

eating food off patient food carts and playing cards with patients, except on certain wards where card playing was directed by the doctors for therapeutic reasons.

5. During the period of appellant's employment at CSH, abuse by nonsupervisory officers of the foregoing policies on consumption of patient food and playing cards with patients was fairly widespread but not pervasive. A substantial percentage of Officer 3's (sergeants) ignored these rules and themselves violated them. Other Officer 3's observed the policies and enforced them on the wards they supervised. Of higher-ranking Officer 5's, at least one ignored the policies and violated them himself. Other Officer 5's observed the policies and enforced them, but due to administrative responsibilities and the need to supervise the dining hall when food carts were on the wards, had little opportunity to check on whether the policies were being adhered to.

6. Each ward at CSH during the period of appellant's employment had a ward procedures manual.

7. Each manual consisted of one or two loose-leaf binders in which were inserted general directives, policies and memos regarding the operation of the institution as well as specific material for the particular wards, which varied in some cases from ward to ward.

8. The manuals were potentially confusing since there was no system for eliminating superseded or irrelevant material, and the manuals contained outdated and in some cases conflicting documents. Furthermore, new documents usually were posted on the ward bulletin board or placed on a clipboard containing such things as patient charts before being placed in the manual, and might remain on the bulletin board or clipboard

for extended periods (eg, 2 - 3 years) before being placed in the manual.

9. The appellant was assigned on a permanent basis to Ward 2 approximately 3 months prior to his termination, following assignments to a number of wards at the institution.

10. On Ward 2, appellant worked under the supervision of Officer 3 Prill.

11. During the period of appellant's employment on Ward 2, Officer 3 Prill personally adhered to and enforced the policies on consumption of patient food and card playing with patients.

12. Sgt. Prill specifically informed the appellant of his (Prill's) position on these policies, telling him that he did not allow officers to play cards with patients or to eat food off the patient food cart and that infractions could constitute cause for discharge, several times (approximately 10) during appellant's employment on Ward 2.

13. During the course of his employment at CSH, the appellant observed on several occasions Officers 1 and 2 violating the policies on eating patient food and playing cards with patients, and some instances of Officer 3's violating the food policy and one instance of an Officer 5 violating the card policy.

14. The appellant engaged in the consumption of food off the patients' food cart on several occasions (about 5 or 6) including an incident on July 30, 1978, on Ward 2, for which he received a written conduct report by Officer Prill.

15. The appellant engaged in the playing of cards with a patient without authorization on September 18, 1978, on Ward 2, for which he received a written conduct report by officer Prill.

16. Each door to the patients' rooms on Ward 2 contains a small trap

door which provides a means of passing food trays through to the patients when the trap door was down and in a horizontal position.

17. There was a severely mentally-impaired patient on Ward 2 who had an extreme craving for liquids as a result of the administration of large doses of various kinds of medications.

18. This patient frequently would place his plastic cups on the horizontally-extended trap door and request water or coffee.

19. When the trap door was closed when these cups were still on it, the cups would fall into the patient's room.

20. On a number of occasions the appellant witnessed another, permanent, officer on the ward (Tolsma) knock this patient's cups off the trap door as a result of the action of opening the main door to allow the patient out of the room.

21. On a number of occasions, including an incident on October 5, 1978, for which the appellant was given a written conduct report by Officer Wolfcale, the appellant caused the release of the trap door and the dropping of the cups into the patient's room, causing the patient, at least on October 5, 1978, to become upset and agitated.

22. The reason why the appellant took this action was because on previous occasions he had asked the patient to remove the cups from the trap and the patient had taken up to about 10 minutes to remove the cups and the appellant felt he was unable to communicate effectively verbally with the patient as to the removal of the cups from the trap.

23. During the course of his employment at CSH, the appellant had performed satisfactorily in certain kinds of assignments, such as supervising the dishwashing and visiting room, but he also had displayed a

"know-it-all" attitude and his general performance was below average.

