



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

STATE OF WASHINGTON
PERSONNEL APPEALS BOARD

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

September 15, 1997

CERTIFIED P-360-112-992
P-360-112-993

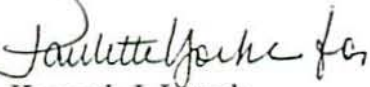
John R. Arthur
Attorney at Law
10900 NE 8th Street Suite 850
Bellevue, WA 98004

RE: Annette Belden v. Department of Corrections, Reduction in Salary Appeal &
Disability Separation Appeal, Case Nos. RED-95-0060 & DSEP-96-0016

Dear Mr. Arthur:

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 15, 1997.

Sincerely,


Kenneth J. Latsch
Executive Secretary

KJL:lh
Enclosure

cc: Annette M. Belden
Michael Sellars, AAG
Jennie Adkins, DOC

1 BEFORE THE PERSONNEL APPEALS BOARD

2 STATE OF WASHINGTON

3 ANNETTE BELDEN,)

4 Appellant,)

5 vs.)

6)

7 DEPARTMENT OF CORRECTIONS,)

8 Respondent.)

Case No. RED-95-0060 and DSEP-96-0016

ORDER OF DISMISSAL

9

10 These matters came before the Personnel Appeals Board, JUDITH MERCHANT, Chair; HOWARD

11 N. JORGENSON, Vice Chair; and ROGER F. SANFORD, Member, pursuant to WAC 358-30-084.

12

13 WAC 358-30-084 provides in relevant part:

14 (1) In all appeals filed with the personnel appeals board:

15 (a) Where the parties have indicated that the case has been settled and ready

16 for dismissal and where there has been no action by the parties during the preceding

17 thirty days; or

18 (b) When the board deems it appropriate for lack of timeliness or any other

19 jurisdictional matter where there is no question of fact; or

20 (c) When a party refuses to participate in a prehearing conference pursuant to

21 WAC 358-30-026(4); or

22 (d) When the board is unable to contact the appellant at the last address and

23 telephone number provided by the appellant, the executive secretary or his/her

24 designee may mail notice to the appellant or the appellant's representative and to the

25 respondent or the respondent's representative that the appeal will be dismissed by the

26 board unless within fifteen days following the date of service of the notice a written

request is made to the board and good cause is shown why the appeal should be

continued as a pending case.

(2) If no request is made, the matter will be brought before the board for

dismissal.

1 The appeals of Annette Belden fall within the categories covered by the rule. Specifically, on July
2 16, 1997, the Personnel Appeals Board (PAB) was informed that Ms. Belden had decided to drop
3 her appeals before the PAB. By letter dated July 22, 1997, the PAB contacted the Appellant's
4 Attorney and requested that the appeals be withdrawn. Subsequent to the July 22, 1997, letter from
5 PAB, there had been no action taken by either party to these appeals.

6
7 Therefore, on August 25, 1997, the PAB served the parties with a Notice of Potential Dismissal.
8 The notice stated that the appeals would be dismissed, unless, within fifteen days following the date
9 of service, the Board received a written request showing good cause why the appeals should be
10 continued as a pending case. Appellant received a copy of the notice by certified mail on August
11 26, 1997. Neither of the parties to this appeals have submitted a written request showing good
12 cause why the appeals should be continued as a pending case.

13
14 The Board having reviewed the files and records herein, being fully advised in the premises, now
15 enters the following:

16 **ORDER**

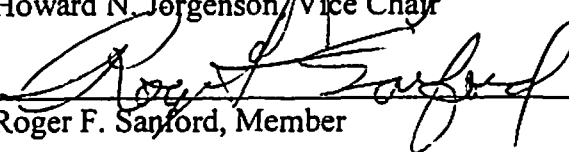
17 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeals of Annette Belden are
18 dismissed.

19 DATED this 15th day of September, 1997.

20 WASHINGTON STATE PERSONNEL APPEALS BOARD

21 
22 Judith Merchant, Chair

23 
24 Howard N. Jorgenson, Vice Chair

25 
26 Roger F. Sanford, Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

1 BEFORE THE PERSONNEL APPEALS BOARD

2 STATE OF WASHINGTON

3 ANNETTE BELDEN,)

4 Appellant,)

5 vs.)

