

STATE OF WISCONSIN

STATE PERSONNEL BOARD

* * * * *
 THOMAS J. MULVEY,
 Appellant,
 v.
 JOHN C. WEAVER, President,
 University of Wisconsin System,
 Respondent.
 Case No. 76-196
 * * * * *

OFFICIAL

OPINION
AND
ORDER

Before: DeWitt, Wilson, Morgan, Warren and Hessert, Board Members.

NATURE OF THE CASE

This case is an appeal of a discharge pursuant to Section 16.05(1)(e), Wisconsin statutes.

FINDINGS OF FACT

Prior to September 7, 1976, appellant was a permanent employe in the classified service, with status in class as a Typist/Stenographer 3, assigned to the Athletic Department at the University of Wisconsin, Milwaukee.

On September 7, 1976, appellant was notified by letter that he was discharged effective the end of that business day. The following findings of fact concern the circumstances surrounding the discharge:

Appellant was scheduled to take vacation leave from Monday, August 2, 1976, through Friday, August 6, 1976, and he was to return to work Monday, August 8. Appellant went to Los Angeles, California over his vacation and booked his return flight for Monday, August 8. The flight was not scheduled to arrive in Milwaukee until 5:00 p.m. that day. He did not return on that flight. Appellant did not return to work until Friday, August 13. Appellant did not have permission to take the additional four days of leave. He failed to contact his supervisor during that four day period. On August 19, 1976, appellant was formally reprimanded

for the absence.

Following appellant's return from vacation, he was tardy for work on August 31, 1976, September 1, 1976, and September 3, 1976.

In addition to the specific incidents referred to above, there were several other areas of conflict between appellant and his supervisor. The supervisor was not satisfied with the quality of appellant's work, including his typing, taking dictation, and handling the telephone. These factors were the subject of several memorandas and meetings between appellant and the supervisor, beginning as early as June, 1976. There had been no resolution of these conflicts up to the time of the vacation and tardiness incidents, and the general working relationship between appellant and his supervisor was rapidly deteriorating prior to the discharge.

CONCLUSIONS OF LAW

In an appeal from a discharge, the burden is on respondent to "...present evidence to sustain the discharge..." and to prove "... that the discharge was for just cause...". Reinke v. Personnel Board (1971) 53 Wisconsin 2d 123, 132, 141 NW 2d 833. In other words, respondent must prove that appellant committed the acts leading to the discharge, and also that the acts justify the discipline imposed.

Upon the evidence presented at the hearing, we found that appellant was absent from work for a period of four days, from August 8, 1976, through August 12, 1976, with no authorization for the absence. In addition appellant failed to contact his supervisor during that four day period. It is noted that because of the way appellant booked his return flight he could not have possibly returned to work on the date he had advised his employer he would. It was also found that appellant was tardy on August 31, 1976, September 1, 1976, and September 3, 1976.

Thus, respondent has sustained its burden of proving that appellant did indeed

commit the acts leading to the discharge. We turn now to the question of whether the acts committed by appellant justified his discharge. In Safransky v. Personnel Board, 62 Wisconsin 2d 464, 474, 215 NW 2d 37, (1974) the Supreme Court stated that just cause for discharge exists when:

"some deficiency has been demonstrated which can reasonably be said to have a tendency to impair (the employe's) performance of the duties of his position or the efficiency of the group with which he works..."

We find that just cause existed for the discharge in this case, based upon appellant's failure to return to work on time after his vacation, and upon appellant's tardiness. The Wisconsin Supreme Court has held that absence without excuse or authorization is, in and of itself, just cause for discharge. See Jabs v. State Personnel Board, 34 Wisconsin 2d 245 (1967). In addition, the Circuit Court for Dane County has held that unexcused absence, regardless of whether or not the employe was at fault in the unexcused absence constitutes just cause for discharge. Kaestner v. State Personnel Board, Dane County Circuit Court #138-247, April, 1973.

We find no reason present in this case which would merit a conclusion contradictory to the above cases. Appellant's absence was unexcused, and no mitigating evidence was presented at the hearing which sufficiently explained all of the absence or the failure to notify the employer.

Further, incidents of tardiness in and of themselves have been found to be just cause for discharge. See Townsend v. Schmidt, State Personnel Board #73-170, January 3, 1975.

It is concluded that the unexcused absence after the vacation, and the tardiness are deficiencies which do impair the performance of appellant's duties, and the efficiency of the University of Wisconsin Athletic Department. Accordingly, the discharge is concluded to have been for just cause, in compliance with Section

Mulvey v. Weaver, 76-196
Page Four

16.28(1)(a) stats.

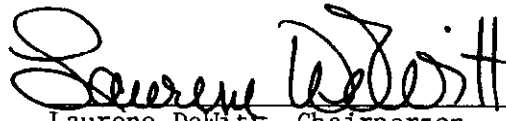
Other grounds for discharge were raised in this appeal. The other grounds raised essentially concerned the quality of appellant's work and the working relationship between him and his supervisor. We made no specific findings with regard to these other issues, since other findings are ample to sustain the discharge.

ORDER

The action of respondent in discharging appellant is sustained and this appeal is dismissed.

Dated August 25, 1977.

STATE PERSONNEL BOARD


Laurene Dewitt, Chairperson