

# ***Health & Hospitals Corp. (Harlem Hospital Ctr.) v. Henry***

OATH Index No. 2196/13 (Dec. 9, 2013)

7-day suspension recommended for special officer who was either sleeping on post or in a position that would be perceived as sleeping.

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## **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**HEALTH AND HOSPITALS CORPORATION  
(HARLEM HOSPITAL CENTER)**

*Petitioner*  
*-against-*  
**COLLETTE HENRY**  
*Respondent*

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## **REPORT AND RECOMMENDATION**

**FAYE LEWIS**, *Administrative Law Judge*

This employee disciplinary proceeding was referred by petitioner, the Health and Hospitals Corporation (“HHC”), pursuant to section 7.5 of the Personnel Rules of the Corporation. Respondent Collette Henry, a hospital police officer at Harlem Hospital (“the hospital”), is charged with sleeping on post on November 17, 2012, in violation of Special Order: Section HP 042, which prohibits officers from sleeping on post, or “assuming a position perceived as ‘sleeping’” (ALJ Ex. 1; Pet. Ex. 2).

A hearing was conducted before me on October 16, 2013. Petitioner’s primary proof was a copy of a video recording of respondent’s post over the course of an hour on November 17, 2012, which petitioner asserted showed respondent sleeping or in a position that a reasonable person would perceive as sleeping. Petitioner also presented the testimony of Detective José Nunez, who authenticated the videotape (Tr. 11-13). Respondent testified on her own behalf.

For the reasons set forth below, I find that the charge is proven and I recommend that respondent be suspended for seven days.

### ANALYSIS

Respondent was assigned to the front desk of the Muriel Pavilion on November 17, 2012 (Tr. 26-27). The video recording (Pet. Ex. 1) shows respondent sitting at the front desk from about 6:00 a.m. until about 7:00 a.m. on November 17, 2012. The pavilion is accessible to employees, as well as visitors to patients in the intensive care unit located above the pavilion (Nunez: Tr. 11, 19, 20).

Although the video recording does not clearly display respondent's face, respondent is shown on multiple occasions either sitting motionless with her head down, or with her head repeatedly bobbing or jerking up and down. The more significant aspects of the video are described below.

Shortly after 6:00 a.m., respondent's head bobs up and down. Respondent appears to be awake immediately after that, leaning forward at about 6:04 a.m. and noticing an individual who had walked by the desk. However, soon after the person left, respondent's head again lowered, albeit momentarily, followed by various instances between about 6:08 a.m. and 6:10 a.m. when her head bobbed sideways up and down. Respondent's head remained lowered from about 6:10 a.m. to about 6:11 a.m., when respondent answered the telephone and then got up from the desk.

Several minutes later, at about 6:16 a.m., respondent returned to her desk and appeared to be writing something. Starting about 6:21 a.m., respondent's head bobbed up and down and sideways several times. Her head moved downwards about 6:25 a.m., and moved further downwards about two minutes later, and appeared to remain motionless and lowered until about 6:30 a.m., when respondent picked up her head. However, respondent's head bobbed up and down about 6:32 a.m., just before an individual walked by her desk. Respondent spoke to the person. Soon after the person left, respondent's head again lowered. The video shows that between 6:35 a.m. and 6:36 a.m., respondent's repeatedly bobbed up and down, as if she were fighting sleep. After that time, respondent's head jerked backwards at about 6:39 a.m. About a moment later, respondent leaned forward, and at about 6:41 a.m., respondent got up from her chair.

Respondent returned to her chair at about 6:42 a.m. After that, respondent's head bobbed up and down multiple times, from 6:46 a.m. to about 6:53 a.m. From about 6:53 a.m. until about 6:55 a.m., respondent is shown with her head downwards, not moving. Respondent's head

jerked backwards at about 6:55 a.m. For a brief instant, it appeared that she held her head erect. However, respondent's head is shown moving up and down in jerking motions multiple times until close to 7:00 a.m., when the video recording ended.