6 DEPARTMENT OF CORRECTIONS,)

7 Respondent.)

Case No. RED-95-0060 and DSEP-96-0016

**NOTICE OF POTENTIAL
DISMISSAL**

10
11 Pursuant to the provisions of WAC 358-30-084, notice is hereby given that the above-referenced
12 matters have been noted for dismissal by the Personnel Appeals Board.

13
14 WAC 358-30-084 provides in relevant part:

15 (1) In all appeals filed with the personnel appeals board:

16 (a) Where the parties have indicated that the case has been settled and ready
17 for dismissal and where there has been no action by the parties during the preceding
thirty days; or

18 (b) When the board deems it appropriate for lack of timeliness or any other
jurisdictional matter where there is no question of fact; or

19 (c) When a party refuses to participate in a prehearing conference pursuant to
WAC 358-30-026(4); or

20 (d) When the board is unable to contact the appellant at the last address and
21 telephone number provided by the appellant, the executive secretary or his/her
22 designee may mail notice to the appellant or the appellant's representative and to the
23 respondent or the respondent's representative that the appeal will be dismissed by the
board unless within fifteen days following the date of service of the notice a written
request is made to the board and good cause is shown why the appeal should be
continued as a pending case.

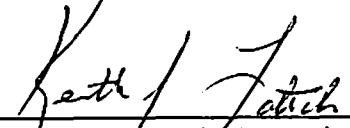
24 (2) If no request is made, the matter will be brought before the board for
dismissal.

1 It appears that the appeals of Annette Belden fall within the categories covered by the rule.
2 Specifically, on July 16, 1997, the Personnel Appeals Board (PAB) was informed that Ms. Belden
3 has decided to drop her appeals before the PAB. By letter dated July 22, 1997, the PAB contacted
4 the Appellant's Attorney and requested that the appeals be withdrawn. Subsequent to the July 22,
5 1997, letter from PAB, there has been no action taken by either party to these appeals.

6
7 Therefore, the appeals will be dismissed unless, within fifteen days following the date of service of
8 this notice, the Board receives a written request showing good cause why the appeals should be
9 continued as pending cases.

10
11 DATED AND MAILED this 25th day of August, 1997.

12 WASHINGTON STATE PERSONNEL APPEALS BOARD

13
14 
15 _____
16 Kenneth J. Latsch, Executive Secretary
(360) 586-1481

17 cc: Annette Belden, APP
18 John R. Arthur, ATT
19 Michael Sellars, AAG
20 Jennie Adkins, DOC



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

STATE OF WASHINGTON
PERSONNEL APPEALS BOARD

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

July 22, 1997

John R. Arthur
Attorney at Law
10900 NE 8th Street, Suite 850
Bellevue, WA 98004

RE: Annette Belden v. Department of Corrections
PAB Case Nos. RED-95-0060 and DSEP-96-0016

Dear Mr. Arthur:

On July 16, 1997, you informed a mediator for the Personnel Appeals Board that Ms. Belden had decided to drop her appeals before the Board. However, the Board has not yet received a formal withdrawal of the appeals.

Before we can close our files on Ms. Belden's appeals, we must receive a formal notification of withdrawal. In order to assist you with submitting the withdrawal, I have enclosed a withdrawal form. Please sign, date and return the form to us as soon as possible so that we can close our files on the matters.

Sincerely,

Holly Galloway
Senior Special Assistant to the Board

Enclosure

cc (without enclosure):
Michael P. Sellars, AAG
Jennie Adkins, DOC
Annette Belden, APP



WASHINGTON STATE
PERSONNEL APPEALS BOARD

APPEAL STATUS REPORT
(To be completed by Mediators)

Date: July 17, 1997
Appeal Name: Belden v DOC
Appeal Number: DSEP-96-0016

The status of the above-captioned appeal is as follows:

- The appeal was settled and a copy of the withdrawal order is attached.
- The appeal was settled and the parties are going to withdraw.
- Appellant called to advise that he/she would withdraw.
- The appeal has been settled but final paperwork has not been completed.
_____ should be contacted by
_____, 19__ to be sure that the withdrawal is forthcoming.
- The appeal was not settled in mediation. The case should now be set for pre-hearing conference and hearing by the board.
- The mediation case has not been scheduled, and the case is being returned to the Board for re-assignment.

