

The issue is:

Did the Department violate ORS 240.570(3) when it reprimanded Appellant for an inability to fully and faithfully perform the duties of her position satisfactorily?

We conclude that the Department failed to prove that one of the two charges was reasonable. However, one charge is reasonable and it substantiated the reprimand.

RULINGS

The parties filed post-hearing briefs on July 17, 2015. Appellant filed a 38-page brief, which exceeds the page limitation of OAR 115-010-0077. Appellant did not have permission, or an agreement with the Department, to submit excessive pages. The Department moved to strike the final eight pages from the brief. Appellant requested that the Department be allowed to submit eight additional pages of briefing. However, the Department did not want to avail itself of that option. Appellant then proposed that 20 different lines on various pages be deleted from the Appellant's post-hearing brief in lieu of the deletion of the last eight pages.

The ALJ determined that eight pages of the brief would be struck as follows: (1) Page 3, Line 11 through Page 10, Line 4 (section titled Background Information); and (2) Page 37, Line 5 through Page 38, Line 10 (section titled Conclusion). The ALJ based this decision on several factors: (1) further briefing from the Department would not be useful; (2) it would be unduly burdensome and confusing to parse out several small pieces as proposed by the Appellant; and (3) deleting the last eight pages would remove Appellant's legal arguments, which contain the most helpful information for the ALJ.

We determine that the ALJ acted within her discretion. The remaining rulings of the ALJ were reviewed and are correct.

FINDINGS OF FACT

The Parties and Background

1. The Department is an Oregon state agency that provides social services to children and others in need of assistance. The Department defines core values that employees are expected to exhibit. These core values include stewardship, integrity, responsibility, respect, professionalism, innovation, and service equity.

2. To provide protective services for children, the Department administers the Child Protective Services Program, also known as the Child Welfare Program. As part of that program, the Department will receive legal custody of a child if a court determines that the child is not safe while residing in the home of a biological or legal parent because of abuse or neglect.

3. Department caseworkers and their supervisors are responsible for working with the family. In making decisions for the family's needs, they work with employees and volunteers from Court Appointed Special Advocates (CASA) in determining the best interest of children in the Department's custody. They also work with foster parents, the children's attorneys, the parents' attorneys, the children's counselors, and the parents' counselors.

4. The Department also works directly with the parents of children who are brought into the Department's custody. These parents are often very upset about losing custody and direct a great deal of hostility at Department staff.

5. The Department maintains paper files for cases. Additionally, it maintains a statewide database called ORKids where caseworkers and supervisors can add and refer to notes and updates in the cases.

6. When children are first placed in the Department's custody, caseworkers and supervisors follow the Oregon Safety Model to establish a permanency plan that is designed to safely work toward the goal of restoring children to their homes, although that goal is not always achievable. Permanency plan development requires the input of the family and others who have direct relationships with the children.

7. Once a permanency plan is established, caseworkers and supervisors have tools to change it as circumstances warrant. One such tool is a Family Decision Meeting (FDM). An FDM is used when a family member's input is needed in making case planning decisions. Supervisors attend FDMs whenever possible. Supervisors also ensure that a caseworker, facilitator, or other child welfare staff person who is an expert in child safety attends the meetings. Further, supervisors review and approve the decisions made during FDMs.

8. To maintain the parent-child bond while attempting to rehabilitate the parents and to comply with court-ordered visitations, caseworkers and supervisors facilitate visits between these children and their parents to the extent possible by establishing a visitation plan, which is considered a part of the permanency plan.

9. Caseworkers and supervisors also follow the Oregon Safety Model. It requires that, in first establishing a visitation plan, the following people must be involved: parents, child substitute caregivers, the child, and other relevant people (*e.g.*, the child's attorney, CASA, therapist or relatives). The supervisor's role in developing a visitation plan is to review the case plan, including visitation and contact plans, consult with the caseworker when issues or concerns arise, ensure that supervised visits are used only when necessary, and support the caseworker's efforts for frequent contact between the child, parents, and siblings.

