

RULINGS

The ALJ's rulings were reviewed and are correct.

FINDING OF FACTS

1. The Department operates a Metro Unemployment Insurance (UI) Center in Milwaukie, Oregon. At all relevant times, the Metro Center Manager was John Young. The Center's functions include an adjudication unit and a claims unit, which are located on opposite sides of the Metro Center facility. In addition, the Metro Center has a satellite office in Hillsboro. The adjudication unit, the claims unit, and the Hillsboro satellite office are each overseen by assistant managers, who report directly to Manager Young. Under each assistant manager are unit supervisors, who are the direct supervisors of the classified staff.

2. From 1999 through 2009, Encarnation (Chonny) Buehler worked for the Department in a classified position. During this time, she worked primarily in the claims unit as a Business and Employment Specialist (B&ES). In 2009, Buehler was working in a B&ES lead worker position in the Metro Center.

3. In 2009, JW,¹ a male employee at the Department, worked in the Metro Center's adjudication unit in the classified position of adjudicator. Buehler and JW interacted as co-workers and sometimes took breaks or walks together. In the fall of 2009, after JW was transferred to the Hillsboro satellite office, Buehler and JW continued to have some contact, primarily by telephone. The Hillsboro office was managed by Assistant Manager Scott Rollins.

4. In September 2009, Buehler was appointed to a limited duration position as a Principle Executive Manager (PEM)-B claims unit supervisor at the Metro Center. Buehler reported directly to Claims Unit Assistant Manager Sue Taylor.

5. During her time as Assistant Manager, Taylor held management team meetings with the claims supervisors who worked under her, including Buehler. During these meetings, they discussed various management issues, including staffing, productivity, and personnel matters. One of the reasons for discussing personnel issues in the management team was to ensure consistent treatment of classified staff. Manager Young also held management team meetings with the Metro Center supervisors from both the claims and adjudication units.

6. In January 2010, Taylor issued Buehler an evaluation stating that Buehler was an outstanding employee who worked closely with her staff in a direct, caring, and respectful manner.

7. In April 2010, JW and Buehler began an on-again, off-again intimate relationship. Their relationship was common knowledge in the Hillsboro office. In April or May 2010, Buehler told her friend and co-worker, Claims Supervisor Sean Tran, about her relationship with JW. Tran advised Buehler to tell Manager Young about the relationship. Buehler responded that

¹We use some employees' initials to protect their anonymity.

since JW was in Hillsboro, she did not supervise him and, as there was no policy requiring her to disclose the relationship, she did not need to tell Manager Young.

8. The relationship between JW and Buehler ended in June 2010, after which their contact was generally limited to talking on the telephone after work approximately once a week. At the end of February 2011, the Department laid off JW from his employment as an adjudicator.

9. In February 2011, Taylor issued Buehler an evaluation, stating that Buehler continued to be an outstanding employee. In the evaluation, Taylor stated that Buehler kept the appropriate people informed; got along well with staff and the management team; was strict, but fair with staff; and contributed to a positive, respectful, and productive workplace.

10. In late March 2011, JW and Buehler resumed their intimate relationship, which became serious to the extent that they discussed marriage and children.

11. In May 2011, there was an opening for a B&ES position at the Metro Center. JW told Buehler that he might apply for the position and use it to help him move back into an adjudicator position. JW was out of town, so Buehler initially was not sure if he had applied for the position. Assistant Manager Taylor then told Buehler that she would be on the interview panel for the position.² Shortly after this, Buehler found out that JW had turned in an application for the position.

12. Approximately a week prior to the interviews, Assistant Manager Rollins told Taylor that Buehler should not be on the interview panel because of her relationship with JW. Taylor then told Buehler she was being removed from the panel, but did not initially explain why. Taylor also advised Manager Young that she had taken Buehler off the interview panel because Rollins had told her that Buehler had some type of a relationship with JW.³ A few days later, Taylor explained to Buehler that she had been taken off the panel because Rollins had said she had a relationship with JW. Taylor told Buehler that because of the relationship, it was best that Buehler not be on the interview panel. Taylor did not tell Buehler that she had told Manager Young about the relationship.

²Buehler testified that she did not say anything to Taylor about her relationship with JW immediately after she found out that JW had applied for the position, in part, because she was not sure at that point if she was on the interview panel. However, Buehler admitted in her March 13, 2012 interview that Taylor had told her that she would be on the panel and later “removed” her from the panel. This admission was consistent with Taylor’s testimony. Therefore, we conclude that Buehler knew she was on the interview panel at the time she became aware that JW had applied for the position.

³Young acknowledged he had been told by Taylor that the interview panel had been changed but Young did not recall Taylor telling him about Buehler’s relationship with JW. However, Taylor clearly recalled telling Young why she had removed Buehler from the panel.

13. JW was hired for the Metro Center B&ES position and Taylor assigned him to work under Claims Supervisor Curtis Mayes to avoid any conflict due to JW's relationship with Buehler. Neither Taylor nor Buehler told Mayes about the relationship. Taylor was never told of, nor observed, any problems between JW and Buehler at work.

14. During May and June 2011, JW and Buehler continued their relationship. During this time, they generally kept the relationship out of the workplace, seldom took breaks or ate lunch together, and usually spoke after work and saw each other on weekends.

15. In June 2011, JW was hired as an adjudicator in the Metro Center Adjudication Unit. He worked under an adjudication unit supervisor, who reported to Assistant Manager Lee Harold.

16. Buehler's limited duration supervisor position ended on June 30, 2011. From July 1, 2011 until July 30, 2011, Buehler worked in an out-of-class temporary rotation as the claims unit assistant manager while Assistant Manager Taylor was on leave. From August 1 to August 14, 2011, she worked under a temporary rotation as a claims unit supervisor. On August 15, 2011, Buehler was appointed to a permanent, regular status claims supervisor position.

17. Sometime in July 2011, the relationship between Buehler and JW ended. At some point in August, JW notified Buehler and his other telephone contacts that he was turning off his cell phone for a period of time. Buehler left a note on his desk expressing concern that she was the reason he was turning his telephone off and then later called him to see if he got the note. Buehler asked to talk about the situation, but JW indicated he did not want to talk. Buehler became upset and told him that he should stop opening doors for her at work and never talk to her again. JW agreed to meet with Buehler because he wanted them to be friends and to have a peaceful relationship. He did not want to have someone upset with him at work.

18. Buehler and JW met after work to discuss their relationship, including how JW only wanted to be friends and how they should interact in the workplace.

