BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CYNTHIA BRITTS, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	Case No. SUSP-99-0026 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at Airport Ramada Inn, Room 100, Spokane, Washington, on March 27, 2001. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Cynthia Britts was present and was represented by Edward Earl Younglove III, Attorney at Law, of Parr & Younglove, PLLC. Patricia Thompson, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a two-day suspension without pay for neglect of duty, insubordination and gross misconduct. Respondent alleges that Appellant made insulting and derogatory comments about coworkers.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

II. FINDINGS OF FACT

2.1 Appellant Cynthia Britts is a Laundry Worker 1 and permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on September 16, 1999.

2.2 By letter dated July 27, 1999, Tom Bumgarner, Administrator of the Consolidated Support Services department, advised Appellant of her two-day suspension without pay effective August 17, 1999. Mr. Bumgarner charged Appellant with neglect of duty, insubordination and gross misconduct. Mr. Bumgarner specifically alleged that on June 16, 1999, Appellant commented that "you have to be a fat ass to be a supervisor in the laundry," and that on June 22, 1999, Appellant referred to a manager as "a fat son of a bitch who would only sort dirty laundry if you told him it was a smorgasbord."

2.3 Appellant began her state employment in January 1984. Appellant has been employed in the Consolidated Support Services Laundry for approximately 11 years. Appellant's work performance as a Laundry Worker 1 has primarily been rated as meet normal requirements, however, concerns regarding her interpersonal relationship with coworkers and supervisors have been addressed with Appellant in her evaluations. In her employee performance evaluation signed by Appellant on

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

April 14, 1997, Appellant's supervisor noted that Appellant at times displayed a lack of respect for those in authority.

2.4 Appellant received prior directives and guidance regarding her workplace behavior. By memo dated May 24, 1999, Appellant was instructed to conduct herself in a professional and dignified manner and to do her part in promoting a positive image for the department. Appellant received a letter of reprimand dated July 2, 1998, for behaving in an unprofessional and disrespectful manner when she mimicked her supervisor's Vietnamese accent despite a previous directive to refrain from such behavior. By memo dated May 8, 1998, Appellant was instructed to be respectful of other employees and to conduct herself with professionalism and dignity. On April 28, 1998, Appellant was instructed to follow directions given by her supervisor without becoming argumentative, negative, hostile or using inappropriate remarks.

2.5 Due to difficulties and tension created by poor working relationships among laundry employees, management began to address appropriate workplace behavior with staff. By memo dated June 8, 1995, Respondent instructed employees to cease engaging in any behavior that was threatening, intimidating, insulting or harassing toward others. By memo dated November 3, 1995, Terry LaFrance, Operations Manager, directed laundry staff to cease the use of offensive and insulting language. By memo dated April 7, 1998, Tom Bumgarner, Administrator, addressed poor interpersonal relationships and encouraged employees to work as a team. In addition, management provided laundry staff with training to discuss workplace behavior and concerns and to teach staff conflict resolution skills. Appellant received copies of the memos, attended the training, and she was aware of Respondent's expectations regarding appropriate workplace behavior.

2.6 Appellant disputes that she made the comments alleged by Mr. Bumgarner in the July 27, 1999 letter of suspension. However, in weighing the testimony of Appellant and the two

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

individuals who reported the incidents, Laundry Workers Douglas Bashore and Mike Brown, we note that Appellant has a documented history of making inappropriate comments and showing disrespect toward those in supervisory positions. Therefore, we find that more likely than not, the following events occurred:

2.7 On June 16, 1999, Appellant and Mr. Bashore were working together folding terry cloth. Supervisors Dale Birchler and Mary Garza-Payne were working nearby. Appellant made a comment to the effect, "I guess that's what it takes to be a supervisor, you have got to be fat, ugly and stupid. Those people wouldn't know the difference between up and down."

