STATE OF WISCONSIN PERSONNEL BOARD

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BARBARA MCMANUS, *

Appellant, *

v. *

JOHN C. WEAVER, President, University of Wisconsin, *

Respondent. *

Case No. 74-32

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OPINION AND ORDER

Before: DEWITT, Chairperson, HESSERT, MORGAN, and WARREN, Board Members.

Nature of Case

Pursuant to S. 16.05(2) Wisconsin Statutes, Appellant has appealed the termination of her employment with the state. In an earlier proceeding entitled McManus v. Weaver, Wis. Pers. Bd. Case No. 73-171 (March 29, 1974), this Board held Appellant's termination void because her discharge was not, as the law requires, made by an appointing authority. Subsequent to our decision, Appellant was again discharged for the same events but this time by an appointing authority. The Board, in an Opinion and Order entered in this case on July 30, 1975, rejected Appellant's arguments that the doctrines of res judicata and double jeopardy precluded this discharge for the same events. In that same order, the Board also held that Appellant's appeal proceeding survived her death.

Finding of Facts

The Appellant at all relevant times was a permanent employe in the classified service and was employed as a typist 3 at the Biophysics Laboratory, University of Wisconsin-Madison.

The Appellant was hired for her position on October 9, 1972 and served on probation until April 8, 1973. On May 3, 1973, Paul Kaesberg who was Chairman

of the Biophysics Laboratory and Appellant's supervisor wrote her a letter indicating that her job performance was inadequate. He stressed the unacceptably high number of Appellant's work absences and concluded that she was not discharging the duties of her position satisfactorily. The contents of the letter were covered in a counseling session designed to improve Appellant's work.

After that letter and counseling, Appellant's job performance continued to deteriorate despite a decline in the frequency of her absences. Paul Kaesberg gave Appellant another letter dated September 25, 1973 which indicated that her job performance was still unsatisfactory despite numerous attempts to improve her work through office adjustments. He indicated that inaccuracies in typing and placing mail in professor's boxes were problems. Specific examples of these problems were given and Appellant was told that her work would be monitored and, absent any improvement, Appellant's employment would be terminated. Work absences were again mentioned in this letter.

Appellant's work was carefully monitored and continued to show poor work attendance, inaccurate and sloppy typing on important documents and an excessive amount of time spent typing papers and forms. Her poor performance created work backlogs which disrupted the efficiency of the office and in several instances threatened its funding through grants. Based on this situation Paul Kaesberg took the necessary steps to discharge the Appellant. She was formally discharged on April 4, 1974.

Conclusions of Law

We conclude that Respondent has shown by the greater weight of the credible evidence that the allegations in the discharge letter of April 4, 1974 are true. We also conclude that just cause existed for the termination of her employment. Appellant objects to the use of any evidence outside the time period from September 25 to October 8 of 1973. The objection is that events outside that

time period are not described with sufficient specificity to meet the notice requirements of the "5-W" test of Beauchaine v. Schmidt, Wis. Pers. Bd. Case No. 73-38 (October 18, 1973). We do not feel the resolution of this objection is necessary. The specified time period provides sufficient evidence of the Appellant's inadequate job performance. Thus, for purposes of evidence relating to Appellant's job performance, we have confined our attentions to the requested period of time. This approach does not mean the Board has not looked to events outside the specified period for evidence which relates only to the question of whether the discipline imposed was excessive under all the circumstances. See Zehner v. Weaver, Wis. Pers. Bd. Case No. 74-98 (February 25, 1975). Applying this approach we conclude that Appellant's work performance was in fact inadequate. Further, we conclude that, because the Appellant knew her work was being monitored and because previous warnings and attempts to improve her work had failed, the time period was adequate for just cause despite the limited time involved.

Appellant argues that just cause requires Respondent to have established and communicated objective standards by which her job performance could be measured. The record indicates that such standards were provided. The letter of September 25, 1973 gave specific examples of why Appellant's work was unsatisfactory. Except for one incident, all the allegations in this case involve incidents similar to the specific examples given in that letter. The only exception deals with the excessive amount of time spent typing certain papers and forms. Given the amount of typing involved in those tasks, Appellant's performance would fail any objective test for a professional typist. We therefore find the standards sufficiently objective to meet the requirements of just cause.

The argument that Respondent selected only Appellant's work items which would show poor performance is without merit. Testimony on the record indicates that the items were representative of her work. Moreover, Respondent is required to prove his case and he need not prove his case by cluttering up the record with evidence of both good and bad work.

Appellant argues that just cause requires that she be progressively disciplined before being discharged. She cites Townsend v. Schmidt, Wis. Pers. Bd. Case No. 73-170 (January 3, 1975) and McManus V. Weaver, Pers. Bd. Case No. 73-171 (March 29, 1974). Townsend supra at page 2 has only the following to say which in any way relates to progressive discipline:

> "Appellants lateness and failure to call in was just cause for his discharge in view of his record of having been guilty of similar infractions of the rules in the past and having been disciplined for such infractions."

Townsend does not require progressive discipline but rather indicates that similar infractions and disciplinary actions can support a finding of just cause. In short, evidence of progressive discipline is sufficient but not necessary for a showing of just cause.

McManus deals with the question of whether an appointing authority must be the one to discharge an employe. The case has nothing to say about progressive discipline except that in quoting Bureau of Personnel Guidelines for Handling Disciplinary Actions the following reference is made:

> "When counseling fails to lead to the solution of an employe problem, disciplinary action may be taken..."

We do not find this an endorsement of the concept of progressive discipline. Even if it was such an endorsement, the counseling of Appellant in this case would meet the necessary requirement. We conclude that Appellant was not denied a showing of just cause for failure to impose progressive discipline.

Appellant objects to the use of her errors in sorting mail to show her poor job performance. Her argument is that she could not be assigned such duties and therefore is not accountable for her mistakes. Appellants only mail duties were to separate the mail for certain professors and place the mail in their faculty boxes. This task did not make her a mailing clerk. The task could well fit within the specifications of her typist 3 position though not specifically mentioned in those specifications.

Appellant's final argument is that Respondent was required by law to provide her with some form of alternative employment. Section 16.32(2) Wisconsin Statutes provides:

> "(2) When an employe becomes physically or mentally incapable of or unfit for the efficient and effective performance of the duties of his position by reason of infirmities due to age, disabilities, or otherwise, the appointing authority shall either transfer him to a position which requires less arduous duties, if necessary demote him, place him on a part-time service basis and at a part-time rate of pay or as a last resort, dismiss him from the service..."

If this provision applied, Respondent would be required to attempt to find alternative employment for the Appellant. The record contains insufficient evidence to show that Appellant's poor performance resulted from any infirmity, disability or poor health. No evidence was placed on the record to show that a disability or infirmity interfered with Appellant's typing or ability to complete her job assignments in a timely and accurate manner. The Appellant must provide such evidence in order to qualify under this section of the Wisconsin Statutes. Mahoney v. State Personnel Board, 25 Wis. 2d. 311 (1964). Absent such evidence, we conclude that Respondent was not required to seek alternative employment.

Order

It Is Ordered that the Respondent's action in discharging the Appellant is sustained, and this appeal is dismissed.

Dated April 25, 1977.

STATE PERSONNEL BOARD

Laurene DeWitt, Chairperson