BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

RICHARD MAYA, Appellant, v. COLUMBIA BASIN COLLEGE, Respondent.	)	Case No. SUSP-01-0033 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair. The hearing was held at the Columbia Basin College, Library Conference Room L104, Pasco, Washington, on September 26, 2002. GERALD L. MORGEN, Vice Chair, reviewed the record and participated in the decision in this matter. RENÉ EWING, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Richard Maya was present and was represented by Mark S. Lyon, General Counsel for the Washington Public Employees Association. Patricia Thompson, Assistant Attorney General, represented Respondent Columbia Basin College (CBC).

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a three-day suspension for neglect of duty, inefficiency and insubordination. Respondent alleges that Appellant failed to follow a supervisory directive to move furniture.

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1.4 Citations Discussed. WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Aquino v. University of Washington, PAB No. D93-163 (1995).

II. FINDINGS OF FACT

2.1 Appellant Richard Maya was a Maintenance Custodian II and permanent employee for Respondent Columbia Basin College. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on August 28, 2001.

2.2 By letter dated August 9, 2001, Lee R. Thornton, President of the Columbia Basin College, informed Appellant of his suspension without pay for three days effective at the end of his shift on August 13, 2001. The letter charged Appellant with neglect of duty, inefficiency and insubordination and alleged that on June 22, 2001, Appellant failed to follow a directive from his supervisor and failed to perform assigned duties.

2.3 Appellant received a letter of reprimand from Michael Smith, Director of Plan Operations, dated December 28, 2000 for neglect of duty for failing to complete his assigned duties and for abuse of a fellow worker for behaving in a confrontational manner toward his supervisor. Appellant was reminded that his repeated failure to follow supervisory directives and his argumentative manner would not be tolerated and could lead to further disciplinary action.

2.4 Rick Tosto, Maintenance Custodian Supervisor, supervised Appellant for approximately ten years. Mr. Tosto described Appellant as an outstanding worker through late 1999 when he noted a

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significant change in Appellant. Mr. Tosto noted that Appellant had problems with the quality of work he performed and started to frequently call in late or failed to report to work, and he refused to follow supervisory instructions. Mr. Tosto began to schedule meetings with Appellant to discuss these issues. In Appellant's evaluation for the period of April 2000 to April 2001, Mr. Tosto noted that Appellant needed to improve his quality of work and to follow his supervisor's instructions. In Appellant's evaluation for the period of April 1999 to April 2000, Mr. Tosto that Appellant needed to communicate better with his supervisor.

2.5 On June 21, 2001, Mr. Tosto received a request from secretary Cathy Hampton that furniture and office equipment in the D Building needed to be moved from office D107 to a room across the hallway (room D110). The following morning, at approximately 8:15 a.m., Mr. Tosto approached Appellant, told him about the moving request, and directed him to meet with Cathy Hampton who would tell him what furniture and office equipment to move.

2.6 At approximately 8:50 a.m., Mr. Tosto and Appellant were in the staff lounge. Appellant asked Mr. Tosto if he should move the furniture even though they had not received a work order. Mr. Tosto responded yes, indicating that he would take care of the paperwork. Appellant returned to the D Building at approximately 9:30 a.m. and moved approximately 15 boxes, which he transported in his truck to a storage unit on campus. Appellant estimated that it took him approximately 35 minutes to load and unload the boxes and that he spent some time arranging items in the storage unit to make room for the boxes. Appellant did not move any office furniture or equipment.

2.7 From 12 to 12:30, Appellant and Steve Knighten, Maintenance Custodian II, took lunch together. Appellant talked to Mr. Knighten about the move, indicating that he had moved the boxes but not the equipment because he was going to wait for a work order to move those items. At 12:30 p.m., Mr. Tosto met with Appellant and Mr. Knighten to give them their afternoon assignments. Appellant

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did not indicate to Mr. Tosto that he had not moved the furniture and equipment or that he was waiting for a written work order to do so. Therefore, Mr. Tosto assumed that the move had been completed.