19. After work the next day, JW was at his house with DC, a female friend who was a Metro Center B&ES worker. DC was at JW's house because she was upset about an incident that had occurred at work with her ex-husband, against whom she had a restraining order. Buehler was neither aware of the incident nor that DC and JW had gone to his house.⁴ Buehler went to JW's house to continue the conversation they had begun the prior evening. Both JW and Buehler had shown up at each others' houses unannounced in the past. When Buehler knocked on the door, she could see there was a woman in the front room, but could not tell who it was. JW came to the door, was upset, and told Buehler she needed to leave. When Buehler asked who was in the house, JW told her to leave and stated "I'm this close to going to HR [Human Resources]." Buehler then left. This interaction lasted approximately two minutes.

⁴There is no evidence to support a finding that Buehler went to JW's house because she knew DC was there. JW also did not believe this was the reason Buehler came to his house.

20. In late August or early September 2011, JW began a relationship with DC, which continued on an on-again, off-again basis through November 2011. Although JW and Buehler had ended their relationship at this point, they sometimes talked on the telephone and sent each other text messages. DC was aware of JW's prior relationship with Buehler and he shared e-mails and text messages he received from Buehler with DC.

21. In September 2011, JW suggested to Buehler that they get together and Buehler went to his house. JW then told Buehler that he felt like he was cheating because he was dating DC and that DC had been the woman in his house in August. Between September 2011 and January 2012, JW and Buehler returned to their on-again, off-again relationship, sometimes showing up at each others' houses unannounced.

22. On November 18, 2011, after Taylor retired, Buehler was appointed to a temporary out-of-class rotation as the PEM-C Claims Unit Assistant Manager. Buehler signed a job rotation agreement and was given a position description which provided, in part, that the position made high-level management decisions, functioned with a high degree of independence, and functioned as the Metro Center's Manager in the manager's absence. The description also stated that the assistant manager was to "set the tone for the Center in addition the [sic] being a coach and mentor of UI Center claim Supervisors management and staff."

23. After Buehler was appointed to this position, Claims Supervisor Tran reported to Buehler. At some point after Buehler's appointment, Tran, who was DC's supervisor, had issues with DC's below average attendance and sought guidance from Buehler on how to address these issues. During this conversation, Buehler asked Tran if JW and DC were dating. He told her that he saw them together but he did not know.

24. Sometime in November 2011, JW told Buehler that DC had dumped him because of Buehler.

25. On January 6, 2012, Buehler and JW both attended Taylor's retirement party. They did not spend much time together, but after JW left the party, they exchanged text messages. Buehler left the party sometime after midnight and at 12:50 a.m., she sent JW a text asking if he wanted to see her. He responded asking "???" and "Why?." When Buehler asked if "U right:)," JW responded that he was going to sleep because he had to get up at 7:00 a.m. Buehler responded "Really? I'm Omw [on my way]."⁵ When Buehler arrived at JW's house at 1:59 a.m., she sent a text asking "I'm here, can I go in?" JW did not see Buehler's text because he was having a telephone conversation with his friend, Nate Wallbaum, who was a Canby police officer.

26. Earlier that night, JW had called Wallbaum and said he was very depressed. Wallbaum and JW had the type of relationship in which JW would call Wallbaum when he was upset or needed something. Wallbaum would also sometimes drive by in his police car to check on JW's house. JW did not tell Wallbaum what the problem was, but JW was very upset.

⁵Text messages and e-mails included in the findings are set out in their original form and have not been edited for spelling, grammar, or punctuation.

Approximately three months earlier, JW had told Wallbaum he was concerned about a relationship he had with a woman at work. JW did not say much about the relationship, which led Wallbaum to believe JW was ashamed of the relationship and keeping it a secret.

27. When JW did not respond to her text message, Buehler went up to his house. The screen door was closed but not locked and the main door was open. JW had left the doors in a similar manner for Buehler in the past when he knew she was coming, so Buehler entered the house. When JW saw Buehler, he told Wallbaum he would call him back later and hung up. JW asked Buehler what she was doing there and she told him she had sent him a text. He indicated he had not gotten the text. Buehler and JW then went into JW's room to talk and kiss. Wallbaum called JW several times after JW did not call him right back. When JW answered, he told Wallbaum that he could not talk and he would call him back. During one such call, JW whispered into the telephone "she's here" and then hung up. Wallbaum felt that something was wrong so he drove to JW's house in his police car, shined his high beams around the street and into JW's front windows, and then left when he did not see anything. Buehler had not met Wallbaum but knew about him from JW. When Wallbaum shined the lights into the house, she mentioned to JW that Wallbaum was there. JW responded that Wallbaum often came by and checked on his house.

28. After about 20 minutes, Buehler decided to leave and got into her car. JW followed Buehler and stood by her car door talking with her. Wallbaum then drove up in his police car and parked behind Buehler with his high beams on. It appeared to Wallbaum that JW was standing hunched over in the middle of the street with his hands on his knees as if he wanted to throw up. When Wallbaum asked JW what was going on, he did not respond. Buehler, who had not heard what Wallbaum said, walked over and greeted Wallbaum. Wallbaum decided that Buehler was the problem and told her to leave. Buehler then got very angry and told Wallbaum that his job was to protect the community, not to be a bodyguard for JW. She told him that this was a personal situation and he should not be involved. She asked for his supervisor's name, which he gave her, and told him she would have his badge for this. After Wallbaum told JW to stand up for himself and be a man, JW yelled loudly at Buehler "we are over." Buehler then yelled at JW that he should have been a man all along, said it was over, and left.

29. After Buehler left, she and JW exchanged the following text messages:

Buehler - "Fuck u [JW], u need ur ducking friend nate [Wallbaum] to save u. U are so immature and really not a man, I hate u. Do not come across my path ever again. U r dead to me and ur friend will be lucky of I don't call his boss, he is pay to protect the community not to be a body guard for u. All in the name if God, sorry but u have to work very hard to get where u want to go. Be a man for once, * * * (illegible) * * *. I will call the Canby policy dept tomorrow."

JW - "He didn't even know I were here Nate came cause I sounded weird on the phone. U shouldn't have come over in the first place."

Buehler - "Bullshit, he searched my car, and is not the first time. Don't give me excuses, his ass will be fired!"

JW - "Huh? Searched ur car? He's never met u before."

Buehler - "And if something happens to me I will blame u and ur friend the cop. I'm texting my friends. I called the police dept. Just now, I will call tomorrow and talk to the sergeant."