Other Jana Arthur, Atty representing
Belden, sent letter dated 7-16-97
indicating Belden has decided to
"drop her appeals" letter attached

Janeefer Woods 7-17-97
Mediator's Signature Date

JOHN R. ARTHUR
ATTORNEY AT LAW
10900 N.E. 8TH STREET SUITE 850
BELLEVUE, WASHINGTON 98004
(206) 455-2022

16 July 1997

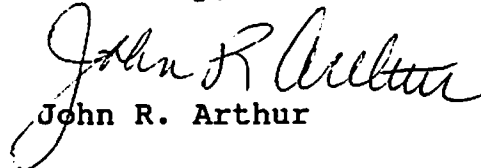
Jennifer Woods
Attorney at Law
715 North 193rd Place
Seattle, Washington 98133

Copy to: (1) Client
(2) File

Dear Ms. Woods:

Annette Belden has decided to drop her appeals before the Board and will pursue her discrimination claims with the Washington State Human Rights Commission. This decision is based upon the fact that the Commission can award reimbursement of her attorney fees. I understand that Mr. Sellers has requested a meeting. If he still wishes to meet after being informed of this letter, he can contact me directly. I would not object to your assistance at such a meeting.

Sincerely,


John R. Arthur

RECEIVED

DEC 10 1996

PERSONNEL
APPEALS BOARD

JENNIFER WOODS
Attorney at Law
715 North 193rd Place
Seattle, WA 98133
(206) 546-9081

December 9, 1996

John R. Arthur
Attorney at Law
10900 N.E. 8th Street, #850
Bellevue, WA 98004

Michael P. Sellars
Assistant Attorney General
P.O. Box 40145
Olympia, WA 98504-0145

Re: Belden v. Dept. of Corrections
PAB Case No. RED-95-0060

Dear Counsel:

This letter confirms the mediation date and time in the above referenced appeal. We will hold the mediation/pre-hearing conference **January 28, 1997** at 10:00 a.m. at the Washington State Reformatory. My understanding is that the Personnel Appeals Board will be assigning me the disability separation appeal file for Ms. Belden and that we will be mediating both the reduction in salary and the disability separation appeal on January 28, 1997. I will inform you both at once if I learn that I will not be assigned the disability separation appeal.

can you let me know?
AW

By letter dated December 5, 1996, Mr. Arthur requested that he appear by telephone for the mediation. I believe we will be able to work something out to accommodate this request although I believe face to face mediation of parties and representatives is more effective. If Mr. Arthur can have Ms. Belden with him, then they will be able to conference privately with one another and with me. If Mr. Sellars can be with his client, then we may be able to hook up on a conference call. I am available to travel to the institution if that works best. Let me know how you see this working and we will set it up for the convenience of you both.

Mr. Arthur sent me some documents pertaining to this mediation which I am happy to review. If Mr. Sellars would like to provide written background information, I will review it as well.

Very truly yours,

Jennifer Woods

cc: Kenneth Latsch



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

STATE OF WASHINGTON
PERSONNEL APPEALS BOARD

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

December 2, 1996

Annette M. Belden
12304 - 227th Avenue SE
Monroe, WA 98272

RE: Annette M. Belden v. Department of Corrections, Disability Separation Appeal,
Case No. DSEP-96-0016

Dear Ms. Belden:

This letter is to acknowledge receipt of the above entitled appeal by the Personnel Appeals Board on November 18, 1996.

For your information, we have enclosed a copy of the Personnel Appeals Board Laws & Regulations and our brochure entitled "Your Right To Be Heard."

