



This Board has many times considered what adequate support may be.

In Gurrath v. Karns, Case No. 147, 3-18-66, we said it is such support as would reasonably tend to justify the appointing officer's action.

In Hartenstein vs. Morgan, Case No. 229, 12-15-67, we said adequate support was substantial evidence and that satisfactory proof of substantial evidence is such proof from which one concludes that it is more probable that the employe did what he had been disciplined for than that he did not. We said that test is the preponderance of probabilities, and that proof need not be to the degree that the conclusion is highly probable or that the evidence be convincing.

There is substantial agreement as to the events leading up to the alleged slapping. There had been a mild New Years Eve celebration on the lower level of the cottage. Shortly after midnight the girls were directed to retire for the night. Those who were housed upstairs went to the second floor. Up to this time there had been nothing of significance that had occurred. Emelia Radauk and Linda Roberts in the immediate presence of the Appellant indulged in some symbolic actions apparently for the benefit of the Appellant. Emelia made an off-color remark to Appellant. It is alleged that Appellant then slapped Emelia's face.

On behalf of the Respondent, Emelia testified that the Appellant slapped her. Transcript, page 19. Linda Roberts, the other girl involved in the symbolic conduct testified that the Appellant slapped Emelia. Transcript page 86.

Appellant denied that she slapped Emelia, but does admit that in the course of the episode that she did place her right hand on Emelia's left cheek. Transcript, page 235.

Another of the girls, Joyce Simpson, testified in behalf of the Appellant. She stated that she was present and saw the event and that the Appellant just reached out her hand and tapped Emelia's face. Transcript, page 294. Joyce did testify that at the time, the Appellant was "upset". Transcript, page 296.

No other eye witnesses to the event were produced by either the Appellant or the Respondent.

On January 3, 1969, Richard Meyer, Assistant Superintendent in Charge of Residential Care, held a meeting over the episode. Present in addition to the Appellant was Lee Hartley, the social worker for the cottage. Emelia was first called in. According to Meyers testimony he asked Emelia to tell her story. He stated that Emelia told them substantially what she told this Board. He testified that the Appellant in answer to his question said, "Yes, that is correct and that is the way it happened." Transcript, page 143. Linda Roberts was then called in. Meyers asked Linda to give her version of the incident. Meyers testified that she told substantially the same story that she told this Board and that Appellant again agreed that it was correct. Transcript, page 144.

Hartley, who was present, testified that Appellant did admit that Emelia's and Linda's stories were correct. Transcript, pages 110 and 111.

Appellant has denied that she made such admissions in the presence of Meyer and Hartley.

About the only other pertinent testimony is that of Rex Duter, Superintendent of the School, who testified to two prior instances when Appellant apparently lost control of herself in the conduct of her duties. Transcript, pages 186, 187. These occurrences were not controverted by the Appellant.

Also of significance is testimony that the girls in Cottage 5 at the time were concerned that shortly before, one of their members had been transferred to Taycheedah for striking another girl.

We must concede that Joyce Simpson's testimony would raise a reasonable doubt that Appellant slapped Emelia. Joyce was a good, apparently forthright witness.

The fact of the concern of the girls over the girl being sent to Taycheedah creates a tenable inference that the Appellant was "framed".

However, Appellant has not been on trial here. If anyone has been on trial here, it is Rex Duter, the Superintendent. He is charged with having acted arbitrarily and capriciously and without just cause in terminating the Appellant. We must look at him rather than the Appellant.

Is there adequate support in the record as would reasonably justify the discipline of the Appellant? Is there substantial evidence that Appellant slapped Emelia Randauk as specified? Is it, without being convincing, that it is more probable that she did than that she didn't?

In the first place, the Appellant had a history of some instability as a counselor. Emelia and Linda testified that the Appellant slapped

Emelia. Joyce, while stating that the Appellant did not slap Emelia, testified that the Appellant was upset. Both Joyce and the Appellant concede that Appellant placed her hand on Emelia's face as a part of the episode. Most important of all is the Appellant's admission before Meyer and Hartley that she slapped Emelia. However else we may speculate or discredit testimony, we cannot conclude that these responsible persons have lied.

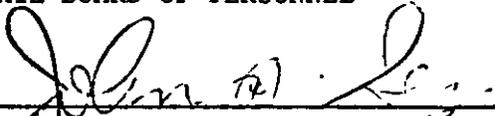
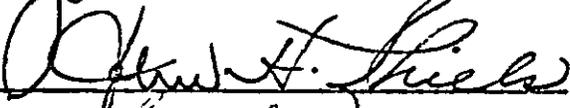
There is substantial evidence that Appellant did slap Emelia. In fact, it could easily be viewed as proof just short of that beyond a reasonable doubt.

The action of the appointing officer must be sustained.

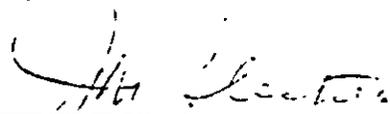
Dated: September 18, 1969.

STATE BOARD OF PERSONNEL

BY


I do not concur with the above decision on the grounds that there was not substantial or satisfactory evidence that the appellant did what she was accused of doing. I feel that the evidence upon which the superintendent acted was most suspect.

  
J. M. Slechta