30. When Buehler called the police department that evening, she was told that Wallbaum's sergeant was not working. Buehler did not call Wallbaum's sergeant the next day. Wallbaum did not file a police report because he did not believe it was a criminal matter.

31. After the January incident and Buehler's text messages, JW felt very unsettled at work and somewhat threatened. He was not sure if Buehler was going to do something or what was going to happen. During this time, JW and Buehler did not communicate with each other. On Friday, February 10, 2012, JW saw Buehler in the hall at work and asked to talk with her. JW wanted to make sure Buehler did not have any ill will toward him so things at work could be normal again. Buehler told him she didn't want to talk with him. After JW called and e-mailed Buehler during work several times that day, Buehler finally agreed that he could call her at home that night.

32. During their telephone call that evening, JW became upset when Buehler told him what had happened in January was his fault. JW brought up going to HR again and told her that he might talk with Supervisor Rollins. JW also told Buehler that DC had said Buehler was harassing her at work. They hung up after the conversation became very heated.

33. Sometime soon after, JW and Buehler exchanged the following text messages:

JW - "I'm fed up...and it's happening. Ur actions that night were inexcusable. I wanted to talk to your first...but I see what it is now."

Buehler - "Listen, I will defend myself to the end. Everyone is seeing what ur doing, we r not stupid. Like I said before, u r dead to me. Please, don't talk to me ever again. I will keep this text and I have the other one. Stop and move with ur life."

JW - "[DC] tells me how you treat her...harassment pure and simple...I thought she was overreacting...not do much. I called to try and rectify the situation...I'm not saying that I was right in everything...but your conduct was inexcusable."

Buehler - "We are just to mean to each other. I'm open to have a serious talk, we need to work with each other day and day out, and this is not healthy."

34. Buehler understood that JW's reference in his text to "it's happening" meant he was going to file a complaint. On Saturday, February 11, 2012, Buehler sent a text to JW asking if he was willing to talk and try to resolve their situation. Buehler stated further, "[i]f I don't hear from u I understand. What is left? Destroying each other?" JW did not respond to her message.

35. On Sunday, February 12, 2012, Buehler sent JW the following e-mail:

"I know you are not going to give me the opportunity to talk to you so I'm writing. I want to tell you that I'm so sorry about everything that is happening, I never thought things will get this nasty. I had few drinks on Friday night and don't remember everything I said.

"I gave you the okay to call me after you insisted so much but it was a bad idea. I know your intentions are not the best ones towards me for sometime and you want to see me destroyed. I'm not scare, this is not the first time you have threatened me with going to HR and now to talk to Scott. If that makes you feel better by all means do it. I could have done the same but it is not my nature.

"I do want you to know that the person you met couple of years ago have not changed. You know me [JW], you know where I came from. I have been fighting all my life and it has not been easy. It's hard to hear you say that you believe I'm harassing someone when there is really no basis for that allegation. I do take it very seriously but deep in heart and my conscience I know I'm not that bad person she is trying to portrait. How could you judge me? I know you know better. Tears have not stop coming out of my eyes, this so hard.

"I'm feeling so mistreated by you, the only thing I did wrong from the beginning was to love you and care for you too much, you have no idea. Why I reacted the way I did towards you and Nate? There was no reason why he should have got involved, I was leaving anyway. Did he want to arrest me? You listened to him and started yelling at me, this was the first time in my life somebody yelled at me that way. All the feelings I had came out, sincerely I don't hate you or wish you any ill. You are not dead to me and how could you be? How??? Sorry, I hurt you enough.

"I recognize my faults and again I apologize. I know I'm a match and overreact sometimes. SListen, I just want to get along for the time being. I'm working on my resume because I'm planning to leave OED as soon as I can. I hope that will make you feel good. I wish you well."

36. On February 13, 2012, JW responded to Buehler's e-mail as follows:

"I hear what u are saying. I don't want ill will and I'm not out to destroy anyone. It's not my intention to drive anyone away. I have not had bad intentions against you for awhile, I actually thought you were having bad intentions against me. If you don't remember what you said the other night, well, it was pretty

venomous...I was just trying to hear your side of things. Look, I'm not talking to Scott [Rollins]. I want a peaceful work place. Remember, I invested feelings into you too. It's been hard for me too. I do not like what has happened either."

37. In January and February 2012, Buehler was the hiring manager for several B&ES positions. She formed an interview panel, which included herself, Rollins, Tran, and Claims Supervisor Debbie Lindley. Buehler became aware that DC had applied for one of the positions. Buehler did not remove herself from the panel because she thought she could be professional and impartial and did not think there was a conflict since she was no longer in a relationship with JW. Buehler did not talk with her supervisor, Manager Young, about her relationship with JW, JW's relationship with DC, DC's belief that Buehler was harassing her or consider how DC would feel about Buehler being on the panel.

38. The interviews were held in late February 2012. During the interview with DC, all of the panel members, including Buehler, asked DC a question. Buehler found it was hard to have DC in front of her during the interview. Buehler was very nervous, even shaky, because she did not want DC to think she was giving DC a hard time or treating her differently than other applicants. Buehler was concerned that DC would think this because JW had said DC believed Buehler was harassing her.

39. Either the next day or a few days after the interview process, Claims Unit Supervisor Tran met with DC because she was about to run out of paid leave. Tran had previously met with DC at least three times for the same reason. In the past, DC told Tran that her poor attendance was due to stress caused by her ex-husband. That day, when Tran questioned DC, she said she did not feel it was fair that Buehler was on the interview panel since both she and Buehler had dated JW and she was going to HR. Tran arranged for DC to meet with Assistant Manager Harold and DC later filed a complaint against Buehler.

40. On March 13, 2012, Senior HR Analyst Kristin Weiss-Guernsey (Weiss) notified Buehler that a complaint had been filed against her and scheduled a meeting for the following day. During the interview, which was also attended by Manager Young, Weiss asked Buehler about an interaction Buehler had with DC near DC's desk in August 2011, discussions Buehler had with other members of the management team after she knew DC was in a relationship with JW, and Buehler's participation in DC's interview process. She also questioned Buehler about the intimate details and history of her relationship with JW, the incidents which occurred at JW's house in August 2011 and January 2012, and their subsequent interactions. Buehler felt humiliated by the experience. At the conclusion of the interview, Weiss told Buehler that she understood that sometimes people who were being interviewed could not remember everything, so if Buehler had anything else to add, Buehler could call her or Young or bring it forward later.