Sincerely,

Kenneth J. Latsch
Executive Secretary

KJL:lh

cc: John R. Arthur, ATT
Linda Dalton, AAG
Jennie Adkins, PO



RECEIVED

NOV 18 1996

PERSONNEL
APPEALS BOARD

November 12, 1996

Director, Department of Personnel
600 South Franklin
Olympia, Washington 98504

Encl: (1) WAC 356-35-010
(2) Medical Certification
(3) Letter of Disability Separation

Copy to: (1) K. DuCharme
(2) Dr. Nochlin
(3) Dr. Reinking

Dear Sir:

I am requesting an appeal of my attached three page Disability Separation, dated October 15, 1996, from the Washington State Reformatory by Kenneth DuCharme, Superintendent. My termination is in violation of the attached WAC 356-35-010 Disability - Reasonable Accommodation - Separation - Appeals. My termination constitutes disability/handicap discrimination. I note the following:

Article 1. An appointing authority may initiate a disability separation of a permanent employee only when reasonable accommodations cannot be provided. According to both of my physicians, Dr. Eugenia Nochlin and Dr. Richard Reinking, only minimal accommodations are essential. My Employer has refused to mutually agree upon an enumeration of reasonable accommodations with my physicians for over two years.

Article 2. My disability does not prevent my performance of the essential functions of my current job of RN3. Appropriate work is and was available while accommodations were to be worked out. I should have been given this work rather than an inappropriate separation without pay.

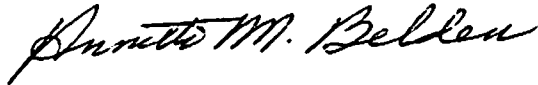
Article 3. A disability determination and evidence was provided by my physicians that I am able to perform my duties with minimal accommodation.

Article 5. I view the disability separation as disciplinary in keeping with management's consistent treatment of me since April of 1993.

Article 7. Both of my physicians have submitted statements that I am able to perform both the duties of my original position or other suitable positions.

Dr. Nochlin's attached Medical Certification of 1 November 1996 establishes that I am currently able to work with, or without, reasonable accommodations.

Respectfully submitted,

A handwritten signature in cursive script that reads "Annette M. Belden".

Annette M. Belden
12304-227th Avenue SE
Monroe, Washington 98272
(360) 794-4123

WAC 356-35-010 Disability--Reasonable accommodation--Separation--Appeals. (1) An appointing authority may initiate a disability separation of a permanent employee only when reasonable accommodations cannot be provided. When the employee requests a disability separation, the appointing authority is not required to consider reasonable accommodations.

(2) If the disability prevents performance of an essential function of the current job, and there is no appropriate work available while trying to reasonably accommodate the employee, the employee shall be allowed to use accrued vacation, sick, shared leave, exchange, and/or compensatory time. If there is no paid leave available or if the employee chooses not to use paid leave, the employee shall be placed on authorized leave without pay.

(3) When reasonable accommodations cannot be provided, the employee may be separated by the appointing authority after written notice of, whichever is greater,

(a) sixty calendar days; or,

(b) the number of consecutive work days for which only accrued sick and vacation leave, as defined in WAC 356-18-050 and 356-18-090, could be used.

If the employee is unable to work due to the disability during the notice period and there is no paid leave available, the absence shall be considered approved leave without pay.

The sixty calendar days notice shall not be required when the employee requests and the appointing authority approves a shorter notice period.

(4) For purposes of this rule, determinations of disability shall be made by an appointing authority only at the employee's written request or after obtaining a written statement from a physician or a licensed mental health professional. The appointing authority may require an employee to obtain a medical examination at agency expense from a physician or a licensed mental health professional of the agency's choice. In such cases, the agency shall provide the physician or licensed mental health professional with the specification for the employee's class and a description of the employee's position. Evidence may be requested from the physician or licensed mental health professional regarding the employee's ability to perform the specified duties.

(5) Agency initiated separations due to disability shall not be considered disciplinary actions and shall be appealable to the personnel appeals board. At the time of notification that their employment will be terminated because of disability, such employees shall be informed by the appointing authority of their right to appeal. The appeal must be filed in writing to the personnel appeals board as provided in Title 358 WAC within thirty calendar days after notice of separation is given.

(6) During the notice period required by subsection (3) of this section the agency shall inform employees being separated due to disability that they may be eligible for benefits/assistance programs such as employees' insurance plans, Social Security, worker's compensation, veteran's benefits, public assistance, disability retirement, and vocational rehabilitation.

(7) The names of permanent employees who have been separated because of disability shall be placed on reduction in force and promotional registers by the director of personnel as provided in WAC 356-26-030 upon submission of a statement from a physician or licensed mental health professional that they are able to perform the duties of the class(es) for which the registers are established.