2.8 On June 22, 1999, Appellant, Mr. Brown and Mr. Bashore were sorting dirty laundry on the conveyer line. When Mr. Brown saw Operations Manager Terry LaFrance drive up into the area, he commented, "guess who drove by?" When Appellant asked "who," Mr. Brown stated it was "the big boy." Appellant told Mr. Brown that he could get written up for his comment. Mr. Brown, who had been previously disciplined for referring to a coworker as "boy," immediately became concerned that his comment could get him in further trouble and he immediately disengaged himself from the conversation. Appellant then stated, "I wonder what that SOB is up to now?" Mr. Bashore responded that Mr. LaFrance was going to "put on a gown and gloves and come back here and rub elbows with us folk." Appellant responded with words to the effect of "the only way you can get that fat bastard back here is to tell him this is a smorgasbord."

2.9 Prior to determining whether misconduct occurred, Mr. Bumgarner, Appellant's appointing authority, reviewed the Personnel Conduct Reports, witness statements and the investigative report into the two incidents. Mr. Bumgarner concluded that Mr. Bashore was being truthful about his retelling of the June 16, 1999 event and that Mr. Brown and Mr. Bashore were being truthful in their retelling of the comments Appellant made on June 22, 1999. Mr. Bumgarner concluded that

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Appellant engaged in misconduct and that disciplinary action was warranted. In assessing the level of discipline, Mr. Bumgarner believed that Appellant had been given reasonable directives on what constituted appropriate workplace behavior and had adequate time to modify her behavior. Mr. Bumgarner concluded that Appellant disregarded these previous directives and expectations when she made derogatory comments about other employees. Mr. Bumgarner believed that a two-day suspension was the appropriate sanction to address Appellant's inappropriate and unprofessional behavior at work.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Mr. Brown and Mr. Bashore are credible and have been consistent in recalling the incidents. Respondent asserts the variations in their stories are not unusual because witnesses normally recall the same events differently and can have variations of the same story. Respondent asserts that Appellant's denials that she made the comments are not credible. Respondent further argues that Appellant's allegation that Mr. Bashore and Mr. Brown are conspiring against her is unfounded and no evidence exists to support that. Respondent argues that Appellant neglected her duty and was insubordinate when she made insulting and derogatory comments regarding Mr. LaFrance, Ms. Garza-Payne and Mr. Birchler. Respondent further argues that Appellant's behavior rose to the level of gross misconduct and that a two-day suspension is the appropriate sanction.

3.2 Appellant denies that she made the comments of June 16 and June 22, 1999, and she asserts that she would not make such comments in front of Mr. Bashore because of previous difficulties they had and her belief that Mr. Bashore would immediately report any misbehavior. Appellant further asserts that on June 22, it was Mr. Brown and Mr. Bashore that were making derogatory comments and bantering back and forth about Mr. LaFrance. Appellant asserts that Mr. Brown and Mr. Bashore falsely accused her and minimized their involvement in the conversation after she

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

warned them that they could be written up for talking that way. Appellant further asserts that Mr. Brown's testimony is not credible and that he was motivated to misrepresent the conversation because he was concerned that Appellant would report his use of the word "boy" because he had been disciplined for its use and had been directed not to use the term again. Appellant also asserts that Mr. Brown and Mr. Bashore's statements were not consistent with their previous written statements. Appellant states that she previously filed a lawsuit against the agency and since then she has had numerous memos placed in her file.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995).

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

4.6 Appellant had a duty to use good judgment, conduct herself appropriately and to treat her fellow employees with dignity and respect. Appellant had been given clear expectations to eliminate conflicts and to refrain from making derogatory or inappropriate comments in the workplace. Respondent has proven by a preponderance of the credible evidence that Appellant neglected her duty and was insubordinate when she made inappropriate and derogatory comments on June 16 and June 22, 1999. However, Respondent has failed to prove that Appellant's behavior rose to the level of gross misconduct or interfered with the agency's ability to carry out its functions. Although Appellant argues that the discipline is retaliatory in nature, there is no evidence to support her contention.

4.7 In assessing the level of discipline here, we find that a two-day suspension without pay is not too severe in light of the numerous directives Respondent has given Appellant about appropriate workplace behavior. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Cynthia Britts is denied.

DATED this _____ day of _____, 2001.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____

Walter T. Hubbard, Chair

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

Gerald L. Morgen, Vice Chair

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504