BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

VIRÁG HEGYI, Appellant, v. DEPARTMENT OF TRANSPORTATION, Respondent.	Case No. RED-05-0021 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, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the Department of Social and Health Services, 840 North Broadway, Everett, Washington, on April 11, 2006. The parties submitted written closing arguments on April 25, 2006.

1.2 **Appearances.** Appellant Virág Hegyi was present and was represented by Attila Hegyi. Mitchel Sachs, Assistant Attorney General, represented Respondent Department of Transportation.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of neglect of duty, insubordination, and willful violation of agency policy. Respondent alleges that Appellant used profanity in the workplace and violated a supervisory directive.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

II. FINDINGS OF FACT

2.1 Appellant Virág Hegyi was a permanent employee for Respondent Department of Transportation. 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 May 26, 2005.

2.2 Appellant worked for DOT in the mid-1990s, had a break in service, and returned to work at DOT in 2000. Appellant worked as a Secretary Senior for the Seattle Project Development/Design Office in DOT's Northwest Region.

2.3 On January 3, 2005, Appellant and her supervisor, Project Engineer Methqal Abu-Najem, were discussing timesheets Appellant had turned in for his signature. Mr. Abu-Najem told Appellant he would not sign the sheets, because she had not indicated the hours she had worked. Appellant and Mr. Abu-Najem had ongoing issues about her working hours, and Appellant told Mr. Abu-Najem she wanted him to fill out the hours since he always disagreed with the hours she documented. Mr. Abu-Najem directed Appellant to complete her own time sheets, and he told her he would not authorize the time sheet until she returned them completed. Appellant became upset and believed she would not receive her next paycheck on January 10.

2.4 Appellant walked away from Mr. Abu-Najem's office in frustration, and she entered the break room. Appellant was visibly upset and was crying. Barbara Bulzomi was present in the break room and she asked Appellant if she was okay. Barbara Sinnot, Secretary Senior, had just entered the break room, and she also observed that Appellant was upset and crying, and she

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

overheard Appellant tell Ms. Bulzomi that Mr. Abu-Najem was refusing to sign her timesheets and that he was "an asshole."

2.5 After Appellant left the break room, she went into her cubicle and was venting to another staff person. Dan Green Transportation Engineer 3, was standing just outside Appellant's cubicle, approximately 10 to 15 feet away. Appellant was expressing anger that Mr. Abu-Najem was refusing to authorize her time slips, questioning how she was going to pay her rent and explain to her children why there was no food. Appellant was also stating that she was going to hire a lawyer. Mr. Green heard Appellant refer to Mr. Abu-Najem as a "son of a bitch," "mother fucker," and "bastard." An outside consultant, who was meeting with Mr. Green, also overheard Appellant's use of profanity. Mr. Green described Appellant's voice as "very loud," and he felt extremely uncomfortable by Appellant's behavior. Appellant's angry outburst lasted approximately 15 minutes.

2.6 On January 10, 2005, Appellant received a paycheck for the hours she worked that pay period.

2.7 The Department of Transportation has adopted a Violence Free Workplace Policy. The policy outlines the standard of conduct expected of all employees and describes unacceptable behaviors, including verbal behaviors, such as use of vulgar or profane language toward others, disparaging, derogatory or inflammatory comments or slurs, or offensive name calling.

2.8 Following the incident, the department initiated an investigation. On January 28, 2005, Appellant met with William S. Vlcek, Assistant Regional Administrator for the Snohomish/King County area and the appointing authority, to discuss the January 3 incident as well as numerous

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

other allegations related to Appellant's absenteeism and failure to meet the expecations of her job. During the meeting, Appellant made a verbal request for accommodation for a chronic injury to her leg. Mr. Vlcek testified that it was the first time Appellant made a request for accommodation, and at the conclusion of the meeting, Kittie Tyler, who handled employee requests for reasonable accommodation, provided Appellant the paperwork necessary to initiate the process and enable the department to gather the medical information for reasonable accommodation.

2.9 Appellant subsequently submitted a letter to Ms. Tyler with an explanation of her medical situation, but she did not provide information from a medical provider. In a letter dated March 1, 2005, Mr. Vlcek informed Appellant that her letter was insufficient for the department to pursue an accommodation, and he specifically asked for documentation from a physician or licensed mental health professional detailing what she required in the form of accommodation to enable her to perform her job. Mr. Vlcek gave Appellant one week to provide this information.

2.10 Appellant did not supply the requested medical documentation. Consequently, Mr. Vlcek decided to proceed forward with the disciplinary process. However, he decided to separate any issues related to Appellant's performance issues that could be attributed to a disability and proceeded with the disciplinary process as it related to the incident of January 3 only. During the January 28 Loudermill meeting, Appellant read out loud from a written response, and she addressed the January 3 incident. Appellant indicated that she was crying and mostly talking to herself and used "some adjectives referring to (but not directed toward) some people who were not there at that time." Appellant also stated that she was "threatening to hire a lawyer" and that her words could not be construed as "threatening, harassing, or intimidating other employees."