[Statutory Authority: RCW 41.06.040 and 41.06.150. 93-14-067 (Order 422), _ 356-35-010, filed 6/30/93, effective 8/1/93. Statutory Authority: RCW 41.06.150. 87-02-038 (Order 267), _ 356-35-010, filed 1/2/87; 85-14-008 (Order 224), _ 356-35-010, filed 6/24/85; 84-23-059 (Order 211), _ 356-35-010, filed 11/20/84; 83-24-002 (Order 193), _ 356-35-010, filed 11/28/83. Statutory Authority: RCW 41.06.150(17). 82-09-022 (Order 169), _ 356-35-010, filed 4/12/82; 81-20-060 (Order 161), _ 356-35-010, filed 10/5/81; Order 58, _ 356-35-010, filed 9/10/75.]

Medical Certification

JSC

PART I TO BE COMPLETED BY THE CLAIMANT

Name: Annette Belden SSA Number: 014-32-3671

Date of illness/injury: 4/93 to current

Describe nature of injury/illness: PTSD, NRSOR Depression, Extreme Anxiety, Nightmares, somatic problems, paranoia, hyperarousals, recall of traumatic events, memory impairment

Describe cause of injury/illness: Hostile event out of the blue, similar to an act without cause, public humiliation and degradation and resultant situation for PTSD.

Authorization: I authorize the Washington State Employment Security Department to use the information on this form in determining my eligibility for unemployment insurance benefits.

X Annette Belden 10/25/96
Claimant's Signature Date

PART II TO BE COMPLETED BY THE DOCTOR - Please complete only the section(s) that has been checked.

SECTION ONE: (1) Describe the patient's condition in ordinary language (use medical terms only for clarity):
The experienced anxiety, hyperventilation, confusion, panic attacks when harassed and when yelled at by supervisor. This have been happening for the past 3 years and more.

(2) The patient was under my care for this condition: From: 4/93 To: Present

(3) Date of onset of the patient's condition: 4/93

(4) If pregnant, what is the expected date of birth? NA

(5) Did you advise the patient to leave work because of illness, disability or pregnancy? Yes No

(6) Has the patient been unable to work at any time? Yes No
If Yes, please provide dates: From: April/93 To: Present/93

(7) Has the patient been released as able to resume work? Yes No
If Yes, Full time Part time On what date? May/93

(8) Please identify any restrictions or limitations the patient may have as to the days or hours of work, type of work, or place of work because of his/her health:
None

(9) I certify that I last Treated Examined this patient on: 11-1-96
X Ma Eugenia G Nochlin MD 11-1-96
Doctor's Signature Date

SECTION TWO: This person was unable to work because of a non-work related injury/illness. Under RCW 50.06.020, benefits may be allowed to an otherwise eligible individual who is reentering the work force after an absence of not less than thirteen consecutive calendar weeks resulting from temporary total physical disability because of a nonwork related injury or illness. In order for us to determine this person's eligibility for benefits, we need the following information from you.

(1) Diagnosis:

(2) Date treatment began:

(3) Date became totally disabled for work:

(4) Date released to resume full-time work:

(5) I certify that the above individual was unable to work without serious risk to his or her health during the period of temporary total disability.

X _____
Doctor's Signature License # Date

Please Complete Information Below Before Returning:

Doctor's Name (Please Print):
EUGENIA G-NOCHLIN MD

Address:
2601 Elliott Ave Ste 4143

City/State/Zip Code:
Seattle, WA 98121

Telephone Number (including Area Code):
(206) 441-9565

Please Return To:

Employment Security Department
P.O. Box 870
Everett, WA 98206

CHASE RIVELAND
Secretary



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

WASHINGTON STATE REFORMATORY
P.O. Box 777 • Monroe, Washington 98272-0777

October 15, 1996

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Annette Belden
12304 227th Avenue SE
Monroe, WA 98272

Dear Mrs. Belden:

This is official notification of your disability separation from your position as Registered Nurse 3 with the Washington State Reformatory, effective December 14, 1996, pursuant to Merit System Rule 356-34-010 Disability - Separation - Appeal - Procedure.

