BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

RANDOLPH NAGY, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. SUSP-02-0050 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 University of Washington, South Campus Center, Seattle, Washington, on May 16, 2003. BUSSE NUTLEY, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Randolph Nagy appeared *pro se*. Jeffrey W. Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a seven-day suspension for insubordination, neglect of duty and verbal abuse. Respondent alleges that Appellant made inappropriate statements to a coworker.

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.

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D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant Randolph Nagy is an Imaging Technologist II and permanent employee for Respondent University of Washington. 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 October 21, 2002.

2.2 Appellant began his employment at the University of Washington Medical Center on February 12, 1990. Appellant works in the Radiology Department.

2.3 Dawn Vincic, Manager of Radiology, is Appellant's supervisor.

2.4 Appellant has no history of prior disciplinary action, however, on September 4, 2002, Ms. Vincic counseled Appellant about his disruptive behavior during a staff meeting held on August 28. During the meeting, Appellant made comments to a coworker about blowing up the coworker's house and made references to terrorism. Appellant intended the comments as a joke, however, Ms. Vincic advised Appellant his comments were inappropriate, unprofessional and were not acceptable in the workplace. She also warned Appellant that similar types of comments would not be tolerated by the department.

2.5 Keila Getz is a CT Technologist 1 in the Radiology Department. Appellant and Ms. Getz were familiar with each other, however, they did not work in the same area. On September 10, 2002, Appellant entered the control room where Ms. Getz was working. Appellant was

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accompanied by another individual. Appellant introduced the individual to Ms. Getz as a union organizer and he told Ms. Getz that he wanted them to talk about the union. Appellant was talking in a loud voice. Ms. Getz' supervisor directed them to leave the control room. Ms. Getz, the union representative and Appellant left the control room to the hallway where they could talk. They were standing within six feet of a waiting area.

2.6 Appellant continued to encourage Ms. Getz to ask questions about the union. Ms. Getz found Appellant's voice to be overly loud and unprofessional, especially because they were within a short distance of the waiting room, where approximately six patients/family members were sitting. During the exchange, Appellant jokingly threatened to send Ms. Getz a mail bomb, and he repeatedly joked that he was a "real terrorist" and that he knew how to make the bombs. Although Ms. Getz did not fear Appellant, she believed that his comments were loud and unprofessional, and she told him to quiet down. Ms. Getz agreed to talk to the union representative and Appellant left.

2.7 Ms. Getz was uneasy with the incident and she reported it to her supervisor.

2.8 After learning of Appellant's statements to Ms. Getz, Ms. Vincic recommended that Appellant be suspended for a period of seven days. Ms. Getz concluded that a seven-day suspension was warranted because she had recently counseled Appelalnt about similar inappropriate statements, but he failed to heed her advice that such behavior would not be tolerated by the hospital. Ms. Vincic also believed that the sanction was appropriate to ensure that Appellant and others not engage in behavior that was inappropriate in light of concerns about violence in the workplace.

2.9 By letter dated September 26, 2002, Paul Ishizuka, Associate Executive Director of the University of Washington Medical Center, informed Appellant of his seven day suspension

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effective October 20, 2002 through October 26, 2002. Mr. Ishizuka charged Appellant with insubordination, neglect of duty and verbal abuse.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant made an incredibly unprofessional statement in a loud voice where numerous patients could hear him. Respondent argues that jokes about terrorism do not have any place at work, even if his coworkers understood it was a joke. Respondent argues that Appellant served as a role model to other employees and students, and that his behavior was inappropriate, especially because it was made one day before the one-year anniversary of the terrorist attacks. Respondent argues that the seven-day suspension should be upheld.

3.2 Appellant argues that he "should not be hung or crucified for saying something stupid" and he believes that society has become "afraid little sheep." Appellant asserts that the atmosphere in the Radiology Department has been tense and that morale is poor and that he fears retaliation. Appellant argues that the seven-day suspension was too severe and should be modified.

IV. CONCLUSIONS OF LAW

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

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).

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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 Appellant had a duty to act in a professional manner and treat others with respect. Respondent has proven by a preponderance of the credible evidence that Appellant neglected his duty when he made unprofessional and inappropriate remarks to Ms. Getz that he was going to send her a "letter bomb in the mail." Appellant's joke went beyond what is acceptable workplace joking and bantering.

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).

4.6 Appellant was put on notice less than one week prior to this incident that jokes about mail bombs and terrorism were not acceptable and were not to be repeated. However, Appellant continued to engage in a pattern of inappropriate comments of a similar nature. Respondent has proven by a preponderance of the credible evidence that Appellant failed to comply with Ms. Vincic's directive to cease making inappropriate and unacceptable comments.

4.7 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. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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4.8 In determining the level of discipline, we have considered Appellant's length of service, the prior warning he received, and the nature of his comments to Ms. Getz as well as Appellant's response to the charges. However, Appellant failed to present any mitigating facts for why the seven-day suspension should be modified. The nature of Appellant's joking was inappropriate and his failure to modify his behavior required a strong statement that similar misconduct would not be tolerated. Under the proven facts and circumstances of this case, Respondent met its burden of proof that a seven-day suspension is warranted. Therefore, the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Randolph Nagy is denied.

DATED this _____ day of _____, 2003.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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