COPY

STATE OF WISCONSIN	CIRCUIT COURT	DANE COUNTY
JOHN R. KAESTNER, Petitioner, -v- STATE OF WISCONSIN, PERSONNEL BOARD, Respondent.		NOTICE OF ENTRY OF JUDGMENT Case No. 138-247 AG: D73011616

TO: Lawton & Cates
703 Tenney Building
Madison, Wisconsin 53703
Attorneys for Petitioner

PLEASE TAKE NOTICE THAT JUDGMENT, a copy of which is attached, was duly entered in the Office of the Clerk of Courts for Dane County, Wisconsin on the 28th day of March, 1973.

Dated this 4th day of April, 1973

ROBERT W. WARREN
Attorney General

BY: S/Robert J. Vergeront
ROBERT J. VERGERONT
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STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

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* 138-247

JOHN R. KAESTNER,
Petitioner, *

v. *

STATE OF WISCONSIN, *

PERSONNEL BOARD,
Respondent. *

Before: Hon. W. L. Jackman, Judge

Hearing on State Agency Review: March 27, 1973

Appearances: Petitioner by James R. Hill
Respondent by Robert J. Vergeront, Assistant Attorney General

The petitioner's contention is that the evidence does not support the conclusion of the Board, and that the procedures were defective.

Sufficiency of Evidence

Petitioner conceded that he was an alcoholic addicted to excessive drinking, but he claims this was an illness. The evidence shows without dispute that over some period of time he absented himself from his duties without leave and his duties on those occasions had to be performed by others and he neglected performance of assigned tasks. Petitioner was offered leave but he declined it because of the wage loss. Finally petitioner's condition deteriorated to the point where he had to be hospitalized and after petitioner exhausted his sick leave, he was discharged.

Petitioner does not contest the correctness of the several findings of fact so designated. Suffice it to say that the several recitals of the findings of fact are supported by substantial evidence.

It seems to us that a real issue in this case is whether alcoholism which interferes with a public employee's work is ground for discharge. While no doubt alcoholism may be an illness in the same sense that drug addiction is, there are two kinds of alcoholics: 1. Those who desist from use of alcohol because they are unable to cope with it, and 2. Those who continue to use alcohol to the point where it interferes with their work. While petitioner claims he has now joined the first class, the evidence shows that during his employment he was within the second class. We are of the opinion that the civil service, be it state, city, or county, is not required to continue the employment of one whose lack of sobriety affects his work. In addition, one who is away from his job more than the permitted sick leave and vacation and without leave of absence granted is subject to dismissal even though his absence is without his fault, and this even though he may have been unaware of his duty to apply for leave. Jobs v. State Board, 34 Wis 2d 245.

Like drug addiction, alcohol addiction is usually self-induced and is unfortunate for the addict. But we know of no rule that requires a state agency to retain addicted persons in employment when their addiction causes incapacity to perform their duties, even though they seek a cure. We find that there is substantial evidence which sustains the findings and the findings sustain the conclusions and order of the Board.

Procedural Questions

Petitioner complains that all the Board did by way of "decision" was to make its findings, conclusions and order, and maintains that there must also be an opinion or memorandum rationalizing the findings, conclusions and order, and petitioner cites what he says is a former custom to include such an opinion with the findings, conclusions and order. We are of the opinion that Sec. 227.13 contemplates that what is sometimes called a final order, or an award, is a decision. A decision, as that section seems to refer, is the result of the findings and conclusions, not the rationalization therefor. In this case the petition for review recites that petitioner is aggrieved by the findings, conclusions and order. What is referred to in the petition as the order is obviously the decision, since that is what petitioner seeks to set aside under Sec. 227.20. Any opinion giving reasons for the findings, conclusions and order is not a decision because it does not decide anything. However helpful discussion, rationalization and argumentative matter might be to discover the Board's approach, these things have no place in the findings on which the decision is based. Wis. Tel. Co. v. PSC, 232 Wis 274. So we see no reason why any opinion is necessary to a decision. The order is the decision and the statute does not call for anything to support it but findings and conclusions.

When Mr. Brecher made his remarks at Tr. p. 42, we do not think, as petitioner seems to, that this indicates any prejudice or bias against petitioner. Probably the choice of language is not good, but the basic concept that alcoholism is a cause of great loss of man hours in industry is almost a matter of common knowledge. However, even if it does indicate that overindulgence is abhorrent to Mr. Brecher, we do not think this necessarily disqualifies him. No statute provides for the equivalent of an affidavit of prejudice or substitution of a judge. If the contention of the petitioner should be sustained, it is conceivable that a case could never be decided if the members of the Board expressed their opinions prior to determination of the case. Petitioner's attorney did not ask the Board to disqualify Mr. Brecher, but asked him to disqualify himself. He did not do so, nor did the other member of the Board. And the attorney further was asked if he wished to make a change in his original stipulation that the two Board members, Mr. Ahrens and Mr. Brecher decide the case and the attorney declined to. We are of the opinion that under the circumstances, petitioner cannot now complain since he was given a choice which he took and did no more than ask for a voluntary disqualification, not a forced one.

We are of the opinion there is no ground for setting aside the order sustaining the petitioner's discharge and the Board's order dated December 4, 1972, should be affirmed.

It is therefore:

ADJUDGED: That the order of the State Board of Personnel dated December 4, 1972, sustaining the discharge and termination of employment of petitioner John R. Kaestner, be and the same is affirmed.

Dated March 28, 1973.

BY THE COURT:

S/ W. L. Jackman
W. L. JACKMAN, JUDGE