BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CARVIN SCOTT, Appellant, v. UNIVERSITY OF WASHINGTON, Respondent.	Case No. SUSP-04-0033 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 in Conference Room 132, Terry Lander Hall, University of Washington, Seattle, Washington, on May 19, 2005.

1.2 **Appearances.** Appellant Carvin Scott appeared *pro se*. Assistant Attorney General Jeffrey W. Davis represented Respondent University of Washington.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a 15-day suspension for just cause, including but not limited to neglect of duty, gross misconduct, and failure to follow established procedures for food handling and safety. Respondent alleges Appellant failed to wash his hands and change his gloves prior to serving food to a customer.

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II. FINDINGS OF FACT

2.1 Appellant is a Food Service Worker 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 June 1, 2004.

2.2 Appellant began his employment with the University of Washington as a Food Service Worker in September 1999. Appellant currently works as a Food Service Worker in the Husky Den's At Home workstation.

2.3 Appellant received a letter of reprimand dated October 30, 2001, for tardiness and reporting to work unfit to safely perform his job.

2.4 By letter dated May 26, 2004, Paul Brown, the Director of Housing and Food Services, notified Appellant of his 15-day suspension, effective June 7, 2004 through June 21, 2004 for just cause, including but not limited to neglect of duty and gross misconduct, due to his failure to follow established food handling and safety procedures.

2.5 WAC 246-215-080, regarding a food handler's personal hygiene, requires food service workers to wash their hands thoroughly after handling unclean items.

2.6 Food service employees are provided with the Housing and Food Services Classified Employee Guide, which stresses good hygiene. In addition, food service employees are trained in food handling procedures, and handwashing procedures are posted at sinks located in all food stations.

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2.7 On March 30, 2004, Appellant was working at the At Home pasta station. Appellant was cleaning his work station and the floor mats that food service workers stand on while serving customers. By the end of a shift, the floor mats accumulate a significant amount of bacteria from grease, dirt, and food dropped in the course of preparing the entrees. As Appellant was shaking out the mat, a customer approached and ordered a pasta dish. Appellant, while wearing the same gloves he used while cleaning the floors mat and without washing his hands, sprinkled cheese on the customer's pasta.

2.8 Appellant does not dispute that he served a customer without changing his dirty gloves or washing his hands.

2.9 By memo dated April 23, 2004, Executive Chef Eric Lenard recommended Appellant's suspension to Mr. Brown, Appellant's appointing authority. In determining the level of discipline, Mr. Lenard considered the seriousness of Appellant's actions, the training provided by food service management, the posted signs reminding workers of proper procedures, and Appellant's years of service with the University. Although Mr. Lenard found Appellant's behavior unacceptable, he wanted to allow Appellant an opportunity to demonstrate that he takes food safety seriously and will follow food handling and safety guidelines in the future. Mr. Brown reviewed Mr. Lenard's memorandum and concluded suspension was the appropriate discipline.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that proper hygiene is strongly emphasized in all University dining facilities and asserts Appellant received training on proper food handling and sanitation procedures. Consequently, Respondent argues there is no excuse for Appellant to engage in improper food

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handling techniques. Respondent contends Appellant's actions created a health risk for customers and a liability for the University. Therefore, Respondent argues a 15-day suspension is warranted and necessary to protect the public and the institution.

3.2 Appellant admits that he served a customer without changing the gloves he wore to clean the floor mat but contends he forgot and did not think to change his gloves when a customer appeared at the counter. Further, Appellant asserts that other food service workers have demonstrated worse hygiene habits than he did and argues that a 15-day suspension is too severe.

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).

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 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

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4.5 Respondent has proven that Appellant neglected his duty to follow food safety guidelines when he failed to wash his hands and remove contaminated gloves prior to serving a customer food. Respondent has further proven that Appellant's actions created a potential health risk and liability for the University. Therefore Appellant's actions rise to the level of gross misconduct.

4.6 Under the proven facts and circumstances, a 15-day suspension is clearly warranted, and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Carvin Scott is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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