41. On March 14, 2012, Buehler provided Weiss and Young with a written statement, telling them that she did not understand the specific complaints JW and DC had brought against her and felt very humiliated and concerned by the very personal questions they had asked. Buehler stated further:

“Mr. [JW] is an adult and therefore responsible of his actions and decisions. The fact that I was asked if I knew if I was his first intimate relationship, I answered yes because that was what he told me. Do I know for sure, I don’t know.

“As far as the second incident at his place involving his friend Nate, I was upset and raised my voice because he was yelling at me. There is no reason why I should allow anyone to yell at me.

“I was always professional at my place of employment, in fact I was feeling harassed by Mr. [JW] in the work place. He was calling all the time; if I did not answer he will call me up to 6 or 7 times. He would walk over to see if I was at my desk.

“There was the incident in the stairwell. I had asked him in several occasions not to call me or contact me. This was one of those times; I was leaving to go home at around 4:30 p.m. He would also leave at 4:30 p.m. In this particular occasion he was coming up the stairwell and purposely bumped my bag. Later he texted me and said sorry for bumping my bag, was a way to start talking to me again, this was after the first incident at his place.

“Another incident happened back in November if I recalled right the time. I was the closing manager on Tuesday, he knows that. I was getting ready to set the alarm when I saw him going back to the Adjustment Unit. I waited and waited for him to exit the Adjustment Unit then I saw him walking in the BES side. I asked him what he forgot and he said his head phones and touched my bag. He went out the door and I set the alarm, when I got to the elevators area he was there sitting, like waiting for me. We both went down the stairs and when I was exiting the building I saw [DC] coming in the building, instead of exiting he took a right and went to the Marquis area downstairs. I exited the building and left. To this incident, Michele Presley was a witness.

“Another incident also happened during my lunch. I usually take a lunch in the huddle room by the office support staff. In this particular occasion, again I was not talking to him. I saw the phone rang but did not answer, and then he just showed up in the huddle room. He said he wanted to talk, I always tried to be respectful and that was very uncomfortable to me because [DC] was not in that day.

“It was uncomfortable every time I would be talking to someone and he would come in the room or tried to be part of the conversation.

“I’m requesting the Office of Human Resources to interview Lisa Hand, Michele Presley and Nancy Chernoff as witnesses of the different incidents and his less than desirable behavior in the workplace.

“As far as Ms. [DC], I always treated her with respect. In the past she never talked to me but after she started dating Mr. [JW] she started saying ‘good morning Chonny’ in a very sarcastically way and out of the ordinary. I saw Ms. [DC] everyday by my cubicle talking to Gina (Gina was using Mr. Frazier’s desk). I don’t know what allegations for sure she is bringing forward but I can’t be responsible for people’s decisions and lives. I’m a manager (Assistant Manager) and therefore I have a job to do. When she engaged in a relationship with Mr. [JW] she was fully aware I had dated Mr. [JW] and that at some point I would have to talk to her or have some kind of interaction with her. She is in the unit I supervise.

“I take responsibility for my action but now, I have to be responsible for her decision and stop supervising and doing my job? Just because I was in the interview panel and the hiring manager doesn’t mean that can’t do my job and be impartial.”

42. On May 4, 2012, HR Manager Louise Melton-Breen issued Buehler a pre-removal notice. A pre-discipline meeting was subsequently held on May 11, 2012, which was attended by Buehler, Weiss, Taylor, Melton-Breen, and Young. At one point during the meeting, Buehler stated:

“JW and DC knew I was involved in the hiring process. There was no conflict of interest on my part and I was no longer in a relationship with JW. If they believed that there was a conflict they should have brought it to the attention of the supervisor. To me the relationship was over and there was no conflict.”

43. Melton-Breen subsequently decided to remove Buehler from management service. She decided to reinstate Buehler to classified service because of Buehler’s work history and evaluations, which showed that Buehler was an outstanding performer from a technical standpoint. Melton-Breen felt if Buehler returned to classified service, she would be in a more structured environment, which would not raise similar issues. Melton-Breen decided a lower level of discipline was not appropriate for a number of reasons, including that Buehler failed to alert HR or her supervisors to a potential problem although JW had mentioned going to HR several times, Buehler raised harassment allegations against JW and DC in her March 14 response in retaliation for DC’s complaint, Buehler failed to remove herself from the interview panel even though she had previously been removed from a panel due to conflicts arising out of her relationship with JW, and the impact of Buehler’s actions on DC.

44. On June 6, 2012, Melton-Breen notified Buehler that she was removed from management service and returned to classified service effective June 7. The notice provided, in part:

“As a result of the investigation it was learned that in January 2010 you began a romantic, intimate relationship with [JW], at that time you were in a management service position and [JW] was a classified service employee whom you did not

supervise and worked at the Metro UI Center in Milwaukie, Oregon. In August 2011, [JW] ended the relationship with you.

“SUPPORTING FACTS:

“A. Failure to advise management of potential conflicts of interest

“1. In May 2011 when JW was returned to the Metro UI Center in a seasonal B&ES Claims Taker position, you were romantically involved with JW.

“2. When JW was hired back into a seasonal position as a B&ES Claims Taker in May 2011 you did not directly notify your supervisor of the relationship.

“3. From January 2010 – February 2012 you served on many staff interview panels, were involved in management decisions related to hiring staff, and discussed other staffing issues related to the overall needs of the Metro UI Center.

“4. DC, another classified service staff from the Metro UI Center in Milwaukie, Oregon began a relationship with JW on or around November 2011.

“5. During the months of January and February 2012, you served on an interview panel associated with hiring several new additional staff at the Metro UI Center.

“6. In February 2012, DC was interviewed by a panel of managers for two types of positions in which you were a panel member.

“7. During this time frame you did not notify your manager that you may have a potential conflict of interest by being involved on an interview panel concerning an applicant who was romantically involved with your former boyfriend, JW.

“B. After-hours interactions with JW where you made threats, including if he went to Human Resources for help

“1. First, on or around August 2011, you came to JW’s house uninvited. JW was with another classified Metro UI Center employee, DC.

“2. Your visit to JW’s house occurred after work hours and was after the relationship between you and JW had ended.

“3. During this visit, there was a verbal altercation between JW and you, which caused JW to ask you to leave. JW also stated that if your contact with him did not end, he would have to go to HR.

“4. Your response to this request was to tell JW that if he went to HR, you would have to go to HR in order to defend yourself.

“5. Second, in and during January 2012, you again went to JW’s house uninvited. There was another verbal altercation between you and JW.

“6. JW’s friend, who is a police officer witnessed JW again asking you to leave him alone. JW again told you he would need to go to HR if you could not leave him alone.