10. Once the visitation plan is in place, caseworkers and supervisors have the authority to suspend and reinstate visits. Unlike the initial plans, there are no specific procedures or policies that caseworkers and supervisors must follow in order to suspend or reinstate visits. However, because maintaining the parent-child bond is an important goal, the only circumstances in which

the Department will suspend visits are when a parent presents a clear danger to a child or when a parent misses three consecutive visits. Therefore, even if parents attend visits when clearly under the influence of drugs or alcohol, their visits will not be suspended. In situations such as those or other possible risks, the Department has authority to increase the levels of supervision to help protect the child. The rule suspending visits after three are missed is enforced because there are other families that want to use the available visiting times.

11. Appellant has worked for the Department since 2000. She started as a Child Protective Services caseworker. In 2007, she was promoted to a supervisor. In January 2014, Appellant started working in Lincoln County. Her placement in Lincoln County followed a previous discipline that was later withdrawn pursuant to a settlement agreement.

12. Supervisors supervise five to six caseworkers and are responsible for personnel management, including: interviewing, selecting new staff, promoting staff, recommending salary increases, reassigning staff, completing performance appraisals, responding to grievances, rewarding excellent performance, and taking disciplinary action.

13. When Appellant started working in Lincoln County, many of the caseworkers under her supervision were newly hired caseworkers with little experience. Each caseworker has approximately 17 to 22 cases, many involving multiple children. With such a high caseload, it is often difficult for caseworkers and supervisors to complete their work within 40 hours each week. Often they are not able to return phone calls in a timely manner.

14. The Department placed caseworker Tracy Bohne under Appellant's supervision in Lincoln County. Supervisor Angela Cazares had previously supervised Bohne. Appellant perceived that Bohne continued to discuss her cases with Cazares, thereby undermining Appellant's ability to work with Bohne.

15. Fridays are court days in Lincoln County and supervisors are expected to attend court hearings. As such, they are typically not available for other duties such as attending FDMs.

The "DC" Case

16. "DC" is a young child who was placed in the Department's protective custody in January 2013, due to drug addiction and domestic violence occurring in the home with her father "DC Father" and her mother "DC Mother."¹

17. The Department placed DC into foster care with her grandmother, (DC Grandmother), and established a plan for supervised visitations between DC and DC Father. Bohne was assigned as the caseworker.

¹Initials are used for individuals in the Department's custody. Family members and other involved persons are referred to by their relationship with the individual.

18. DC Father was known to direct anger and hostility toward Department staff. He blamed them for ending his relationship with DC Mother. Sometimes when he called the Lincoln County office, he would yell at the receptionist, LucyAnn Gibson. However, at other times, he was calm and polite toward her. Further, Bohne told Appellant that he had stormed out of court on one occasion.

19. DC Father was inconsistent about attending the scheduled supervised visits. He often arrived very late or not at all. DC was often demonstrably upset by DC Father's failure to attend the scheduled visits. Due to this behavior, DC Father's visits were suspended and reinstated by Bohne on a few occasions before February 2014.

20. DC Mother gave birth to an infant (DC Sister) while in drug treatment in Benton County. The Department's Benton County office began facilitating visits with DC Father and DC Sister.

21. On February 14, 2014, Bohne scheduled an FDM for DC's family to occur on Friday, February 21, 2014. The purpose of the meeting was to determine what would be necessary to return DC to her mother's care.

22. On February 17, Bohne sent Appellant (and others) an email that documented the day and time of the February 21 FDM. The email asked anyone that would not be attending to contact Bohne. Appellant did not recall receiving the email. Bohne also spoke with Appellant and documented that Appellant stated that she would be attending the meeting. However, Appellant did not attend the meeting or alert Bohne that she (Appellant) would not be attending.

