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 *
 LORETTA TALIAFERRO, *
 *
 Appellant, *
 *
 v. *
 *
 Secretary, DEPARTMENT OF HEALTH & *
 SOCIAL SERVICES, *
 *
 Respondent. *
 *
 Case No. 81-252-PC *
 *
 * * * * *

INTERIM
 DECISION
 AND
 ORDER

NATURE OF THE CASE

This matter is before the Commission on the question of whether the transaction in question was a termination of probationary employment. The parties have filed written arguments. The essential facts relating to the characterization of the transaction do not appear to be in dispute and are set forth in the following findings.

FINDINGS OF FACT

1. Following a transfer from a Work Processing Operator 2 (WPO 2) position, in which she had permanent status in class, appellant began work as a WPO 2-Lead in the Division of Policy and Budget on December 1, 1980.
2. The appellant was required to serve a 6 month permissive probation.
3. On May 22, 1981, the appellant received a letter from the division administrator which stated in part as follows:

"This is to inform you of our intention to terminate your employment in the Division of Policy and Budget effective May 29, 1981, due to your failure to meet probationary standards."
4. This followed a meeting on May 20, 1981, at which the appellant was advised verbally that her termination would be requested on the ground of inadequate performance.

5. On May 27, 1981, the appellant received a letter informing her that she would be terminated effective May 29, 1981. This letter enclosed a revised probationary service report.

6. The appellant worked the entire day of May 29th in Policy and Budget and started work in Community Services (where she had been employed prior to her transfer) on June 1, 1981.

CONCLUSIONS OF LAW

1. The appellant has not obtained permanent status in class as a WPO 2-Lead.

2. This appeal is that of a terminated probationary employee.

OPINION

The appellant argues that she attained permanent status in class pursuant to s. Pers 13.10, Wis. Adm. Code, and therefore was not subject to termination of probation.

See Pers 13.10 provides as follows:

"If the performance of an employe serving a probationary period has been satisfactory, the appointing authority shall notify the employe in writing that the employe will receive a permanent status in class. Permanent status in class is gained immediately upon completion of the last assigned work period of the probationary period. No employe shall be denied permanent status in class after successfully completing a probationary period because an appointing authority fails to submit notice."

This rule must read in conjunction with s.230.28(2), Stats.:

"A probationary employe's supervisor shall complete a performance evaluation under s.230.37 of the employe's work. The evaluation shall be in writing and shall indicate whether or not the employe's services have been satisfactory and whether or not the employe will be retained in his or her position. A copy of the evaluation shall be given to

the employe a reasonable time before the completion of the employe's probation. An employe shall gain permanent status unless terminated by the appointing authority prior to the completion of his or her probationary period."

In the context of the entire subsection, the word "terminated" it read most appropriately as a reference to the notification to the employe that he or she will not be retained. The statute provides that the appointing authority is to make a written evaluations which indicates whether or not the employe will be retained, is to give the documnt to the employe a reasonable period of time before the completion of probation, and that the employe gains permanent status unless terminate - i.e., given such notice - before the completion of the probationary period.

With respect to s. Pers 13.10, the sentence relied on by the appellant must be read in the context of the enabling statute and the entire text of the rule. The rule begins by stating that if the employe's performance is satisfactory, the appointing authority is to notify the employe in writing that he or she will receive permanent status in class. The next sentence sets forth when such permanent status in class is to be effective - "Permanent status in class is gained immediately upon completion of the last assigned work period of the probationary period."

Inasmuch as the appellant was notified in advance of the completion of her probationary period that her performance was unsatisfactory and that she would not be retained, she failed to attain permanent status in class, and this appeal is that of a terminated probationary employe.

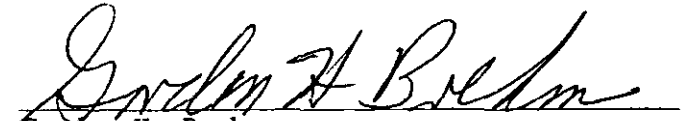
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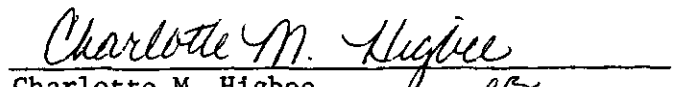
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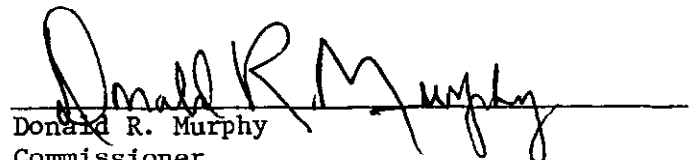
The appellant's request for a determination that the appellant
achieved permanent status in class is denied.

Dated Sept. 3, 1981

STATE PERSONNEL COMMISSION


Gordon H. Brehm
Chairperson


Charlotte M. Higbee
Commissioner


Donald R. Murphy
Commissioner

AJT:mgd

Parties

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