility, trust and the corresponding obligation to adhere to the standards of conduct, which include, but are not limited to the following:

(1) . . . shall be responsible and accountable for his or her own nursing judgements, actions . . .

(5) The licensed practical nurse shall not abide, abet or assist any other person in violating or circumventing the laws or rules pertaining to the conduct and practice of licensed practical nursing.

"CODE OF ETHICS

High moral and ethical standards among correctional employees are essential for the success of the department's programs. The Department of Corrections subscribes to a code of unfailing honesty, respect for dignity and individuality of human beings, and a commitment to professional and compassionate service."

DOC Policy 801.001 Ethics (Attachment 8) states, in pertinent part:

"POLICY

Restrictions:

Additional restriction placed upon employees include, but are not limited to the following:

2. Employees shall not use state resources for personal benefit or to benefit another except as may be required during the execution of their official duties.

Responsibilities

Violations of the State Ethics Law and/or this policy may lead to corrective or disciplinary action up to and including dismissal."

You have a duty to follow the licensing standards and uphold the professional conduct entrusted to you as a licensed practical nurse. You also have a duty to follow procedure that is designed to support you in accomplishment of your professional service to the DOC inmate population, using resources properly and not for your personal use.

Your actions in this matter were irresponsible, unprofessional, unethical and counterproductive to achieving the Department's mission to provide fair and equitable treatment to inmates while they are under our supervision. You neglected your duty to follow the professional standards of your licensure which includes honest and responsible execution of your duties and the expectations of your employer. By your actions you did not properly complete associated paperwork when you accessed drugs in the mini-pharmacy tackle box and lied about accessing the medications. Your behavior was a willful violation of published agency rules and regulations as identified, a neglect of your duty as outlined in the licensing guidelines cited and rises to the level of gross misconduct.

As a result of the administrative review held on November 17, 1995, I determined, and verbally notified you and your representatives at that time, that misconduct had occurred. We convened in a Loudermill hearing on November 20, 1995, to discuss your possible

Donna L. Evans
January 3, 1996
Page 5 of 5

termination. You were allowed an opportunity to fully discuss and refute the charges and/or to present reasons why your termination was not appropriate. Throughout that meeting you demonstrated that you do not accept your responsibilities in this matter, stating that everyone was lax and that's just the way it was done. By your actions and your repeated failure to recognize your lack of responsibility in this matter, you have lost my trust in your ability to honestly and professionally perform your duties. I find your attitude and defense of your actions and admitted failure to follow procedure intolerable and unprofessional. This is not the standard of professional performance that I expect of staff, especially staff with access to controlled substances and who are responsible for the medical health and welfare of the inmate population.

In addition, you provided no defense or plausible explanation for your fingerprints to be on Vial No. 2, when the 10 missing Furosemide tablets were discovered. I can only conclude that you have lied about your contention that you did not access the vial, and you stole the tablets and used them inappropriately. Therefore, I find that your immediate suspension, followed by termination is fully warranted.

Attachments one through eight are attached hereto and by this reference, made a part of as though fully set forth herein.

Under the provisions of WAC 358-20-010 and 358-20-040, you have the right to appeal this action OR to file a grievance per Article 10 of the Collective Bargaining Agreement between the Department of Corrections and the Washington State Corrections Employee Association. If you file an appeal, it must be filed in writing at the Office of the Personnel Appeals Board, 2828 Capitol Boulevard, Olympia, Washington 98501, within thirty (30) days after the effective date stated in the first paragraph of this letter.

The Merit System Rules, WAC's, Department of Corrections policies and the Collective Bargaining Agreement are available for your review upon request.

for - Jacqueline Campbell

Belinda D. Stewart, Superintendent
McNeil Island Corrections Center

Attachment(s)

cc: Tom Rolfs, Director, Division of Prisons
Jennie Adkins, Director, Division of Human Resources
Donna Grazzini, WWC Area Personnel Manager
Linda Dalton, Sr. Assistant Attorney General
Katherine Deuel, MICC Personnel Officer
Employee Personnel File