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

2.11 After considering Appellant's response and reviewing the investigation and statements from the witnesses, Mr. Vlcek concluded that Appellant engaged in inappropriate workplace behavior when she loudly used profanity in the workplace, which was disruptive to others in the office. Mr. Vlcek concluded that Appellant's conduct was unacceptable and unprofessional, and that she neglected her duty to treat others with dignity and respect. Mr. Vlcek concluded that Appellant's conduct was a violation of the department's violence in the workplace policy. Based on his conclusion that the incident occurred, he considered imposing a 15-percent reduction in pay for one month; however, he ultimately decided to spread the reduction in salary out for a period of three months to minimize the impact to her income.

2.12 By letter dated April 27, 2005, Mr. Vlcek notified Appellant that her salary as a Secretary Senior was being reduced by five percent effective for three months, beginning May 16, 2005, through August 15, 2005. Mr. Vlcek charged Appellant with neglect of duty, and willful violation of agency policy. Specifically, he alleged that on January 3, 2005, Appellant was overheard using profanity directed toward Project Engineer Methqal Abu-Najem. Mr. Vlcek also charged Appellant with insubordination, citing to a directive in a letter dated December 21, 2004, where she was directed to adhere to the Violence Free Workplace procedure. A typographical error on page one of the disciplinary letter referred to the year of the letter as 2003; however, there was only one letter dated December 21, and that was issued in 2004, not 2003.

III. CONCLUSIONS OF LAW

3.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

3.2 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

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

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).

3.3 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).

3.4 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

3.5 Respondent has met its burden of proving that Appellant's angry outburst and use of profanity in the workplace was unacceptable and created an unpleasant and uncomfortable atmosphere in the workplace. The department has a responsibility to ensure that its employees behave in an appropriate and professional manner at all times. Although Appellant may have had legitimate concern at the possibility of not receiving a paycheck, her method for venting that frustration was clearly inappropriate. Respondent met its burden of proof that Appellant's behavior was a neglect of her duty and violation of agency policy.

3.6 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

3.7 Appellant also raised the issue that Respondent charged Appellant with violating a directive in a December 21, 2003 letter which she did not receive. However, the evidence established that the disciplinary letter contained a typographical error, and the letter the appointing authority referenced was a December 21, 2004 letter, which Appellant does not dispute she received. We conclude that this typographical error is not material to the substance of the charge that Appellant used profanity in the workplace. However, Respondent has failed to show that Appellant refused to comply with a lawful directive. Rather, the December 21, 2004 letter set forth a standard of behavior based on the violence in the workplace policy. While Appellant's conduct during the January 3 incident was a neglect of her duty to behave in an acceptable manner, we do not conclude that Appellant was being willfully insubordinate. The charge of insubordination has not been sustained.

3.8 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness and circumstances of the offenses. The penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. An action does not necessarily fail if one cause is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

3.9 In her defense, Appellant raises the issue of disability and claims that Respondent failed to accommodate her disability. In Maxwell v. Dep't of Corrections, 91 Wn. App. 171, 956 P.2d 1110 (1998), appellant Maxwell, a diabetic and manic depressive, asserted that the Board should excuse his admitted misconduct because it was caused by his medical condition. The Court of Appeals upheld the Board's ruling that without evidence that appellant Maxwell's condition caused his

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

behavior, he could not show he was disciplined because of his condition or discriminated against because of his condition. The Court also stated that an employer's duty to accommodate does not arise "unless there is a need for accommodation." The court, quoting from Goodman v. Boeing Co., 127 Wn.2d 408, P.2d 1265 (1995), states that "the employee, of course, retains a duty to cooperate with the employer's efforts by explaining her disability and qualifications. . . . Reasonable accommodation thus envisions an exchange between employer and employee where each seeks and shares information to achieve the best match between the employee's capabilities and available position."

3.10 There is no dispute that Appellant suffers from a physical disability; however, there is no evidence that Appellant's salary was reduced because of her physical disability. Rather, the preponderance of the credible evidence supports Appellant's salary was reduced because she engaged in unprofessional and unacceptable workplace behavior when she used derogatory and profane words to describe her supervisor in a voice loud enough to be heard by others in the office.

3.11 Moreover, Appellant has failed to provide persuasive evidence that her behavior was caused by her medical condition. Furthermore, there is no evidence that Appellant made her employer aware of any need for accommodation until after the misconduct occurred. We have also considered Appellant's assertion and testimony that the department discriminated and retaliated against her due to her disability; however, the credible evidence does not support this contention.

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504

3.12 Appellant's behavior was unacceptable, and Respondent has established that the disciplinary sanction of a three-month, five-percent salary reduction was appropriate under the circumstances presented here. Therefore, the appeal of Virág Hegyi should be denied.

IV. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Virág Hegyi is denied.

DATED this _____ day of _____, 2006.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504