“7. You responded back to JW that you would call the officer’s sergeant and turn the friend in for interfering in this personal matter between you and JW.

“C. Filing a complaint that was not based upon good faith belief on your part

“1. Complaint Process: The Oregon Employment Department has provided training and tools for employees to file a complaint with the Human Resources if staff feels that they are being harassed or discriminated against.

“2. Staff are encouraged to bring forward these concerns as soon as possible in order for the Department to conduct a timely investigation as soon as possible. The process is to notify your supervisor, staff in the Human Resources, or a union representative.

“3. On March 14, 2012, the day after the Oregon Employment Department conducted an interview with you concerning the allegations brought forth by DC concerning the February 2012 interview process, you filed a complaint of harassment against JW.

“4. You filed this complaint only because you believed that JW had filed a complaint against you.

“5. The expected basis for filing a complaint associated with the DAS policy 50.010.01 – Discrimination and Harassment Free Workplace is as a result that the person actually believes that they had been harassed.

“CONCLUSION:

“During the pre-removal meeting you brought another (former) manager to explain that she discussed with John Young, Metro UI Center Manager, about your dating a co-worker. However, the Department is concerned that after you accepted the WOC Assistant Manager position at the Metro UI Center you did not engage your supervisor to discuss the aspects of the relationship nor that you were involved in interview panels where the new girlfriend of JW was a candidate. In other words, the Department acknowledges that the Metro UI Center manager, and your direct supervisor, may have been made aware of your relationship you still had an obligation to disclose your relationship with a represented staff member from the Metro UI Center to your direct supervisor during the ensuing months.

“This includes approaching him, not only generally, but including before you took part in the interview processes and after the direct contacts you were making at JW’s residence. Depending on another manager in this manner is not a sufficient disclosure of all relevant matters and did not give your supervisor sufficient explanations in order for your supervisor to monitor the issues and make appropriate decisions on matters such as your serving on an interview panel where one applicant was the current girlfriend of someone you had previously been in an intimate, romantic relationship with.

“Both your actions, and in some cases inactions, violated simple standards of management conduct and as a management service employee, working in an out-of-class PEM C, Acting Assistant Manager, you would be expected, at that level, to come forward and use good judgment in that type of situation. Your conduct and judgment have placed the department at risk and has resulted in a loss of trust for you to continue as part of the management team.

“In addition, during the course of off-duty contacts you made with JW, which were also not reported to your supervisor, you threatened the employee when he raised coming to HR. Your actions had a chilling affect (*sic*) on JW to the point where JW was fearful to come forward to Human Resources in order to request assistance to keep you away from him – either at work or after work hours. You subsequently made good on the threat by filing a claim only after you learned that a complaint had been made against you. These actions have further resulted in a loss of trust. In addition, your threat to report a member of law enforcement to his own employer was a way to attempt to control the officer from telling the truth as to what occurred on or around January 2012 when you went over to JW’s home.

“The department has concluded that your conduct demonstrated your failure to uphold management standards of conduct for a manager at the Employment Department.

“Some of the conduct outlined above, standing alone, has caused the Department to lose confidence in your ability to exercise good judgment and your credibility, which in turn, has caused a loss of trust in you as a member of the management team. Your failure to discuss the on-going impacts from the prior relationships with your supervisor is an example. Your contacts through the interview process where DC was an applicant is an example as well as your contacts with JW outside of work is another example. Finally, your misuse of the complaint process is another example.”

Relevant Policies and Training

45. On April 7, 2010, Buehler was provided classroom training on, and copies of, the Department’s Discrimination and Harassment Free Workplace Statewide Policy 50.010.01 and Maintaining a Professional Workplace Statewide Policy 50.010.03. She had previously received training on these policies in March 2007. The trainer explained that employees engaging in harassment outside of work might be subject to the policy if their conduct had a negative impact on the work environment or work relationships. On October 8, 2011, Buehler completed online training on these policies through the Department’s iLearnOregon System. One of the slides in the online training program provided:

“An employee who engages in harassment of other employees while away from the workplace and outside of working hours may be subject to the provisions of this policy if that conduct has a negative impact on the work environment and/or working relationships.”

46. The Discrimination and Harassment Free Workplace Policy prohibits discrimination or workplace harassment because of an employee's protected class status and sexual harassment. Sexual harassment is defined as "unwelcome, unwanted, or offensive sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" which "has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." The policy provides that employees engaging in harassment of other employees outside of work might be subject to the policy if their conduct has a negative impact on the work environment or work relationships.

The policy directs anyone who believes they are subject to or aware of conduct violating the policy to report the conduct to their immediate supervisor or Human Resources, prohibits retaliation against an employee who has filed a discrimination/harassment complaint, and provides that any employee who has violated the policy or retaliated against someone filing a complaint may be subject to discipline, including dismissal. The policy also states that "[m]anagers/supervisors are held to a higher standard and are expected to take a proactive stance to ensure the integrity of the work environment. Managers/supervisors must exercise reasonable care to prevent and promptly correct any discrimination, workplace harassment or sexual harassment they know about or should know about." It further provides that managers who know or should know about conduct which violates the policy and fail to take prompt action or report the behavior may be subject to discipline.

47. The Maintaining a Professional Workplace Policy establishes the expectation that all employees behave respectfully and professionally and prohibits inappropriate workplace behavior, which is defined as "[u]nwelcoming or unwanted conduct or behavior that causes a negative impact or disruption to the workplace or the business of the state, or results in the erosion of employee morale * * *." Examples of conduct which violates the policy include "comments or behaviors of an individual or group that disparage, demean or show disrespect for another employee, a manager, a subordinate, * * * in the workplace." The policy provides that employees violating the policy or retaliating against an employee for reporting a violation may be subject to discipline, up to and including dismissal. The policy establishes a process for reporting violations, including an obligation for supervisors to address inappropriate behavior that they observe or experience as close as possible to the time it occurred.

48. The Department maintains Office Practices and Procedures, with which Buehler was familiar. Buehler was last provided a copy of this document on June 16, 2011. One section of the procedures require all staff to work harmoniously with each other and states "[i]f personal or professional issues arise and cannot be resolved amicably, such issues should be taken to and addressed by appropriate management staff and at the lowest possible level."

