

STATE OF WISCONSIN

BEFORE THE STATE BOARD OF PERSONNEL

Richard Skubis,

Appellant,

vs.

John Weaver, President
University of Wisconsin,

Respondent.

MEMORANDUM DECISION

#387

Appellant was an orderly at University Hospitals. This is a permanent position in the state's classified service in the classification Nursing Assistant 2. Appellant had held that position for about ten years. At the time of his discharge he was assigned to day duty in nursing unit 5B which is generally devoted to thoracic and dermatological cases.

For the past several years Appellant's attendance record was not good, due in a large measure to disabling injuries and illness. He suffers from a chronic bronchial ailment and at unpredictable times is just too sick to go to work or even to be concerned with whether or not his superiors were notified that he would not be in.

Early in 1970, Appellant's attendance became even more erratic than before, and caused his superiors problems. When he did not report and did not notify them, the "float" personnel had already been assigned in many cases and Appellant's work either remained undone or had to be divided and assumed by others. This caused the operation of the unit to be less satisfactory than those who had its responsibility expected it to be and generated a measure of unhappiness among the other employes.

In April, Reinhold, Employee Relations Coordinator at the Hospitals, had a meeting with Appellant at which the situation was discussed in depth.

Appellant explained that when he tried to work when he was ill just aggravated his health problem. Reinhold who has delegated authority to handle personnel problems, considered granting Appellant a leave of absence to rest and try to straighten himself out physically.

Before that leave was made operative, Reinhold discovered that Appellant was "moonlighting" at St. Marys Hospital 10 or 15 hours a week. Reinhold apparently felt that Appellant was compounding his own problems by this extra work outside his primary job. Reinhold instead of granting Appellant a leave of absence, suspended him without pay for 30 days.

Upon the Appellant's return, there appears to be little improvement in his attendance. On pages 13 and 14, Record, are the details of Appellant's attendance for the 39 working days between the end of his suspension and the time the decision was made to terminate his services.

It is obvious from that report that his superiors could never plan on his being present and that as persons responsible for an operation it was something that they should not have to contend with as a repetitious pattern of availability.

Appellant does not seriously contest his poor attendance or the fact that it caused significant problems in the conduct of unit 5-B. He does contend that he had no personal control over the factors that caused the absenteeism and tardiness. The Board believes this to be true. Appellant is not malingering. His conduct outside of work has not caused his problem. The Board is convinced from the record and from Appellant's appearance that he is too ill to work a full-time scheduled job.

This Board has held in the past and now holds that when an employe is physically or mentally - regardless of cause - unable to handle his job tasks or meet the job requirements that such is just cause for his termination.

Appellant has contended that because the patients in unit 5-B are afflicted with resperatory ailments similar in a measure to his chronic condition that there is some connection between unit 5-B and his illness, and that he would feel better if he did not have to work 5-B. There is no evidence that the patients in 5-B infected Appellant with anything that aggravated his indispositions. The Board is not persuaded that Appellant could do any better on another work assignment.

Suppose, however, that working in unit 5-B was bad for the Appellant's health, how does he get to work in another unit or at another job? Requesting a change or transfer of his superiors in the employing unit or even of the hospital central personnel office would not help him. He has to do it himself

There is a union at the hospital. The union contract covers transfers within the same classification to different shifts or different units. If there should be a vacancy in the class Nursing Assistant 2 in another unit or at another shift, the vacancy must be posted and any Nursing Assistant 2 could bid for it. It would be awarded to the bidder most qualified. Management has no control over such transfers. Appellant may have bid for such vacancies, but if he did, he was not successful.

If there is a vacancy in a position in some other classification at the same salary range that has not been filled by posting and bidding, the employe must convince the employing unit that it wants him. It does not have to take him, for it has the option to ask for a promotional examination. If the employe can persuade the employing unit, he then must convince the central personnel at the hospital that he has the necessary qualifications. If he does, central personnel can approve the transfer. There is some evidence that Appellant had talked with another employing unit, but there was no evidence that he made any progress with it. Certainly Reinhold was never requested to approve such a transfer.

If there is a vacancy in some other classification in a different salary range that has not been filled by posting and bidding, it is filled by examination. There is no evidence that Appellant had ever applied for any such examination.

The employer is bound by civil service laws and rules on transferring employes to different classes. The latitude that it formerly had to transfer a position from one shift or unit to another shift or unit has been pre-empted by the union contract.

Part-time employes are not encouraged in the state's civil service.

Unless Appellant could on his own merits work his way out of it, he was stuck with orderly duty in unit 5-B.

Appellant could not meet the fundamental requirement of the work as a Nursing Assistant 2 in unit 5-B, which requirement was reasonably adequate attendances and punctuality.

Counsel for the Respondent shall prepare Findings of Fact and Conclusions of Law consonant with this memorandum.

Dated March ____, 1971.

STATE PERSONNEL BOARD

BY _____

Members Brecher and Serpe did not participate in this appeal.