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JUNE R. LAXTON,  
 Appellant,

v.  
 DEPARTMENT OF TRANSPORTATION,  
 Respondent.

Case No. 78-247-PC

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DECISION

NATURE OF THE CASE

This is an appeal from a termination of probationary employe pursuant to section 230.45(1)(f), Wis. Stats.

FINDINGS OF FACT

1. The appellant began working for the Department of Transportation on May 8, 1978, as a Supply Clerk 2 at District 6 Headquarters of the State Patrol.

2. Although being a former state employe, a youth counsellor for 29 years, she was required to serve a six-month permissive probation period. The appellant was notified of this in her appointment letter.

3. The appellant was the first woman to hold the position of Stock Clerk at District 6 of the Wisconsin State Patrol. She passed a physical test on various strength-related jobs during her interview for the job.

4. During her interview she was asked questions relating to her husband's employment. During her orientation rounds to fuel dissemination stations and around the work place some comments were made about her being a woman and that she was doing a man's job.

5. The appellant's supervisor, Gerald Tisdale, formerly held the position of Stock Clerk 2 at District 6. On numerous occasions he told others in the office that the appellant would not make it through her probationary period.

6. The Commander of District 6, Perry L. Griffith, worked across the hall from the appellant's work station. Captain Griffith is prone to using loud and vociferous language at the work place.

7. Captain Griffith was displeased with work-related job assignments of appellant. His voice was heard by the appellant even though she was not in the same room.

8. The appellant's on-the-job training was confined to direct supervision by her immediate supervisor for a couple of days. The rest of her training was to answer questions she had or to bring to her attention mistakes she had made.

9. The appellant had difficulties learning some of her tasks during the period of time she was employed at District 6. The appellant felt that her immediate supervisor was harsh in his treatment of her when she made mistakes and she brought this to the attention of his supervisor.

10. The appellant made various mistakes in the mail system, including incorrect postage, incorrect mailing of 1st and 3rd class mail, and placing incoming mail in the wrong place. Her methods of placing outgoing mail in the individual boxes for officers were also inefficient.

11. There were numerous instances of supplies being stored incorrectly in the store room. These functions were under the appellant's responsibilities. The appellant denied that she had made those mistakes. Other

people, including her immediate supervisor had access to the store room after the appellant left work each day.

12. Female office co-workers had assisted her immediate supervisor with mailings when he was a supply clerk, especially on Fridays. They were not allowed to help the appellant with the mailings and they were discouraged from helping the appellant in any of her work.

13. The mail system was changed by the management shortly after the appellant started working. The system was designed to make the separation of 1st and 3rd class mail easier, which it did. However, it did cause troopers to have to check two boxes, which caused some of them to complain to the appellant. This added to her state of nervousness.

14. A letter was sent by Captain Griffith to Administrator Harvey in Madison. The deadline was a Monday. It was placed in the basket to go in one large envelope to headquarters in Madison. The only address on the small envelope was "Administrator Harvey." The letter was later sent out individually - 1st class - but was returned for insufficient address since it had not gone out in the large envelope. The letter actually returned to District 6 on Monday, the same day it was due in Madison.

15. On Tuesday, July 11, Captain Griffith gave the appellant his own personal pistol to clean. His manner was hostile and made the appellant extremely nervous. She spent most of the day cleaning the pistol. The appellant considered the gun cleaning as discipline for the mix-up of the letter to Administrator Harvey. Cleaning weapons is not part of the job description of the appellant.

16. The appellant became fearful of her three male supervisors and she became very nervous about her job.

17. Captain Griffith denied the gun cleaning was discipline and gave his reason as it being good experience for the appellant and he did not have time to do it himself. Captain Griffith also denied knowing if other troopers clean their own guns.

18. Captain Griffith noticed a number of large envelopes being sent to a number of troopers with 1st class postage. He suspected that, from the size of the envelopes, the contents should go out 3rd class. He asked the appellant's supervisor, Tisdale, if he knew of any large amount of 1st class that was being sent out. Tisdale knew of none. No attempt to stop the mailing was made but, instead, Captain Griffith contacted one of the troopers in Nielsville and told him to return the envelope when he received it and to inform Captain Griffith what was in it. It was all "junk" mail.

19. Captain Griffith also observed the appellant putting an individual note on each trooper's stack of mail, then placing the mail in the trooper's boxes, rather than just putting each stack in each trooper's mail box. This was a waste of time by appellant.

20. A group of Elka Sensors, a device for screening people suspected of driving while intoxicated, were given to appellant to label. Lieutenant Price told her how to accomplish the task, which she wrote down. Each label was to include both the trooper's names and WSP number. However, appellant stamped out only the names on each label until corrected by Lieutenant Price.

21. The appellant was instructed by Lieutenant Price and her immediate supervisor to make sure that, when issuing tires, the treads and brand of tires be identical, yet the appellant issued different tires to trooper's autos. These mistakes were observed by her supervisors and corrected by

appellant before the tires were installed on the patrol vehicles.