49. The August 2011 Department Employee Handbook provides an overview on the Conflict of Interest/Ethical Behavior Policy, which states:

"It is essential that public employees provide services fairly and impartially to all in a professional and ethical manner. Employees are prohibited from taking any action that could result in private financial or personal gain for themselves, any

member of their family, or any business with which they or members of their family are associated. As a public employee, it is necessary to avoid even the appearance of a conflict of interest. Always consult with your supervisor for guidance on this issue. Providing preferential services to anyone is considered a conflict of interest and/or a violation of public trust. Employees may not provide services to themselves, family members or others you know.”

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and the subject matter of this dispute.
2. Buehler’s removal from management service was consistent with ORS 240.570(3).

Standards of Proof

ORS 240.570(3) provides that after completion of trial service, 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.” The employer has the burden of proving that its discipline was consistent with 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 employer meets its burden of proof if this Board determines, under all of the circumstances, that the employer’s actions were “objectively reasonable.” *Brown v. Oregon College of Education*, 52 Or App 251, 260, 628 P2d 410 (1981); *Morisette v. Children’s Services Division*, Case No. 1410 at 23 (March 1983).

We review management service disciplinary appeals using a two-step process. *Dubrow v. State of Oregon, Parks and Recreation Department*, Case No. MA-3-09 at 27 (May 2010), *recons* (June 2010). First, we determine if the employer proved the charges that are the basis of the discipline. *Id.* The employer need not prove all of the charges on which it relies. *Ahlstrom* at 15.

Second, if the employer has proven some or all of the charges, we apply a reasonable employer standard to determine whether the employer was justified in taking the disciplinary action. *Greenwood v. Oregon Department of Forestry*, Case No. MA-03-04 at 30 (July 2006), *recons den* (September 2006). A reasonable employer is one that clearly defines performance expectations, provides those expectations to employees, and tells employees when those expectations are not being met. *Bellish v. State of Oregon, Department of Human Services, Seniors and People with Disabilities*, Case No. MA-23-03 at 8 (April 2004), *recons* (June 2004). A reasonable employer also “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 * * *.” *Smith v. State of Oregon, Department of Transportation*, Case No. MA-4-01 at 8-9 (June 2001). However, a reasonable employer may not be required to use progressive discipline “where an employee’s offense is gross or the employee’s behavior probably will not

be improved through progressive measures.” *Peterson v. Department of General Services*, Case No. MA-9-93 at 10 (March 1994).

In applying the “objectively reasonable” standard in management service discipline cases, an employer may hold a management service employee to strict standards of behavior, as long as the standards are not arbitrary or unreasonable. *Helper v. Children’s Services Division*, Case No. MA-1-91 at 22 (February 1992). A significant factor for this Board’s consideration in management service discipline is

“the extent to which the employer’s trust and confidence in the employe have been harmed and, therefore, the extent to which the employe’s capacity to act as a member of the ‘management team’ has been compromised. [Footnote omitted.] In addition, [Board precedents] give weight to the effect of the management service employe’s actions on the mission and the image of the agency and the extent to which those actions do or do not reflect the proper use of judgment and discretion.” *Reynolds v. Department of Transportation*, Case No. 1430 at 10 (October 1984).

Basis for Removal

We begin by considering whether the Department proved the charges on which Buehler’s removal from management service was based. The Department removed Buehler from management service for acting contrary to the standards in ORS 240.570(3) by 1) failing to advise management of potential conflicts of interest; 2) making threats to JW during after hours interactions, including threats in response to JW’s statements about going to HR; and 3) filing a complaint against JW that was not based on a good faith belief, but because she believed JW had filed a complaint against her.

Charge 1: Failing to advise management of potential conflicts of interest.

The Department charges that Buehler violated simple standards of management conduct and good judgment when she failed to advise her supervisor of conflicts of interest arising out of her relationship with JW and placed the Department at risk. The Department relies on Buehler’s failure to notify her supervisor regarding potential conflicts of interest which existed after the incident at JW’s home in August 2011, after she was appointed to her position of Acting Assistant Manager in November 2011, after her involvement in the incident at JW’s house in January 2012, and in relation to her involvement in DC’s interview process.

Buehler argues that no violation should be found because Assistant Manager Taylor and Manager Young knew of her relationship with JW; she and JW acted professionally and did not bring their relationship into the workplace; she was obligated to perform the duties of her job, including participating in DC’s hiring panel; there was no specific rule that either required her to disclose her relationship with JW to Manager Young or prohibited her participation in DC’s interview; two of the other managers on DC’s panel were aware of her prior relationship with JW and did not raise a concern about a potential conflict; and there is no evidence that Buehler did not act in a fair, impartial, and professional manner during DC’s interview process.

We conclude that the Department proved Buehler violated simple standards of management conduct and good judgment when she failed to advise her supervisor of potential conflicts of interest arising out of her relationship with JW and placed the Department at risk. First, Buehler failed to notify either Assistant Manager Taylor or Manager Young of potential workplace conflicts resulting from JW's statement to her in August 2011 that he was close to going to HR. Buehler was aware of the policies against sexual harassment and inappropriate workplace behavior; knew that she was held to a higher standard as a manager and expected to be proactive in ensuring the integrity of the work environment; and knew that conduct occurring outside of work, such as her relationship with JW, which had a negative impact on the working environment or working relationships violated these policies.

When JW told Buehler he was close to going to HR, Buehler understood that JW was telling her that he was considering filing a complaint at work about her conduct related to their personal relationship. At this point, Buehler knew or should have known that such a complaint, or even the fact that JW was considering filing a complaint, constituted a negative impact or disruption to the workplace. While she may not have believed that her conduct violated any policies, as a manager she was obligated to be proactive by alerting her supervisor to the potential impact of her involvement with JW on the workplace so her supervisor could take action to limit any conflicts of interest or liability for the Department. Her failure to notify either Assistant Manager Taylor, at the time of the incident, or Manager Young, after her appointment as assistant manager, violated simple standards of management conduct and good judgment.

Second, the Department proved that Buehler failed to perform her duties as acting assistant manager satisfactorily when she did not inform Manager Young of potential conflicts, policy violations, and work impacts resulting from her interactions with JW in January and February 2012. For the same reasons discussed above, Buehler should have informed Manager Young that JW had raised going to HR and talking with Rollins in February 2012, that Buehler believed JW was harassing her, and that JW had told Buehler that DC believed Buehler was harassing her. Even if Buehler did not believe she was harassing DC, because DC was in her line of supervision and Buehler could have an impact on DC's employment, Buehler was obligated to be proactive as a manager and report DC's concerns to Manager Young.

