OFFICIAL

STATE OF WISCONSIN PERSONNEL BOARD

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MICHAEL G. AMRHEIN,

Appellant,

v.

LESTER P. VOIGT, Secretary,
Department of Natural Resources,

Respondent.

Case No. 73-50

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OPINION

AND ORDER

ON REMAND

Before AHRENS, Chairman, SERPE, JULIAN, STEININGER and WILSON.

OPINION

The Appellant is a forestry specialist employed by the Department of Natural Resources in its Madison, Wisconsin office. On October 21, 1972, while off duty, he was arrested for possessing a pheasant during the closed season in violation of the State's hunting laws. He was subsequently convicted of the offense. On March 27, 1973, he was suspended for two weeks, without pay, for violating the DNR Code of ethics with respect to an act "which will violate /the employes'/ public trust and reflect discredit on themselves or the Department." He filed a timely appeal.

On February 9, 1974, the Board entered an Opinion and Order finding that the Respondent Voigt had not proven that Appellant's conduct had discredited the Department's reputation and, in addition, that such conduct was "so substantial, oft-repeated, flagrant, or so serious that it undermines public confidence in the State service." It further ordered Appellant reinstated fully. The Respondent appealed to the Circuit Court.

On May 6, 1974, the Court issued an Opinion and Judgment wherein it held that no proof need be presented that the Department's reputation was damaged. It stated that such injury to the employer can be inferred from the offense itself alone. The fact of injury or the absence of it, was a determination for the Board to make since, as the Court noted, the Board "is the ultimate finder of fact." The Court held further that the test the Board should apply to the offense in question is whether it "is likely to cause damage to D.N.R. in undermining confidence in it." The Court suggested further that in considering such question the Board should evaluate "how substantial, flagrant, or serious the offense was." It further instructed the Board to take into account what effect the offense "may probably have" in the future. Put another way, the question for the Board to answer in making its findings of fact is whether the offense was "so substantial, flagrant or serious as to be likely to undermine public confidence in D.N.R."

We find that Appellant's offense was not so substantial, flagrant, or serious as to be likely to undermine public confidence in D.N.R. The offense involved was a minor game violation. We find that it is improbable his conduct had any appreciable effect whatsoever on the reputation of that agency. Fundamental is a recognition, long recognized in the law, that criminal responsibility, even for minor offenses is a personal liability. It is the Appellant, Michael G. Amrhein, who violated the law and who was fined by the law for having done so. The public can hold the Appellant to be less than exemplory in his conduct, with respect to game laws, but this is not the fault of D.N.R. The Department is not the 24-hour per day guardian of the conduct of its employees. The public we believe has a keener sense of

who bears the responsibility for what than to lose confidence in DNR for what one of its employees does in his off-duty hours. The instant case does not involve a game warden, whose duty is to enforce the law and who might well undermine respect for the law if he himself broke the law. That might well be a different matter. Whether a particular law violation of a public employee is "likely to undermine confidence in the agency" will necessarily vary with the circumstances of each case and must be decided on a case by case basis. Among the factors which would enter into such a consideration would be the level of the employee involved and the nexus between the law violation and the employee's duties and responsibilities within the agency. In this case, the Appellant's offense was not a serious matter; it is not substantial, it is not flagrant and it is unlikely that public confidence in DNR will be undermined because of it.

ORDER

Upon the foregoing Opinion and the entire record in this case,

IT IS ORDERED that the Respondent immediately reinstate Appellant fully, rescind the ten (10) work-day suspension imposed on the Appellant from April 16, 1973 to April 27, 1973, and pay to him full work pay for such period.

IT IS FURTHER ORDERED that the Respondent advise the Board in writing within ten (10) days of the date of the service of this Order what steps it has taken to comply herewith.

Dated July 22, 1974

STATE PERSONNEL BOARD

BY

William Ahrens

William Ahrens, Chairman