22. The appellant had difficulty in filling orders on the supply forms. Many had to be corrected by her supervisors. Some mistakes were not corrected until improper amounts were received into the supply room.

23. Captain Griffith asked the appellant's supervisor to start documenting mistakes of the appellant and any corrective procedures given her in June of 1978, one month after she had started working at District 6.

24. The appellant's mistakes were discussed with her by her three supervisors at various times. The appellant's evaluation of August 31, 1978, indicated that she was not progressing at a satisfactory rate to pass probation. This report was given to the appellant.

25. The appellant was terminated on October 21, 1978, and appealed to the Personnel Commission on October 23, 1978.

#### OPINION

The decision of the Commission in this case rests with the testimony of Lieutenant Price. He had personal knowledge of the repetitive mistakes made by the appellant that indicated she did not meet the basic requirements of Stock Room Clerk 2. Another important aspect of her probation was the intermediate report when she was notified she was not up to standards. Also, appellant was given the full six months to bring her work up to standards before being terminated.

However, the record in this case had a proclivity of sex discrimination that the Commission would be negligent to bypass without comment. Testimony and written statements by co-workers of the appellant indicate that they felt she was being discriminated against because she was taking over a job

that had always been held by a male in the past.

Neither the appeal or the defense of the respondent was based on sex discrimination charges. Therefore, no conclusion can be drawn on the information in this record. Some of the evidence, however, indicates there may be valid reasons for the co-workers' feelings.

It is the feeling of the hearing examiner that Captain Griffith, the District Commander, was not being truthful when he denied questions were asked of the appellant about her husband's job during her oral interview. The hearing examiner also accepted the appellant's statement rather than Captain Griffith's denial that she was being disciplined in the gun cleaning incident of July 11 and her statement that the Captain made remarks to her about thinking that the gun cleaning was police brutality.

The Captain's automatic acceptance of the appellant being the blame for shells being mixed together, forms being mixed together, light bulbs being mixed, and letters being sent out incorrectly just because such tasks were part of the appellant's area of responsibility dissipated his judgment in the eyes of the hearing examiner. His statement, "It never happened before," ignores the fact that the job was never done by a woman before and, at least a small possibility existed that someone might do those little tricks to make the appellant look incompetent.

The appellant's immediate supervisor's denial of statements about, "having a woman riding around with you," didn't fit with his admission about being unhappy about the kidding he was taking about a woman replacing him. His very early statement to fellow workers that the appellant would not pass probation also indicates a lack of sensitivity if nothing more.

It is quite possible that both Mr. Tisdale and the appellant were honest in their statements as to his corrective methods in her training. She felt he was harsh and critical. He felt that he was not. This being his first supervisory position and first training of a female employe could account for the parties to have opposite opinions.

The undisputed fact in the case is that the appellant became very nervous in trying to accomplish her job in a manner acceptable to her supervisors. How much, if any, of the blame for her nervousness is attributable to the treatment she received from her supervisors is impossible to determine based on the record. The record does provide sufficient information to make a determination whether the termination was arbitrary and capricious.

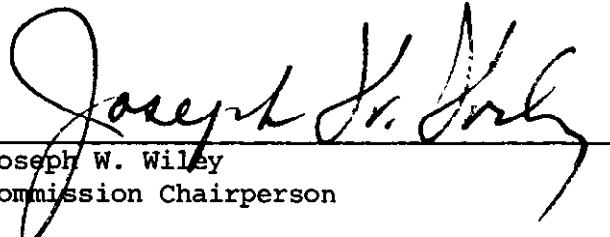
#### CONCLUSIONS OF LAW

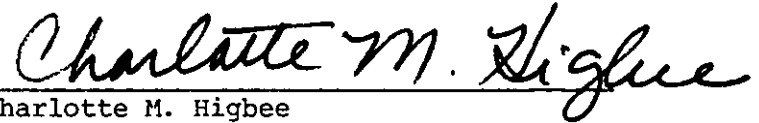
1. This case is properly before the Commission pursuant to s. 230.45 and 111.91(3), Wis. Stats.
2. Review of the respondent's action is limited by s. 111.91(3), Wis. Stats., to the test of "arbitrary and capricious" action.
3. The burden to proof is on the appellant to establish to a reasonable certainty by the greater weight of clear preponderance to the evidence that the respondent's action was arbitrary and capricious.
4. The appellant here has not met that burden of proof.
5. The termination of the appellant as a probationary employe is sustained.

ORDER

The action of the respondent terminating the appellant's probationary employment is sustained and this appeal is dismissed.

Dated: July 5, 1979. State Personnel Commission

  
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Joseph W. Wiley  
Commission Chairperson

  
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Charlotte M. Higbee  
Commissioner

CMH:skv

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