Finally, Buehler did not act as a reasonable manager or use good judgment when she failed to notify Manager Young about the impact on the workplace that had arisen out of the relationship triangle between herself, JW, and DC before being involved in DC's interview process. Buehler continued her involvement in the interview process even after realizing that these issues had affected her ability to do her work. Buehler was aware that she should not participate in a hiring panel involving a potential conflict arising out of a personal relationship or, at the very least, that her supervisor should be informed of the potential conflict. She had previously been removed from a hiring panel because of her relationship with JW and told by her supervisor that the reason she was being removed was due to the potential conflict. Buehler was also aware that a potential conflict existed regarding her participation in DC's interview process based on their relationships with JW in the same time frame, Buehler's knowledge that DC believed Buehler was harassing DC at work, and Buehler's belief that DC was treating Buehler inappropriately at work due to the relationship. While a manager might not always be required to

inform their supervisor that an interview process involved a boyfriend's ex-girlfriend, under the circumstances in this case Buehler should have notified Young.

In addition, even if Buehler did not need to notify Young of a possible conflict based on her involvement in DC's interview panel prior to the process occurring, she certainly should have either notified Young or removed herself from the panel after the interview occurred. While Buehler argued that she acted professionally and impartially during the interview, she admitted that she was so nervous that she was shaking. She explained this occurred because she realized DC might think she was going to treat DC differently than other applicants in the interview process. Buehler clearly knew that she was having difficulty acting professionally in the situation and with separating her personal issues from her work responsibilities. As a result, she knew or should have known that it was no longer appropriate for her to remain involved in the interview process. Yet she did and, by doing so, failed to exercise simple standards of good judgment as a manager.

Buehler's reliance on Assistant Manager Taylor's knowledge of her relationship with JW does not excuse her failure to report the issues arising out of the relationship to Manager Young after Buehler became the assistant manager in November 2011. After Taylor was no longer her supervisor, Buehler could not rely on Taylor's knowledge. First, Buehler admitted that she did not know if Young was aware of her relationship with JW. Next, even if Buehler believed that Manager Young knew about Buehler's relationship with JW, Young had no way of knowing that the relationship had created conflicts that were affecting the workplace. Only Buehler had this information. Therefore, Buehler had an obligation as a manager to inform him.

Buehler's reliance on Rollins' and Tran's knowledge of her relationship with JW also did not relieve her of her responsibility to either remove herself from the panel or report the potential conflict to Young. While Rollins was aware of their relationship in May 2011, there is no evidence that he was aware of the triangle involving JW, Buehler, and DC at the time of the interview process. Tran did know of Buehler's relationship with JW and JW's relationship with DC prior to the interview process. However, there is no evidence that Tran was aware of the serious issues that had developed between Buehler, JW, and DC. In addition, at the time of the interview process, Buehler was Tran's supervisor. As such, she had an independent obligation to follow high standards of behavior of a manager, which she did not.

Charge 2: Making threats to JW during after hours interactions, including threats in response to JW's statements about going to HR for help.

The Department charges that Buehler made threats to JW in response to their interactions in the August 2011 and January 2012 incidents at his house, including when he raised the possibility of going to HR. In support of this charge, the Department relies on JW's statements about going to HR in August 2011 and after the January 2012 incident and Buehler's statements during the January 2012 incident and in text messages and e-mails after that incident. The Department argues that, as a result, JW was afraid to request assistance from HR. Buehler asserts, however, that her statements to JW were not threats, but only statements related to her right to defend herself in response to any action he took.

We must determine whether Buehler's statements constituted threats. The relevant common meaning of the word "threat" is

"**t** : an indication of something impending and usu. undesirable or unpleasant (the air held a ~ of rain); as **a** : an expression of an intention to inflict evil, injury, or damage on another usu. as retribution or punishment for something done or left undone (quieted at once on the teacher's ~ to keep them in after school) **b** : expression of an intention to inflict loss or harm on another by illegal means and esp. by means involving coercion or duress of the person threatened (<~s inducing fear of bodily harm are often cause for legal action even in the absence of overt violence>)." *Webster's Third New Int'l Dictionary* at 2382 (unabridged ed 2002).

We summarize the relevant events. In August 2011, after JW referred to going to HR, Buehler left and made no direct response to his statement. However, on January 7, 2012, immediately after Buehler left JW's house, she exchanged text messages with JW, in which she told him she never wanted him to cross her path again, threatened to call the Canby Police Department and that Wallbaum's "ass will be fired," and stated "if something happens to me I will blame u and ur friend the cop. I'm texting my friends[,] I called the police dept. Just now, I will call tomorrow and talk to the sergeant." When JW and Buehler talked about what had occurred in January, JW again brought up going to HR. When he later sent her a text saying he was fed up and "it's happening," Buehler understood that JW was telling her that he was going to file a complaint. To this, Buehler responded, "[I]isten, I will defend myself to the end. Everyone is seeing what ur doing, we r not stupid. Like I said before, u r dead to me." Finally, on February 12, Buehler sent JW an e-mail stating, "I know your intentions are not the best ones towards me for sometime and you want to see me destroyed. I'm no scare, this is not the first time you have threatened me with going to HR and now to talk to Scott. If that makes you feel better by all means do it. I could have done the same but it is not my nature."

We conclude that Buehler's statements to JW constituted threats, including threats regarding his intent to go to HR. Buehler believed that JW had bad intentions toward her, especially after the January 2012 incident, and understood JW's references to going to HR meant he was considering or intending to file a complaint against her. In anger, she lashed out and warned him of the undesirable consequences that might occur if he did. In the same way that Buehler felt threatened by JW's statements, he felt threatened by hers. While neither may have had bad intentions against the other, they both believed the other had bad intentions against them. Taken in the context of their interactions, Buehler was threatening JW by telling him that should he take any action against her, such as filing a complaint, she would respond by inflicting harm or damage to him.

Buehler's assertion that she was merely defending herself, which she believed was her right under the circumstances, completely discounts the fact that she was a high level manager making these statements to a classified employee in relation to a work-related matter, *i.e.*, his right to file a complaint for policy violations. Although she did not supervise JW directly, after November 2011, Buehler was the Claims Unit Assistant Manager. This placed her in a position of power and authority. As a result, her statements carried much more weight than they would have if she had been another classified employee.

Charge 3: Filing a complaint against JW not based on a good faith belief, but because JW had filed a complaint against her.

The Department charged Buehler with violating policy and management expectations by filing a complaint that was not based on a good faith belief that harassment had occurred. The Department relies on Buehler's knowledge that relevant policies prohibit an employee from retaliating against someone who has filed a complaint, a lack of evidence that Buehler had been harassed, her failure to address the alleged harassment at the time it occurred, her threats to JW when he brought up going to HR, and her filing of the complaint against JW only after she became aware that complaints had been filed against her.