2.8 The Maintenance Department receives written work orders, however, written work orders are not required for the maintenance staff to perform work when they are given an oral directive. In this case, a written work order was not required for Appellant to move the furniture and equipment as he was directed to do by Mr. Tosto. Furthermore, by Appellant's own estimates, moving the boxes took him approximately 30 to 45 minutes, and even accounting for time spent rearranging items in the storage unit, this task should have taken no more than one and one half hours.

2.9 Appellant produced a copy of a written note which indicates that boxes are to be moved from "D-110 to D-107." Appellant claims that Mr. Tosto handed him this note on June 22 when they spoke about the work assignment . Mr. Tosto denies that he wrote the note or that he handed the note to Appellant. After reviewing the written note and weighing the testimony of Appellant and Mr. Tosto, we find Mr. Tosto more credible and find that there is no credible evidence to support that Mr. Tosto gave Appellant a written note which required Appellant to move only boxes.

2.9 On June 26, 2001, Mr. Tosto learned from Ms. Hampton that Appellant had refused to move the furniture and equipment without a work order. Mr. Tosto moved the furniture and equipment himself, which took him approximately one and one half hours. Mr. Tosto was concerned with Appellant's failure to seek clarification from him if he had a question about the move and he did not believe that Appellant spent three hours moving the boxes.

2.10 Lee Thornton, President of the Columbia Basin Community College, was Appellant's appointing authority when the discipline was imposed. In determining the level of discipline, Mr. Thornton reviewed Appellant's personnel history, and he met with Appellant to discuss the allegation.

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During the meeting with Mr. Thornton, Appellant provided no explanation of where he was or what he did after he finished moving the boxes. After considering Appellant's response to the charges, Mr. Thornton concluded that Appellant engaged in misconduct by not following a supervisory directive and by not performing his assignment. Mr. Thornton did not feel that Appellant presented any mitigating facts and he felt that a three-day suspension was appropriate based on Appellant's pattern of behavior and defiant attitude.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant repeatedly refused to follow the orders of his supervisor and perform his assigned duties. Respondent argues that Appellant received clear direction to move the furniture. Respondent argues that his failure to do so constitutes neglect of duty and insubordination. Respondent further argues that Appellant was also inefficient when he spent three hours moving a few boxes. Respondent argues that there was not a requirement that Appellant receive a written directive to move the furniture/equipment. Respondent further argues that Appellant's assertion that he received a written note from Mr. Tosto to move only boxes is not supported by the evidence because the written note does not contain Mr. Tosto's handwriting. Respondent argues that a three-day suspension is the appropriate sanction.

3.2 Appellant asserts that this case arose out of a misunderstanding between himself and Mr. Tosto. Appellant asserts that he was waiting for Mr. Tosto to provide him with the paper work listing what equipment would be moved. Appellant asserts that he was initially given a written order by Mr. Tosto indicating he should move the boxes, that he went to the office and discovered that staff wanted other items moved that had not been indicated previously. Appellant asserts that when he spoke to Mr. Tosto about the situation, Mr. Tosto told him that he would obtain the written work order. Appellant asserts that he waited to move the equipment because he believed that he was supposed to wait for a work order before moving the furniture, as he had done on previous assignments. Appellant asserts that in the

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interim, he moved the boxes and later assisted Mr. Knighten. Appellant contends that he would have moved the furniture if he had understood that he was supposed to do so even without a written note

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; WAC 251-12-240(1); 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 Inefficiency is the utilization of time and resources in an unproductive manner, the ineffective use of time and resources, the wasteful use of time, energy, or materials, or the lack of effective operations as measured by a comparison of production with use of resources, using some objective criteria. Anane v. Human Rights Commission, PAB No. D94-022 (1995), *appeal dismissed*, 95-2-04019-2 (Thurston Co. Super. Ct. Jan. 10, 1997).

4.5 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).

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4.6 Although it is not appropriate to initiate discipline based on prior formal and informal disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No. D93-163 (1995).

4.7 Respondent has proven by a preponderance of the credible evidence that Appellant was inefficient and insubordinate and he neglected his duty when he failed to carry out an assignment given to him by his supervisor. Under the totality of the proven facts and circumstances, a three-day suspension is appropriate and the appeal should be denied

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Richard Maya is denied.

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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