23. On February 21, 2014, the FDM commenced with the following individuals present in-person or by telephone: Bohne, DC Father, DC Mother, DC Sister, DC Grandmother, DC Grandfather, DC Attorney, DC Mother's Attorney, DC Mother's Counselor, DC Father's Attorney, CASA Program Manager Carol James, CASA Advocate Bonnie Sloan, and some other observers.

24. From the beginning of the meeting, DC Father was not participating. Then, after approximately five minutes, he stood up so forcefully as to cause his chair to fly backward and yelled "you're a fucking bitch!" He then stormed out of the room, slamming the door on his way out. When he reached the reception area, he punched the wall.

25. Later that day, Bohne told Appellant about DC Father's outburst, and Appellant agreed to suspend his supervised visits.² Bohne informed several parties of this decision by email,

²Appellant testified that Bohne did not inform her of what took place in the FDM, and that Bohne only wanted to suspend the visits until DC Father made contact with the office. Bohne testified that she told Appellant about DC Father's outburst at the FDM. We find Bohne's testimony more reliable, because if her goal was to get the visits suspended, it follows that she would have relayed information about DC Father's extreme behavior, rather than downplaying it. Moreover, the incident would have been fresh in

stating that Appellant had confirmed that the visits should be stopped. Specifically, Bohne sent the email to DC Grandmother, DC Attorney, DC Father's Attorney, Sloan, Lincoln County Social Service Assistant (SSA) Debbie Perkins, and others. DC Grandmother and DC Attorney expressed agreement with the decision. DC Father's Attorney requested that the visits continue, asserting that there had never been any concerns with DC Father's behavior during the visits. Bohne neglected to notify anyone in Benton County at that time that visits with DC Sister were to be stopped there as well.

26. Between February 21 and February 25, 2014, DC Father unsuccessfully attempted to reach Bohne several times. On February 25, 2014, at approximately 11:30 a.m., DC Father phoned the Lincoln County offices and reached Gibson. He asked to speak with Bohne. Gibson told him that Bohne was not available. DC Father began yelling that he wanted to speak with someone immediately. Gibson went to find someone who could speak with him. She located supervisors Cazares and Julie Davis, but they were leaving and stated that they could not take the call. Gibson returned to the phone and told DC Father that he would need to leave a message for Bohne. DC Father became extremely upset, yelling "[t]his is unacceptable! I'm going to be there in 30 minutes, and if there is no one there to talk to me, I'm going to fuck somebody up!" Gibson asked him to calm down and asked if he would like to be transferred to Bohne's voicemail. He responded "fuck you!" and hung up. Gibson perceived this threat to be sufficiently serious that she called a non-emergency police line and filed a report. Gibson also entered a case note into the casefile database on that date, detailing the incident.

27. On February 26, 2014, Bohne sent an email to numerous individuals, including Appellant, to "update everyone about what [] happened over the last week with [the DC] case." That email documented both the February 21 FDM outburst and the February 25 incident. Appellant did not read this email.

28. On February 26, 2014, DC Father attended a supervised visit with DC Sister in Benton County because the Benton County SSA and caseworker had not been included on Bohne's February 21, 2014, email about suspending DC Father's visits.

29. Bohne learned of the Benton County visit and, later that day, drafted an email recapping the situation to the involved parties and confirming that visits were to be stopped in both Lincoln and Benton counties.

30. On March 2, 2014, DC Father attempted to reach Bohne, but Bohne was out of the office. Gibson told Appellant that DC Father wanted to talk to someone, but that he had been unsuccessful in reaching Bohne. Appellant took his call.

31. Appellant arranged to meet with DC Father the following day. Bohne was out of the office that day as well. DC Father arrived for the meeting as scheduled. Appellant told DC Father that he needed to engage in rehabilitation services and needed to be consistent in his visits.

Bohne's mind at the time that she spoke with Appellant, making it more likely that she would have informed Appellant about the outburst.

