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STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY  
CIVIL DIVISION  
BRANCH 26

ROBERT S. FAUBER,

Petitioner,

-vs-

CASE NO. 849-551

STATE PERSONNEL COMMISSION,

Respondent.

DECISION

Petitioner Robert S. Fauber asks this Court to overturn the decision of the respondent State Personnel Commission, which upheld his termination from the position of Tax Representative III with the Wisconsin Department of Revenue. Fauber concedes that his job performance (or lack thereof) may have warranted discipline but termination was too extreme. Because there is substantial evidence in the record supporting the decision of the Commission, the petitioner's request is denied.

The petitioner had worked as a tax representative since 1965. Over the years he had advanced to the top bracket of tax representative work, that being Tax Representative III. The job of a tax representative is to identify delinquent taxpayers, both business and personal,

1 and collect the taxes owed by them. Petitioner's assigned  
2 area included some of the areas near the south and west  
3 boundaries of Milwaukee. In June of 1982, the petitioner  
4 was terminated.

5 Since this is a Chapter 227 review of the decision  
6 of the State Personnel Commission, the standard of review  
7 is whether the findings of the State Board of Personnel  
8 are supported by substantial evidence in view of the record  
9 as a whole. Reinke v. Personnel Board, 53Wis.2d123, 191N.W.2d883  
10 (1971). Furthermore, substantial evidence does not mean  
11 a preponderance of the evidence, but rather means that  
12 reasonable minds could reach the same conclusion as that  
13 of the agency, given the evidence in the record. Wisconsin  
14 Environmental Decade v. Public Service Commission, 98Wis.2d  
15 682, 298 N.W.2d205 (Ct. App. 1980).

16 Applying the above law to the facts of this case,  
17 the Commission's decision must stand. Section 230.34(1)(a)  
18 of the Wisconsin Statutes provides that: "An employee  
19 with permanent status in class may be removed, suspended  
20 without pay, discharged, reduced in base pay or demoted  
21 only for just cause." Incompetency, insubordination or  
22 disobedience of the lawful authority of the appointing  
23 and supervising authority or of established work rules  
24 can be "just cause" for discharge. 67C.J.S Officers 8.133

1 (1951). Commission Findings of Fact 19 through 26 show  
2 that from 1978 on, the petitioner's performance on tax  
3 referrals and completions was significantly below average  
4 and often he was ranked last in one or both of these  
5 categories. Findings 27 through 49 chronicle the repeated  
6 attempts by petitioner's supervisor over more than four  
7 years to point out petitioner's deficiencies and assist  
8 him in remedying them. The petitioner knew what was  
9 expected of him but he failed to perform. He was ordered  
10 to clean up his old referral list, but didn't; he was informed  
11 of the expectation of his supervisor that he would complete  
12 40 referrals per month, but didn't. These failures and  
13 his general subpar performance were likely to have an  
14 adverse effect on the efficiency of the state public  
15 service; altogether, the Commission could reasonably  
16 conclude they constituted just cause for his dismissal.

17 The findings of fact and conclusions of law of the  
18 State Personnel Commission are upheld. SO ORDERED.

19 M. P. SULLIVAN

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20  
21 HON. MICHAEL P. SULLIVAN

22 Circuit Court Judge, Branch 26

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24 Dated this 8th day of Oct.  
25 1986, at Milwaukee, Wisconsin.