Respondent's testimony confirmed that she was very tired and struggling to stay awake on this occasion. She was working tour one, which was an eight-hour tour beginning about midnight (Tr. 34). Respondent was assigned to patrol during the tour, until about 6:00 a.m., when she was directed to report to the front desk of the Muriel Pavilion (Tr. 33). Respondent acknowledged that there were times, as shown on the video, when she had her "head down" (Tr. 34). She testified, "I was writing, I was reading, I was struggling" (Tr. 34). Asked to elaborate, she said that tour one is very tiring and she was "so tired" (Tr. 35) and "struggling to stay awake" (Tr. 37). Asked if she had fallen asleep, respondent said she did not know (Tr. 37). Respondent also testified that she normally takes a painkiller during her earlier tour to help with migraines, but she does not remember if she did on this occasion (Tr. 37). She acknowledged that the painkiller makes her drowsy (Tr. 37).

Asked about the two people who were seen walking by the desk during the video, respondent indicated that the second person (who walked by about 6:30 a.m.) was confused about what building he should go to for his appointment. Respondent was able to answer his question (Tr. 36). The first person who walked by (at about 6:07 a.m.) was an employee working in the building (Tr. 37).

The video recording demonstrates that there are multiple instances between 6:00 a.m. and 7:00 a.m., when respondent's head was lowered and not moving for several minutes. This is a strong indication that she was sleeping, at least for several minutes. There are also instances stretching for minutes at a time, where respondent's head bobs up and down and sideways. Respondent acknowledged that her head was down and she was fighting sleep. Thus, the evidence establishes that or at various times during 6:00 a.m. and 7:00 a.m, respondent was either sleeping, or in a position that a reasonable person would perceive as sleeping. This violates Special Order: Section HP 042.

### **FINDINGS AND CONCLUSIONS**

On November 17, 2012, respondent violated Special Order: Section HP 042 when she was either sleeping on post or had

assumed a position that a reasonable person would perceive as sleeping.

### **RECOMMENDATION**

Upon making these findings, I requested and received information relating to respondent's prior disciplinary history. The information submitted indicated that respondent began her employment at Harlem Hospital in 2008 and has received mixed performance evaluations. Of the four performance evaluations which petitioner submitted, the most recent graded respondent as "satisfactory," while two earlier, interim evaluations graded her as "unsatisfactory," and "needs improvement," due to issues with time and leave. Respondent has no history of adjudicated prior discipline.

Petitioner has requested that I recommend a 10-day suspension. This falls within the range of penalties for sleeping on duty, which vary depending on whether security concerns were presented and whether the employee had a prior disciplinary history. *See, e.g., Fire Dep't v. Erhlich*, OATH Index No. 1850/12 at 52-54 (May 21, 2013) (45-day suspension recommended for EMS lieutenant found guilty of sleeping on six occasions, excessive lateness, and AWOL); *Dep't of Sanitation v. Trippin*, OATH Index No. 2308/07 at 2, 9 (Oct. 5, 2007) (fifteen-day suspension was imposed on a computer associate found guilty of sleeping on the job on nine separate occasions); *Dep't of Correction v. Jackson*, OATH Index No. 134/04 (May 5, 2004), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 05-67-SA (Sept. 14, 2005) (20-day suspension for sleeping while on duty and three AWOLs, where officer had minor disciplinary record); *Triborough Bridge and Tunnel Auth. v. Andreola*, OATH Index No. 1385/03 (June 7, 2004), *modified on penalty*, President Dec. (July 9, 2004), *modified on penalty*, Civ. Serv. Comm'n Item No. CD05-64-M (Aug. 18, 2005) (35-day suspension for sleeping on security post plus four instances of AWOL); *Dep't of Correction v. Aviles*, OATH Index No. 457/02 (Apr. 18, 2002), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD03-40-SA (Apr. 11, 2003) (10-day suspension where a correction officer was charged with sleeping on duty while assigned to watch a high-flight risk inmate in a hospital psychiatric unit); *Dep't of Correction v. Gilcrest*, OATH Index No. 592/95 (Dec. 6, 1994) (six suspension days recommended where there was only a negligible security risk).

In this case, respondent was assigned to sit at a security post near the end of her tour. By her own admission, she was not fully alert and attentive during this time and fought to stay awake. However, this is respondent's first instance of formal discipline, which should mitigate any disciplinary penalty. Considering all the above, a penalty of seven days suspension is appropriate, and I so recommend.

Faye Lewis  
Administrative Law Judge

December 9, 2013

SUBMITTED TO:

**DENISE C. SOARES, RN, MA**  
*Executive Director*  
*Harlem Hospital Center*

APPEARANCES:

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