Based on the discussion with DC Father, she determined that it would be appropriate to resume visits with the maximum level of supervision. Appellant did not consult Bohne, the file or ORKids before making this decision.³ Appellant subsequently acknowledged that she should have discussed the matter with Bohne before making that decision. Appellant also acknowledged that, had she read the February 21, 2014, email that documented DC Father's recent behavior, she would have approached the matter differently.⁴

32. Appellant coordinated with Perkins and decided to allow for two visits a week based on Perkins's availability. Appellant approved visits with intensive supervision, which would mean that both an SSA and a CASA advocate would supervise. The Oregon Safety Model describes this as follows: "[t]his highest level of supervision is only appropriate on high risk cases or when there are significant child well-being issues. Examples might be: threat of abduction, threat of coercion of testimony, fearful child."

33. Appellant informed Bohne of her decision. Bohne sent an email to DC Attorney, DC Father's Attorney, DC Grandmother, Sloan, and a Benton County caseworker, informing them of the reinstatement. DC Attorney responded "I would have preferred that we see some walk with that talk, like actually doing the treatment and passing the [urinalyses]. But I guess we will see." On March 3, 2014, Appellant responded to DC Attorney: "[h]e is going to have a visit tomorrow. I am not sure if [it] is going to continue. I said, he would get a visit tomorrow. We will re-assess his situation as he is living and staying in Salem."

34. DC Father had a successful visit with DC on March 4, 2014. DC Father did not attend any further visits after that. Accordingly, on March 13, 2014, Appellant suspended the visits again.

35. In May 2014, DC Father's counselor recommended to Bohne that DC Father's visits be reinstated because he had not shown any aggressive behavior during his supervised visits. Bohne agreed to reinstate visits, even though DC Father had drug delivery charges pending and had met with DC while apparently under the influence of heroin. At the first visit with DC after this reinstatement, DC Father arrived several hours late and appeared to be under the influence of marijuana or heroin. He missed three visits in a row shortly thereafter and his visits were suspended again.

³By not consulting Bohne, the case file or ORKids, Appellant made a decision without complete information. She did not know about DC Father's recent behavior with Gibson. Further, Appellant failed to accurately recall what Bohne told her, resulting in making a decision based on inaccurate and incomplete information.

⁴Appellant may have ultimately arrived at the same conclusion (to reinstate visitation rights), but she acknowledged that she would have undertaken a different process that included Bohne in making that decision.

The WS Case⁵

36. WS is a young disabled adult in the custody of the Department. He resides in a home for the developmentally disabled (DD Home). WS Father has a history of violence and a no-contact order with the family.

37. On Friday, March 28, 2014, WS Father called the DD Home and stated that he was coming to visit WS. The DD Home staff phoned the Lincoln County office staff to get guidance on how to respond.

38. As Appellant was returning from morning court sessions, Gibson approached her and told her that Ron McCall from the DD Home was trying to reach her. Appellant consulted the file and phoned McCall. Appellant told McCall that WS Father was not to visit and that he (McCall) should phone the police if WS Father showed up at the DD Home. Appellant also phoned WS Father and told him not to visit, and that he needed to get visits established through the Department. Appellant then called McCall again to tell him that she had told WS Father not to visit. Appellant then returned to court for afternoon sessions.

39. WS CASA Advocate Tim Osborn was also informed of WS Father's intent to visit. He attempted to contact the caseworker, but she was out of the office. Osborn contacted James for direction. James instructed him to call the caseworker's supervisor, who was Appellant, and also to phone WS Father and tell him that he would need to be cleared by the Department before he could visit. Osborn contacted WS Father, told him not to visit, and called Appellant, leaving a message on her voicemail requesting a call back.

40. At some point, Gibson also informed Cazares of the situation. Cazares researched the background of the case and determined that WS Father might present a danger. Cazares told Gibson to tell McCall and Osborn to call the police if WS Father arrived at the home. Cazares also told Gibson to communicate to WS Father that he could meet Cazares at the Lincoln County office if he wanted contact with his son.

