BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ERIC BAKER, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	Case No. RED-05-0025 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 office of the Personnel Appeals Board in Olympia, Washington, on April 11, 2006. GERALD L. MORGEN, Member, listened to the recorded proceedings, reviewed the file and exhibits and participated in this decision.

1.2 **Appearances.** Appellant did not appear. Kari Hanson, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of reduction in salary for neglect of duty and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleges Appellant failed to remain alert and slept or gave the appearance of sleeping while on duty.

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II. FINDINGS OF FACT

2.1 Appellant is a permanent employee for Respondent Department of Corrections (DOC). 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 June 15, 2005.

2.2 Appellant is a Correctional Officer at McNeil Island Corrections Center and has been employed with the department since at least 1999. Appellant's personnel file reflects the following disciplinary actions:

- On August 27, 1999, Appellant received a letter of reprimand for being arrested for driving under the influence and not having a valid driver's license.
- On April 25, 2000, Appellant received a letter of expectation due to harassment.
- On June 30, 2003, Appellant received a letter of reprimand for driving under the influence of intoxicants and failing to report the arrest within the required 24-hour period.
- On February 28, 2005, Appellant received a letter of reprimand for providing false information and making false allegations about another staff member.
- On March 1, 2005, Appellant received a letter of reprimand for "no call no show" on November 19, 20, and 22, 2004.

2.3 By letter dated April 25, 2005, Superintendent Alice Payne notified Appellant of his reduction in salary, effective May 16, 2005, through August 15, 2005, inclusive. Superintendent Payne charged Appellant with neglect of duty and willful violation of published employing agency or Department of Personnel rules or regulations for failing to remain alert and sleeping or giving the appearance of sleeping while on duty.

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2.4 Specifically, on January 1, 2005, Appellant was assigned to perform a hospital watch of a Special Commitment Center (SCC) resident at Tacoma General Hospital. The resident was a sex offender and required the same level of custody/monitoring as a DOC inmate.

2.5 At approximately 10:51 a.m. on January 1, Sergeant Joel Estes entered the hospital room and greeted the resident in a loud voice. Appellant did not react or respond to Sergeant Estes entering the room. Consequently, Sergeant Estes walked over to Appellant and tapped the bottom of his shoe, at which time Appellant woke up and acknowledged that he "must have dozed off."

2.6 On February 23, 2004, Sergeant Estes initiated an Employee Conduct Report (ECR) alleging that he observed Appellant sleeping or giving the appearance of sleeping on duty. Appellant did not provide any comments to the ECR.

2.7 On February 18, 2005, Associate Superintendent Douglas Cole conducted an administrative review hearing to discuss the incident described in the ECR. At that time, Appellant admitted he had "probably nodded off for a few seconds."

2.8 The DOC Employee Handbook states that employees are expected to remain alert and prohibits employees from sleeping or giving the appearance of sleeping on duty. Additionally, the Regular Post Orders for the Hospital Watch Officer, section 3, states that officers are required to "[r]emain alert at all times." Appellant acknowledged his awareness of department policies and post orders.

2.9 Superintendent Payne determined misconduct had occurred and that Appellant neglected his duty when he chose to ignore the expectations of his position, which included remaining alert when monitoring SCC residents. In determining the level of discipline, Superintendent Payne considered

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Appellant's employment record, including prior corrective actions, and the serious safety risk Appellant created when he failed to remain alert. Superintendent Payne concluded that a reduction in salary was the appropriate sanction to impress upon Appellant the serious nature of his misconduct.

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 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 Appellant had a duty to remain alert and not sleep or give the appearance of sleeping while on duty. Respondent has proven that Appellant neglected that duty when he "dozed off" while he

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was assigned to monitor an SCC resident. Respondent has further proven that Appellant violated the department's Post Orders that require correctional officers on hospital watch to stay alert while performing their duties, as well as the expectations outlined in the DOC Employee Handbook that require officers to remain awake and not sleep or give the appearance of sleeping on duty.

3.6 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness 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).

3.7 Under the facts and circumstances, a reduction in salary is an appropriate disciplinary action to impress upon Appellant the seriousness of sleeping on duty, deter him from further misconduct, and to maintain the integrity of the program.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Eric Baker is denied.

DATED this _____ day of _____, 2006.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

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Gerald L. Morgen, Member

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