CONCLUSIONS OF LAW

1. This case is properly before the Commission pursuant to s. 111.91(3) and 230.45(1)(f), Wis. Stats. (1977).

2. The burden of proof is on the respondent to prove that the action of the respondent in terminating his probationary employment was arbitrary and capricious. See s. 111.91(3), In re Request of the American Federation of State County and Municipal Employes (AFSCME), Council 24, WSEU, AFL-CIO, for a Declaratory Ruling, Wis. Pers. Bd. No. 75-206 (8/24/76); Dsziaadosz v. DHSS, Wis. Pers. Comm. No. 78-32-PC (10/9/78).

3. Arbitrary and capricious action is action which is "either so unreasonable as to be without a rational basis or the result of an unconsidered, wilful, and irrational choice of conduct." Jabs v. State Board of Personnel, 34 Wis. 2d 245, 251 (1967).

4. The respondent's action terminating appellant's probationary employment was not arbitrary and capricious.

OPINION

The appellant did not deny that he had violated the rules on card playing and consumption of patient food. His case rested on the theory that these rules were violated routinely and that these violations were participated in or condoned by the CSH supervisors, and that his training was inadequate.

While the appellant did establish widespread violation and condonation of these rule violations, he did not establish that these were universal. In fact, there were some supervisors, including Officer Prill, who

did adhere to and enforce these rules. Despite a rather sketchy training program, the appellant had ample notice of the existence of these rules on an institutional basis and that his supervisor intended to enforce them on Ward 2. The relatively widespread abuse that existed did not excuse the appellant's violations or make the respondent's reliance on these violations as grounds for termination arbitrary and capricious.

As to the incident involving knocking the patient's cups off the trap door, the appellant argued that this was not improper and that he had observed another guard engaging in somewhat similar conduct. The appellant felt that this was appropriate behavior. Officer Wolfcale, who wrote the conduct report on this incident, felt that this was inappropriate behavior. Another officer who had worked with this patient testified that while he would not have handled the patient in this fashion, in his opinion different officers could appropriately handle situations with patients in different ways. It certainly could not be concluded that the institution's determination that the appellant's handling of this matter was inappropriate and constituted grounds for discharge was arbitrary and capricious.

The appellant presented testimony from some officers that his performance of certain aspects of his work was satisfactory. The respondent produced testimony as to the appellant's overall below average performance and poor attitude. Taking into consideration all of the evidence presented, it can not be concluded that the termination of appellant's probationary employment was arbitrary and capricious.

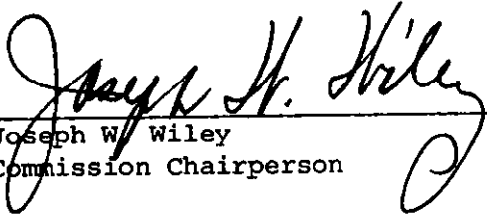
The appellant pointed out a number of institutional problem areas, including inadequate training, widespread abuse and inconsistent enforcement of certain rules, and out-of-date and conflicting ward manuals. While

these did not lead to a conclusion that the appellant's termination constituted arbitrary and capricious action, as discussed above, they appear to have contributed to a number of personnel as well as other problems at the institution and hopefully can be addressed by the respondent.

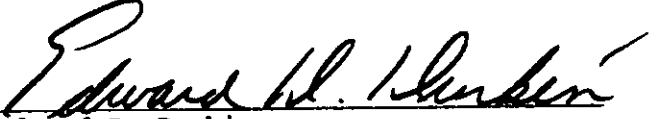
ORDER

The respondent's action terminating appellant's probationary employment is affirmed and this appeal is dismissed.

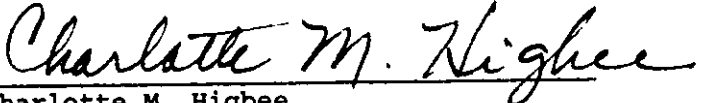
Dated: May 8, 1979. State Personnel Commission



Joseph W. Wiley
Commission Chairperson



Edward D. Durkin
Commissioner



Charlotte M. Higbee
Commissioner

AJT:skv

4/2/79