41. WS Father arrived at the Lincoln County office in the afternoon. He was agitated, but Cazares met with him in the lobby and was able to calm him. WS Father eventually left after providing his contact information.

⁵The testimonies of Appellant, Cazares, and Gibson all vary as to the events on March 28, 2014, regarding the WS case. The accounts are even further confused by prior written accounts by these witnesses that contradict their testimony to some degree. The facts, as found here, attempt to reconcile the discrepancies to the extent possible. However, the central fact at issue here is not disputed—which is that Appellant did not return a phone call, as described below.

42. Late that afternoon, both Appellant and James were attending court sessions. After court adjourned, they were walking out together and James told Appellant that she (Appellant) had a message from Osborn. James intended to convey a sense of urgency. However, neither Appellant, nor her husband, who was also present and who is a law enforcement officer with decades of investigative experience, sensed that urgency.

43. When Appellant heard Osborn's message after returning on Monday, she marked it as addressed because she had already contacted McCall and WS Father, and considered the issue resolved.

Disciplinary Process

44. Starting in March 2014, Program Manager Mary Moller, who supervises Appellant, began a disciplinary investigation into Appellant's actions in the DC and WS cases. Specifically, Moller was investigating Appellant's reinstatement of DC Father's visits and her failure to return Osborn's call on the WS matter.

45. Moller obtained information on these cases from employees such as Bohne and Cazares. However, she did not contact Appellant about these matters. Moller forwarded the information that she received to District Manager Marco Benavides and Human Resource Analyst Keith Jeskey for disciplinary consideration.

46. On March 11, 2014, Moller sent an email to Jeskey and Benavides that said:

"I'm waiting to get back other information on a different case related to safety decisions made by [Appellant]. I want to remind you of my concern about [Appellant's] safety judgment. Historically, there is a case that [Appellant] worked years ago [where] a child died. Safety decision-making for [Appellant was] a question then as well. Thank you."

47. The case that Moller referred to was not a case where a child on Appellant's caseload died. Rather, Appellant's involvement in the case began only after the child had died.

48. On April 22, 2014, Benavides recommended a fact-finding hearing into Appellant's handling of the WS and DC cases. Benavides conducted the fact-finding hearing on May 14, 2014. Consistent with Department practice, Appellant was not informed in advance of the issues that would be presented at the fact-finding hearing. Appellant was permitted to bring a personal attorney.

49. Appellant was surprised that issues related to the WS and DC cases were the subject of the fact-finding hearing. She did not immediately remember the specific details of her actions during those cases. On May 23, 2014, she provided additional information to Jeskey and Benavides about what she recalled from the WS case.

50. On June 6, 2014, Appellant filed a complaint of misconduct against Benavides, alleging harassment, intimidation, retaliation, hostile workplace, physical and emotional injury, and failure to meet the professional standards of a program manager.

51. On June 17, 2014, Benavides issued a written reprimand to Appellant. Benavides charged Appellant with a lack of sound professional judgment. The letter stated that Appellant had violated the Department's core value of responsibility. Specifically, Benavides charged:

“During the May 14, 2014, investigatory meeting you stated you did not notify the caseworker or the CASA Program Manager that you had notified [WS Father] and informed him that he could not visit his son based on the no-contact order.

“During the May 14, 2014, investigatory meeting you stated that you did not review the visitation plan, consult with the caseworker or consult with the SSA when you reinstated client [DC Father's] visitations with his children. You stated you were aware he has been aggressive and threatening in family meetings and child safety meetings. You stated you should have contacted the caseworker prior to authorizing the visits. Subsequently the father showed up late and under the influence for his assigned visit and you then suspended visits after. Your failure to review and weigh all available information was potentially harmful to children in DHS care, again a concern for the agency.”

