
WILLIAM C. RUFF,

Petitioner,

vs.

Case No. 81 CV 4455

STATE PERSONNEL COMMISSION,

Respondent.

We have read the entire transcript and exhibits as well as the briefs submitted. The case results from the discharge of petitioner by the State Investment Board. The respondent offered the discharge of petitioner from his employment as an Administrative Officer 2, Assistant Investment Director for Public Bonds.

Petitioner's appointment was made on the basis of his eligibility for mandatory reinstatement and his score of over 70 on the application. He was not required to serve a probationary period. He had had experience as Research Analyst 4 with the bond portfolio. Petitioner's supervisor expected him, with some direction, to be at full performance level on assuming his duties as AO2.

Although petitioner had experience in the State Investment Board with mortgages, he had little basic knowledge of public bonds, their markets and trading. The evidence clearly shows that His supervisor attempted to explain the requirements of petitioner position and what was expected of him and suggested educational aids such as books to assist petitioner in the performance of his work.

After four months petitioner did not improve his performance and it was concluded that he was not competent to perform his position and his discharge resulted.

There were two reprimands made. One for failure to complete assignments by the time designated and one for failure to properly supervise the progress of a credit review program.

There was evidence offered and received to justify the reprimand.

While employed at a level of RA4 petitioner had phoned the governor's office to comment on the appointment of trustees to the Investment Board. On questioning by a supervisor about the incident a week or two later he claimed he could not remember what he had said and was evasive in his answers. For his evasiveness he was reprimanded. The evidence of this incident is adequate to support the finding of it as a fact.

The reason for discharge was the conclusion that petitioner was not competent to perform as AO2 and his performance as RA4 had not been wholly satisfactory, so he was not demoted.

It is the contention of petitioner that there was not just cause for the discharge. The questions to be addressed on whether the conduct which formed the basis of the discharge occurred and whether it constituted just cause for discharge. As to each question the court must determine whether there is substantial evidence to support the findings of the respondent in view of the record as a whole, *Safra v. Personnel Board*, 62 Wis. 2d 464; 215 NW 2d 379 (1974).

The evidence clearly shows that petitioner repeatedly failed to meet deadlines on the work assigned to him. It also shows that the work done by him was not satisfactory. The argument that petitioner's deficiencies were the result of a failure by his supervisors to provide adequate training is based on a conclusion that his performance was less than adequate.

The petitioner contends that there should have been allowed from six to twelve months of training before petitioner should be judged on his competency to perform satisfactorily. Petitioner does not point out any rule or statute which requires that the agency establish any training program. The evidence shows that petitioner's supervisor did attempt to assist petitioner and suggested studies to improve petitioner's understanding of the duties and responsibilities of the position. The evidence does show that petitioner's performance did not improve as time progressed. His continued failure to meet deadlines was the principal element in the determination that he was not competent to perform as A02.

The findings of fact are voluminous and there is substantial evidence in support of each. There is substantial evidence to support each finding. It is true that there may be evidence which would support some contrary findings. For instance, it is the claim of petitioner that petitioner did not get adequate training. There being no fixed standard of how much training of instruction, if any, is adequate, it becomes a matter of the judgment of the fact finder. The fact finder did recognize that he was given training and instruction and that it was adequate and there is substantial evidence to support the finding. It is not to say that a different result might not have been reached, but it is not the power of the court to second guess the Commission so long as the Commission's findings are supported by substantial evidence, *Reinke v. Personnel Board*, 53 Wis. 2d 123; 191 Nw 2d 833

What is just cause, Sec. 230.34(1)(a), is a question which must be determined in each case. The word "just" may be equated with reasonable or well founded. In any industry the failure of an employee to perform his assigned tasks would lead to discharge. The failure to perform assigned duties has been held just cause for discharge, *Maloney v. State Personnel Board*, 25 Wis. 311, 130 Nw 2d 245 (1964). Whether it be inability to perform or unwillingness is not determinative of the reason for failure to perform. The result is the same; the failure to perform. It is only fair and right that a person in public service be expected to perform the tasks which are a part of the position and if for any reason he cannot or will not perform, the public service suffers. This is enough reason to terminate him in the position so that one may take his place and perform the duties of the position. It is not reasonable to retain one in a service when his performance is not adequate. It is reasonable or just to discharge him.

Petitioner takes the position that his discharge was excessive punishment. There are times, of course, when misconduct results in disciplinary action. On the other hand, a discharge because the employee does not perform his work is not disciplinary in character. It is not punishment for wrongdoing, but rather is a termination of the employment even though no wrongdoing or intentional misfeasance is involved. The discharge in this case was for simple incompetence. Whether the discharge was appropriate is a matter of judgment for the Commission to determine.

The reprimands were incidents in the progress of the performance of the position. In and of themselves they were not the basis for the discharge. Rather as stated in Finding 30: "The basis of the cause (to terminate) was appellant's lack of competence in the position, and his failure to improve."

There is nothing in the statutes or rules which require demotion rather than discharge. While he could have been demoted, this again was a matter of judgment and it is not a matter for the court to pass on except to determine if there is substantial evidence to support the finding that there was just cause for discharge. It is distressing that petitioner has lost his job, but there is a limit to what the court can do. We are unable to determine that the action of the Commission was arbitrary, capricious and not based on substantial evidence. We must affirm the Commission.

The Attorney General will prepare the proper judgment, submit it to the approving attorney for approval as to form and submit it to the court for signature.

Dated this 23 day
of July, 1982.


BY THE COURT

CC: Richard V. Graylow, Attorney at Law
✓ Mr. Robert J. Vergeront, Assistant Attorney General
Judge Jackman