The Department did not prove this charge. Buehler provided the information at issue to Young and Weiss the day after her interview and in direct response to their invitation to bring forward any information she wanted to add to the responses she made during the interview process. The information Buehler provided regarding her interactions with DC was directly responsive to their interview questions. Weiss and Young had questioned Buehler about a range of matters related to her relationship and interactions with JW. Therefore, Buehler should not be faulted for providing them information regarding unrelated interactions with JW which she believed to be relevant to their inquiry. And, while the Department determined that the interactions with JW that Buehler raised in her response did not constitute harassment, it did not prove that the interactions did not occur.

Level of Discipline

Since the Department has proven two of the three charges against Buehler, we now turn to the question of whether the Department imposed an appropriate level of discipline. Buehler argues that the Department did not prove that her removal was objectively reasonable in light of her length of service and service record because it failed to clearly define performance expectations, notify her that any performance expectations were not being met, issue a level of discipline which was proportional to the purported offense, or use progressive discipline. In regard to its failure to use progressive discipline, Buehler asserts that the Department neither proved that her conduct regarding any of the proven charges was gross nor that her conduct could not be improved through progressive measures. Buehler contends that if any discipline must be imposed, a reprimand would be the appropriate level.

At the time she was removed from management service, Buehler had worked for the Department for a little over 13 years. Of this time, she worked approximately two and one half years in management service positions. During her time with the Department, Buehler received no prior discipline. As a management service employee, Buehler received outstanding evaluations in January 2010 and February 2011. However, the Department did not terminate Buehler's employment, but limited its decision to removing Buehler from management service. Therefore, while Buehler had a good service record as a manager, her length of service as a manager was not significant.

We conclude that the Department had defined the performance expectations at issue, including notice that failure to meet these expectations would result in discipline. Buehler received repeated training on two policies, Discrimination and Harassment Free Workplace and Maintaining a Professional Workplace, both of which were applicable in this case. Pursuant to this training, she knew that managers were held to a higher standard and required to be proactive in preventing and promptly correcting any policy violations and that conduct outside of work which interfered with working relationships could violate these policies. The Department's Practices and Procedures, with which Buehler was familiar, also notified employees that unresolved personal issues affecting the workplace should be "taken to and addressed by appropriate management staff * * *." In addition, the Department's Conflict of Interest/Ethical Behavior Policy set a standard that employees should provide fair and impartial services in a professional and ethical manner to all, avoid even the appearance of a conflict of interest, and always consult with their supervisor for guidance. And finally, Buehler had been removed from an interview panel and had been told it was not appropriate to be on interview panels which could be affected by personal relationships.

We recognize that the initial relationship between Buehler and JW was certainly consensual and even serious. Unfortunately, over time Buehler and JW developed serious conflicts in their relationship which ultimately turned destructive to them both. It is not for us to assign responsibility or blame for the conflicts that developed between Buehler and JW. The evidence shows that they both engaged in unfortunate behavior and lashed out or threatened each other in inappropriate ways. However, Buehler was a Department manager and by deciding to become sexually involved with a classified employee, she knew or should have known that her actions could lead to behavior that would affect the workplace and possibly result in liability for the Department. As such, she was responsible for ensuring that this did not happen and, at a minimum, had an obligation to notify her supervisor as soon as she became aware that such an impact existed.

In addition, the evidence shows that Buehler's conduct would probably not be improved by progressive measures. Buehler may be highly skilled in her technical duties and in some aspects of her management and supervisory duties. However, even at the hearing she was either unable or unwilling to see how her personal behavior and relationships had affected the workplace or take any responsibility for what occurred. Buehler acknowledged, in hind sight, how her involvement in the interview process could have had a negative impact on DC. However, she continued to be unable to understand why she should have reported the issues in her relationship with JW to her supervisor even after she was well aware that those issues were impacting work relationships and the work environment. She also was unable to understand the inappropriateness of her threatening statements to JW regarding his intent to file a complaint.

Finally, Buehler abrogated her responsibility as a manager by placing the responsibility for raising issues related to the impact of the relationship on JW and DC, rather than advocating for and providing support to classified employees, as a manager should. She explained that when DC engaged in a relationship with JW, DC should have been aware that she would have had to continue to deal with Buehler as a supervisor of her unit and it was not Buehler's responsibility to stop supervising her and doing her job. She later stated that if JW and DC believed there was a conflict with Buehler being on DC's interview panel, they should have brought it to their

supervisor's attention. Yet it was Buehler who, as the manager, had a higher standard of responsibility to proactively ensure a professional workplace. It was also Buehler who knew that JW had raised the possibility of filing a complaint and that DC felt Buehler had harassed her. Yet she took no action to support these employees in addressing these concerns. Instead, she blamed them for a failure to act.

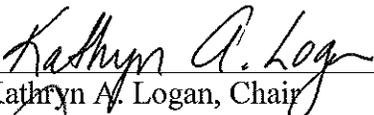
Buehler admitted that she chose not say anything about the personal conflicts that had developed in relation to JW and DC because she hoped to keep her personal issues private. It is also likely that she did not want to share the information that her relationship problems were affecting the workplace or that JW had threatened to file a complaint because she did not want to get in trouble at work. While her desire to preserve her privacy is understandable, she was a high level manager involved in a volatile personal relationship with a Department employee which was affecting the workplace and work relationships. Unfortunately, she either never understood her role as a manager or lost her perspective regarding that role, and let her concerns about her privacy override her obligations at work. While Buehler may have been an outstanding employee and manager in all other respects, she failed to exercise good judgment as a manager by failing to alert her supervisor to the conflicts that had developed which raised possible policy violations and potential liability for the Department and by threatening JW regarding his intent to file a complaint. As a result, Buehler showed she was unwilling or unable to perform her duties as a manager satisfactorily.

In conclusion, Buehler's removal from management service was consistent with ORS 240.570(3). Therefore, we will dismiss the appeal.

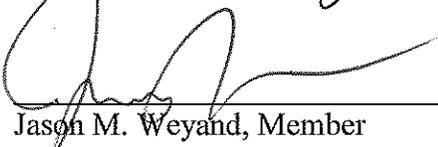
ORDER

The appeal is dismissed.

SIGNED AND ISSUED this 6 day of March 2013.



Kathryn A. Logan, Chair



Jason M. Weyand, Member

This Order may be appealed pursuant to ORS 183.482.