52. Benavides did not cite any specific procedures or policies that Appellant had violated by reinstating DC Father's visits or failing to return Osborne's phone call.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and the subject matter of this dispute.
2. The Department's written reprimand did not violate ORS 240.570(3).

ORS 240.570(3) provides that a “management service employee may be disciplined by reprimand, salary reduction, suspension or demotion or removed from the management service if the employee is unable or unwilling to fully and faithfully perform the duties of the position satisfactorily.” Here, the Department disciplined Appellant by reprimand, the lowest level of discipline identified in the statute. The Department has the burden of proving that its discipline did not violate ORS 240.570(3). OAR 115-045-0030(6); *Ahlstrom v. State of Oregon, Department of Corrections*, Case No. MA-17-99 at 14 (October 2001). The Department meets its burden of proof if this Board determines, under all of the circumstances, that the Department's actions were objectively reasonable. *Brown v. Oregon College of Education*, 52 Or App 251, 260, 628 P2d 410 (1981).

A reasonable employer disciplines employees in good faith and for cause, imposes sanctions that are proportionate to the offense, considers the employee's length of service and service record, and applies the principles of progressive discipline, except where the offense is serious enough to warrant summary dismissal. *Nash v. Department of Human Services*, Case No. MA-008-14 at 23 (December 2014). A reasonable employer also clearly defines performance expectations, expresses those expectations to employees, and informs them when performance standards are not being met. *Stark v. Mental Health Division, Oregon State Hospital*, Case No. MA-17-86 at 35 (January 1989).

A management service employee, such as Appellant, may be held to high standards of behavior, so long as those standards are not arbitrary or unreasonable. *Stoudamire v. State of Oregon, Department of Human Services*, Case No. MA-4-03 at 7 (November 2003). In addition, the Department need not prove all of the charges on which it relied in disciplining a management service employee, so long as the proven charge warrants the discipline imposed. *See, e.g., Patrick v. Department of Agriculture*, Case No. MA-2-91 (June 1991). Further, we may consider any damage to the trust in the relationship between a management service employee and the employer. *See Reynolds v. Department of Transportation*, Case No. 1430 at 10 (October 1984).

Finally, a reprimand is the mildest discipline recognized under ORS 240.570(3). This Board has stated that an employer generally imposes a reprimand to inform the employee that particular behavior is unacceptable and to obtain a correction of that behavior. Because a reprimand does not have an economic impact on an employee, its primary purpose is a form of notice. *Hill v. State of Oregon, Department of Transportation*, Case No. MA-7-02 at 13 (November 2002).

DC Case

The salient facts are undisputed. DC was placed into the Department's custody because her parents were abusing substances and DC Father was violent toward DC Mother. After DC came into the Department's custody, DC Father exhibited erratic and often hostile behavior. He also frequently failed to arrive for visits with DC, which upset DC a great deal. Therefore, he frequently had visits suspended and reinstated. Despite his unreliable attendance and actions toward staff, he had not acted inappropriately with DC or directed violence toward DC in any visits.

DC Father's behavior in the FDM meeting (described in detail above), however, was alarming and sufficient to create a concern, especially given that DC Sister, an infant, was present. Bohne discussed DC Father's conduct with Appellant and both agreed to suspend visits.⁶ DC Father then tried to reach Bohne, but was unsuccessful. In his frustration, he made threatening statements to Gibson sufficient to cause her to contact police. This incident was documented in

⁶At the time that the decision to suspend visits was made, Benton County was not so notified. Consequently, DC Father had a visit with DC Sister. During that visit, DC Father did not exhibit any angry or dangerous behavior.

ORKids. On February 26, Bohne sent Appellant (and others) an email documenting DC Father's recent behavior and explaining that his visitation rights had been suspended.