On March 14, 1996, you were assigned to home due to some troubling incidents which had recently occurred. A copy of that letter is attached. It more fully outlines the concerns I had at that time.

Since that time, I have attempted to receive a specific diagnosis of your health condition in order to determine your ability/inability to perform your job duties.

On August 22, 1996, Dr. Reinking, your psychologist, responded to my inquiry regarding your condition. He stated, in part, "The nature of Mrs. Belden's disability (i.e., PTSD) major depression, etc.) is not like a 'bad back'... there are no physical or mental limitations that need to be imposed. The nature of Mrs. Belden's condition requires that the interpersonal/supervisory environment within which she functions as a nurse be altered in ways I outlined in my July 22, 1996 letter ..." Dr. Reinking further suggested a "face-to-face discussion be our next step". A copy of that letter is attached.

On September 13, 1996, Deborah Addleman, Affirmative Action Officer, and L. Nani McLaughlin, Personnel Supervisor, met with Dr. Reinking. The meeting was held to discuss possible adjustments to your RN 3 position. Dr. Reinking had three solutions:

- (1) reassign you to another RN 3 position in the immediate geographic location;
- (2) appoint you to a position with equal salary outside the nursing profession;

October 15, 1996
Page Two

- (3) the Department provide training for you and appoint you to another profession within the same pay range;

Dr. Reinking said he would not agree to an accommodation which would require you to lose salary and benefits or require a further commute for you.

None of the solutions that were offered by Dr. Reinking are available.

- (1) There are no vacant RN 3 position in the Monroe Command;
- (2) There are no vacant positions with the Monroe Command that are at the same salary range (49N) and for which you qualify;
- (3) An equivalent position within your salary range would require a Bachelor's Degree. The Department has never paid for someone to attain an undergraduate degree, nor would this be considered a reasonable accommodation.

Therefore, given the lack of options available and Dr. Reinking's statement that he would not agree to any other accommodation, you are being separated from your position as a Registered Nurse 3.

This action is being taken without prejudice and may be rescinded at any time during the 60-calendar-day period by submitting a statement from your physician or mental health professional that you are able to perform the essential functions of your position without restriction.

Our records indicate that you have 76.9 hours accrued vacation leave and 8 hours of sick leave. I will allow you to use the balance of your sick and vacation leave before December 13, 1996. A supply of "Leave Request" forms is enclosed.

Since you are a vested employee, you may be eligible for non-duty disability retirement. You are advised to contact the Department of Retirement Systems, P.O. Box 48380, Olympia, Washington 98504-8380 or call 360-709-4700. A brochure from the Department of Retirement Systems describing disability benefits is enclosed. It is also suggested that you contact the Social Security Office regarding disability social security retirement. Another possible resource is Tom Gohm at the Department of Personnel who is a disability personnel specialist. He can be reached in Olympia at 360-586-0164.

October 15, 1996
Page Three


The Merit System Rule on disability separation, a copy is enclosed, provides that you may appeal this termination due to disability by filing an appeal in writing to the Director of Personnel, State Department of Personnel, 600 South Franklin, Olympia, Washington 98504, within 30 calendar days of this letter. Your letter must state that a disability does not exist. Additionally, you have the right to have your name placed on the reduction-in-force register and any current promotional registers by the Director, Department of Personnel, provided you have submitted to the Director a current physician's statement that you are physically able to perform the duties of the class(es) for which the registers are established.

Your service with the State of Washington since February 15, 1983 is appreciated. I regret that your condition has made a disability separation necessary.

Prior to receiving your final paycheck, please return any items of state property such as picture ID, key chits, etc.

If you have any questions concerning this matter, please contact either myself or Cheryl Landers, Area Personnel Manager (until L. Nani McLaughlin returns from vacation on October 21, 1996). Cheryl may be reached at 794-2280 at the Monroe Command House.

Sincerely,


Kenneth DuCharme
Superintendent

KDC:jh

Enclosures

cc: Chase Riveland, Secretary, Department of Corrections
Dennis Karras, Director, Department of Personnel
Jennie Adkins, Director, Division of Human Resources
Eldon Vail, Assistant Director, Division of Prisons
Cheryl Landers, NW Area Personnel Manager
L. Nani McLaughlin, Personnel Supervisor
EOHR File