BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CHIN HAYNEN, Appellant, v. DEPARTMENT OF VETERANS AFFAIRS Respondent.	)	Case No. RED-04-0004 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, GERALD L. MORGEN, Vice Chair, and BUSSE NUTLEY, Member. The hearing was held in the Personnel Appeals Board Hearing Room, 2828 Capitol Boulevard, Olympia, Washington, on October 7, 2004.

1.2 **Appearances.** Appellant Chin Haynen was present and was represented by Christopher Coker, of Parr, Younglove, Lyman & Coker, P.L.L.C. David Slown, Assistant Attorney General, represented Respondent Department of Veterans Affairs.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of reduction in salary for neglect of duty and inefficiency. Respondent alleges Appellant was sleeping while on duty.

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II. FINDINGS OF FACT

2.1 Appellant Chin Haynen is a Custodian for the Department of Veterans Affairs and works at the Washington Soldiers Home and Colony. 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 on January 16, 2004.

2.2 Appellant provides custodial support and housekeeping to resident living areas. Appellant also performs custodial duties in Chilson Hall, the Main Dining Hall, and other buildings as needed. Appellant's work shift is 6:00 a.m. to 2:30 p.m. The established break times for Appellant's shift were 8:00 – 8:15 a.m. and 1:00 – 1:15 p.m., with lunch at 11:30 a.m. The break times were posted, and Appellant had signed and agreed to the break times.

2.3 Appellant has received the following prior discipline:

- On June 5, 2003, Appellant received a letter of reprimand for failing to properly respond to a Nursing Supervisor after a verbal incident with another employee and for trying to involve a resident in the incident.
- On October 23, 2003, Appellant received a letter of reprimand for an aggressive verbal assault toward another employee in the main dining hall.
- On December 9, 2003, Appellant received a counseling memo for not following supervisory directives.

2.4 By letter dated January 15, 2004, Jon Clontz, Superintendent, notified Appellant of her reduction in salary from range 24, step K, to step G, effective February 1, 2004, through March 31, 2004. Mr. Clontz charged Appellant with neglect of duty for failing to complete work functions due to sleeping on the job and with inefficiency for failure to make efficient and productive use of her work time.

2.5 On the morning of November 25, 2003, Appellant's supervisor, Plant Manger Donn Lewis, arrived at work early, around 7:00 a.m., to remind Appellant she was assigned the task of buffing the dining hall floor that morning.

2.6 Mr. Lewis located Appellant's work cart and waited a few minutes for her to return. When Appellant did not return to her cart, Mr. Lewis went searching for her, and at approximately 7:10 a.m., he found Appellant lying down in a prone position on the stage floor of the auditorium in Chilson Hall. There were no other staff or residents present in the auditorium when Mr. Lewis discovered Appellant lying on the stage. The reason why Appellant was lying on the floor in a prone position is in dispute.

2.7 Appellant testified she was doing exercises to stretch her back prior to buffing the kitchen area and was not asleep. Appellant further testified the lights were on, and she saw Mr. Lewis walking toward her when she was lying on the floor but did not sit up because her back hurt. Appellant had previous back problems, and she testified Mr. Lewis said it was all right to take a few minutes to stretch whenever her back was bothering her. Appellant ultimately performed her duty of buffing the dining hall floor around 8:30 that morning.

2.8 Mr. Lewis testified he climbed the stairs to the stage and proceeded to walk across the stage area searching for Appellant. Mr. Lewis testified the lighting was dim, and he did not immediately see Appellant until he walked almost directly in front of her and noticed her lying on top of a pad on the floor. Mr. Lewis stated Appellant did not move or react and appeared to be sleeping. Mr. Lewis testified when he asked Appellant if she had been sleeping, she responded she was not sleeping. When Mr. Lewis asked Appellant to accompany him back to her work cart, he testified she initially said no, but after he asked a second time, she said she needed about five more minutes.

2.9 Mr. Lewis testified he was aware of Appellant's previous back problems, but her doctor had cleared her to fully perform her duties. Mr. Lewis further stated he was not aware of any recent back problems, and that Appellant had not indicated she needed any special breaks to exercise her back.

2.10 In reviewing the documents and testimony, a preponderance of credible evidence has established Appellant was more likely than not sleeping or lightly napping on an unauthorized break.

2.11 Mr. Clontz, Appellant's appointing authority, reviewed the Conduct Investigation Report and also walked through Chilson Hall when it was empty to see if Appellant's assertion that she recognized Mr. Lewis walking toward her was plausible. Mr. Clontz determined the noise from walking across the hollow wood floors in Chilson Hall would have reasonably elicited a response from a person who was awake and heard another person approaching. Therefore, Mr. Clontz concluded Appellant's lack of response indicated she was asleep.

2.12 On January 13, 2004, Mr. Clontz conducted an administrative review to allow Appellant an opportunity to respond to the charges. Mr. Clontz was not persuaded by Appellant's explanation that she was exercising her back, or that she believed she could take a break at any time to stretch her back. In determining the level of discipline, Mr. Clontz reviewed Appellant's employment history, including her prior discipline, and decided a reduction in salary was the appropriate sanction.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues Appellant neglected her duty and was inefficient when she was sleeping on duty. Respondent asserts the credible testimony supports Appellant was sleeping. Respondent

contends Appellant's lack of response to loud footsteps approaching her made it very likely she was asleep. Respondent argues if Appellant had been exercising, she would have been alert to the sound of someone walking toward her. Respondent argues Appellant's assertion she was stretching her back prior to buffing the floor was not believable because she had a scheduled break closer to the time she was going to buff the floor. Respondent asserts a reduction in salary is relatively lenient considering the misconduct

3.2 Appellant argues she was not asleep but simply exercising her back when her supervisor found her lying on the stage floor. Appellant contends her back was bothering her, and she wanted to stretch it before buffing the dining hall floor that day. Appellant contends she was on the stage floor because she wanted to avoid an area where there were a lot of residents. Appellant argues she did not respond to her supervisor because she recognized him walking toward her. Appellant further argues that she answered her supervisor when he spoke to her, and his perception that she was sleeping does not constitute a neglect of her duty.

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 Inefficiency is a failure to produce the desired effect with the minimum of energy and time. Droege v. Dep't of Information Services, PAB No. D88-024 (Littlemore, Hrg. Exam.), aff'd by Board (1988).

4.5 Respondent has proven by a preponderance of the credible evidence that Appellant neglected her duty by sleeping on the job. Respondent has further proven Appellant was inefficient when she used work time to lie down and rest. Furthermore, Appellant's assertion she was stretching prior to buffing the floor is not plausible because she had an authorized break fifteen minutes before she was going to buff the floor, which would have been the appropriate time to stretch.

4.6 Therefore, under the proven facts and circumstances, a reduction in salary is appropriate, and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Chin Haynen is denied.

DATED this _____ day of _____, 2004.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Gerald L. Morgen, Vice Chair

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Busse Nutley, Member

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