On March 3, Appellant met with DC Father and decided to reinstate visits, but with intensive supervision. Appellant did not, however, consult with the case notes, ORKids, or Bohne before deciding to do so. Appellant also neglected to read Bohne's February 26 email that detailed DC Father's troubling actions on February 21 and 25. Appellant acknowledged that had she reviewed that information, it would have made a difference in how she handled the reinstatement of DC Father's visitation rights. Appellant did not provide a sufficient explanation for why she failed to review the available material or talk with Bohne before reinstating the visitation rights.⁷

Under these circumstances, we conclude that the Department proved that Appellant failed to avail herself of available, relevant information before making the decision to reinstate the visitation rights.⁸ It was not unreasonable or arbitrary of the Department to expect as much from Appellant. We also disagree with Appellant's argument that such an expectation needed to be codified in a formal policy in order for the Department to reprimand Appellant. In short, as a management service employee with significant responsibilities and experience, the Department could reasonably expect that Appellant would read pertinent information on the case and talk with the caseworker before making the decision that she did.

Having proved this charge, we consider whether the discipline imposed (a reprimand) was warranted. As set forth above, a reasonable employer imposes discipline proportionate to the nature of the offense. This was, to be sure, a minor offense, and, concomitantly, the Department imposed the minimum discipline allowed by statute. Moreover, the primary purpose of a reprimand is a form of notice so that the employee can modify behavior in future situations. *See Hill* at 13. We find that appropriate in this case. Accordingly, we conclude that the discipline was consistent with the actions of an objectively reasonable employer, and we will not disturb it.⁹

WS Case

We turn to the Department's charge that Appellant failed to return CASA Advocate Osborn's phone call after WS Father had stated an intention to visit WS. Similar to the DC matter, the Department charges that in failing to return Osborn's call, Appellant showed a lack of

⁷Appellant testified that she was unaware of DC Father's actions when she made the decision to reinstate visits. Had Appellant availed herself of the available resources, however, she would have been so aware.

⁸We reject the Department's attempt at hearing to expand the charges to include allegations beyond those set forth in the letter of reprimand.

⁹We agree with the conclusion and reasoning of the ALJ that the record did not establish that the Department imposed the discipline to retaliate against Appellant for filing a complaint against Benavides. We also have concerns about some of the erroneous information circulated by Department personnel in the investigation and discipline of Appellant.

professional judgment because she jeopardized WS's mental and physical well-being and compromised the Department's relationship with community partners. Appellant admits that she did not return Osborn's call. Appellant argues, however, that the lack of a return phone call did not amount to failing an objectively reasonable professional expectation. For the following reasons, we agree with Appellant.

As described above, when James, Appellant, and Appellant's husband were walking outside of the courthouse, James told Appellant that she (Appellant) had a phone call from Osborn. Although James attempted to convey that the matter was urgent, neither Appellant nor her husband sensed that urgency. Under these circumstances, we conclude that the Department has not established that Appellant failed to return a phone call that she understood to be of an urgent nature.

Moreover, Appellant aptly addressed the matter that prompted Osborn's call. Given that the matter had been addressed, it was reasonable for Appellant to determine that it was not essential to return Osborn's call. This is particularly true on this record, which established that caseworkers and supervisors are overwhelmed with cases and are frequently unable to return phone calls. Thus, it is not uncommon for calls such as those made by Osborn to go unreturned. Consequently, we conclude that the Department has not proved this charge—*i.e.*, that Appellant violated an objectively reasonable professional expectation by not returning a single phone call by Osborn.¹⁰

ORDER

The June 17, 2014, reprimand letter is to be withdrawn and then reissued without the reference to the WS case.

DATED this 17 day of December 2015.



Kathryn A. Logan, Chair

*Jason M. Weyand, Member



Adam L. Rhynard, Member

*Member Weyand did not participate in the decision in this case.

This Order may be appealed pursuant to ORS 183.482.

¹⁰We also note that Benavides's wavering testimony about the basis for this charge reflects a lack of substance to the allegation.