STATE OF WISCONSIN STATE PERSONNEL BOARD

GARY F. LOBNER,

Appellant,

v.

LESTER VOIGT, Secretary,
Department of Natural Resources, and
C. K. WETTENGEL, Director,
State Bureau of Personnel,

Respondents.

Case No. 73-168

OPINION AND ORDER

Before: JULIAN, Chairperson, SERPE, and STEININGER, Board Members.

NATURE OF THE CASE

Appellant appeals the removal of his name from the register of eligible candidates for the position of Natural Resources Specialist 3 - Operator/Instructor. The stated reason for the removal was the fact that Appellant previously had failed to successfully complete his probation for the same or a similar position. In an interim Opinion and Order entered March 29, 1974, we held that even if Appellant had no right to a hearing as to his probationary discharge, he was entitled to a hearing as to his removal from the register. The following order was entered and a hearing was accordingly held:

> It is hereby ordered that the matter be forthwith set for hearing on whether Appellant's work record was unsatisfactory and whether, if it was, that reason was sufficient cause for removing Appellant's name from the register of eligible candidates for certification to positions as Natural Resources Specialist 3 - Operator/Instructor.

FINDINGS OF FACT

The Appellant commenced employment with the State of Wisconsin, Department of Natural Resources, as a Natural Resources Specialist 3 - Operator/Instructor, on September 18, 1972. His employment was terminated on March 7, 1973, which was prior to the completion of his six-month probationary period. S. 16.22, Wis. Stats.

Immediately after commencing his employment with the state the Appellant engaged in approximately two weeks of training. This training concerned waste water treatment and testing and related areas. It was given to both plant operators and operators/instructors such as Appellant who would be responsible for ongoing field training and supervision of the plant operators. The normal course was one week but the Appellant's supervisors required him to repeat the course and take a second week of training.

During the first instruction period of the training the Appellant sat in a combination lecture room and laboratory with several other students, including plant operators, and read a newspaper during the entire lecture.

During and as part of the training period the Appellant worked in the state laboratory with persons who were engaged in conducting actual water tests and other laboratory procedures. During this period he engaged in newspaper reading during normal working hours for unspecified periods. He performed tasks in the area of laboratory procedures that were assigned to him but did not seek out additional information or become involved in projects beyond those assigned.

Appellant's supervisors determined that he was not qualified to assume his supervisory and instructional duties after he completed the course of training and they required that he take a second week of training. During this second week his attitude and work was improved.

In addition to Appellant, three other operator/trainees were enrolled for the initial course of instruction. One of these three exhibited similar attitudinal and behavioral patterns, including reading newspapers during work hours, although not during lectures, and was also required to take a second week of training.

Upon the completion of his training the Appellant was assigned to the north central district, Environmental Protection, Department of Natural Resources. This district includes ten counties extending from Vilas to Juneau and Adams. Appellant was the first person to hold the position of operator/instructor in that district. In addition to municipal waste water and water supply operators in the district there were four district engineers who had area wide responsibilities and whose responsibilities were closely allied with the Appellant's.

During the three months of his employment the Appellant made only one visit to the northern six counties of the district, spending most of his time in the southern-most four counties. This schedule was disproportionate to the needs of the district.

The Appellant was headquartered in Rhinelander. Much of his schedule was arranged so that he was in the southern part of the district on Mondays and Fridays and in the Rhinelander office during

the middle of the week. This type of scheduling was at variance with most of the rest of the staff at the Rhinelander office who customarily tended to work in the field in the middle of the week and in the office on Mondays and Fridays when they could consult and communicate with other staff members. Appellant was or should have been familiar with this customary practice.

The Appellant had the authority to and did plan his own schedule subject to the general supervision of his superiors. His family resided in Wisconsin Rapids and due to problems in his family he desired to spend as much time as possible with them and in fact did visit them frequently on weekends during this period.

The Appellant regularly read a newspaper during regular working hours in his Rhinelander office.

On one occasion the Appellant scheduled, somewhat reluctantly and at the insistence of supervisory staff, a water training course for plant operators. However, he scheduled the course for a Friday, which would require some of the operators to have been absent from their facilities for three consecutive days. In many instances these facilities were operated only by one operator and there would be no one available during the three day period to operate the facilities. This type of scheduling was at odds with customary practice which was to schedule the sessions on a day in mid-week. Appellant knew or should have known of this customary practice.

On February 14, 1973, the Appellant met with his primary supervisor, Mr. Lissack, who reviewed some of the foregoing aspects of Appellant's job performance. Prior to this time Appellant's

supervisors had had some discussions with him about his job performance, but the record does not provide any details of these exchanges. At this point Mr. Lissack's intention was to give the Appellant an opportunity to improve his work performance prior to recommending termination. He advised the Appellant that if he were to avoid termination he would have to improve his performance markedly. During the period following February 14, 1973, and prior to the decision to terminate made March 5, 1973, Appellant's performance of his duties improved but not to any great degree. Appellant's employment was terminated effective March 7, 1973, which was prior to the expiration of his six month probationary period. He was subsequently on October 9, 1973, removed from the register for an identical position.

CONCLUSIONS OF LAW

We conclude that Appellant's work record was unsatisfactory and that that reason was sufficient cause for removing his name from the register of eligible candidates for certification to positions as Natural Resources Specialist 3 - Operator/Instructor. The record of his performance was below that which his employer had a right to expect.

However, it is appropriate to mention that we would have recommended a more studied approach to the handling of Appellant's case, particularly in light of the family difficulties he was experiencing at the time. Insofar as the record reveals the meeting of February 14, 1973, was the first one where the Appellant's overall performance was systematically reviewed. This was only about a month

short of the completion of his probation and a few weeks short of his actual termination. It is questionable to expect a significant change in Appellant's performance in this limited period of time. Alternatively, his probation could have been extended an additional short period of time or he could have been advised of his jeopardized position at an earlier date. Nonetheless, these observations do not render the Director's actions utilizing Appellant's unsatisfactory performance for the period when he was on probation to remove him from the register improper, because notwithstanding alternative approaches to the handling of Appellant's termination, the Bureau accurately assessed his actual work record as unsatisfactory.

Section Pers. 6.10, Wisconsin Administrative Code, provides in part as follows:

> In addition to provisions stated elsewhere in the law or rules, the director may refuse to examine the applicant, or after examination to certify an eligible:
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> * * *
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> (10) Except on promotion, whose work record or employment references are unsatisfactory . . . ."

Section Pers. 13.01 provides in part as follows: "The probationary period is an integral part of the examination process . . . ." Although this section undoubtedly was intended to refer primarily to probationary periods for current positions, the rationale applies equally to prior positions, particularly where, as here, the prior position is identical and recently held. There are probably few more reliable predictors of work performance than a period of almost six months in actual performance in an identical position. The Bureau had the right to rely on an accurate evaluation of this prior

work experience and strike Appellant's name from the register of eligible candidates.

We emphasize that Appellant was not made ineligible for other state employment by the Director's actions reviewed here, and that this fact situation is not before us in this case. We also emphasize that the mere fact of termination of probation is not sufficient cause for removal from a register of eligible candidates.

ORDER

IT IS HEREBY ORDERED that the actions of the Director appealed from are affirmed.

Dated September 30, 1975. STATE PERSONNEL BOARD

Percy L. Julian, Jr., Chairperson