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 *
 JEROME J. NUTER, *
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 Appellant, *
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 v. *
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 Secretary, DEPARTMENT OF *
 HEALTH AND SOCIAL SERVICES, *
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 Respondent. *
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 Case No. 82-148-PC *
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DECISION
 AND
 ORDER

This action is an appeal by the appellant Jerome J. Nuter of a one day suspension without pay received by him from his employer, the respondent Department of Health and Social Services (DHSS).

FINDINGS OF FACT

1. The appellant Jerome J. Nuter works as a Unit Supervisor in the Bureau of Community Corrections (BCC), Southeast Region, DHSS, Racine, Wisconsin.

2. On May 10, 1982 a detective of the Racine Police Department contacted the appellant about a client (parolee), who was a suspect in an assault of an elderly man. At the time, supervision of the client was being transferred from the Kenosha BCC to the Racine BCC. The Kenosha office supervisor had contacted the Racine office by telephone and advised them of the transfer and the parole status of the client. The client's file was forwarded to the Racine office by mail on the same day.

The appellant was not aware of the telephone contact with the Kenosha BCC office, he found no record of the client in the card file and advised the detective that he would follow-up on the matter and report back to him.

After the detective left, the appellant checked with the front office and was informed that the client in question was on supervision with their office but they had not received the parole file.

3. On May 11, 1982 the client's parole file arrived in the Racine BCC office and was available to appellant. Information in the file included a statement that the client was on parole for being convicted of endangering safety by conduct regardless of life (gun) and burglary.

The appellant instructed a parole agent to contact the client and have him report to the Racine BCC office on May 12, 1982.

4. The client reported to the Racine BCC office on May 12, 1982. The appellant called the detective at the Racine Police Department, but he was not in. The appellant left a message that the client was in the Racine BCC office and that the detective should contact the appellant concerning the next steps.

After reporting to the Racine Police Department, the appellant talked with the client and arranged for his return to the supervision of the Kenosha BCC office. The client reported to the Kenosha office that afternoon.

5. Upon the return of the client to the supervision of the Kenosha BCC office, his parole file was first reviewed on May 14, 1982. The parole agent in consultation with his supervisor determined from reading appellant's notes that the client should be detained under §HSS 328.22(1) Wis. Adm. Code. Subsequently an apprehension request was issued and on May 17, 1982 the client was taken into custody.

6. On June 11, 1982 a predisciplinary hearing of the appellant was held by the chief of the Southeast Region, BCC and it was recommended that appellant be disciplined.

7. On June 22, 1982 appellant was sent a disciplinary letter, suspending him for one day without pay for failing to detain the client in question for violating §HSS 328.22(1) Wis. Adm. Code and failing to inform the Kenosha BCC office that the client was an assault suspect. The disciplinary action was appealed to this Commission by the appellant within 30 days of notice of same.

8. Section HSS 328.22 Wis. Adm. Code (1982) provides:

Whenever feasible, staff shall rely on law enforcement authorities to take a client into custody. When such assistance is not practical, field staff shall take clients into custody in accordance with this section.

- (1) A client shall be taken into custody and detained if the client has a record of prior assaultive or dangerous conduct and is arrested for any reason or is involved in assaultive or dangerous conduct. A regional chief may permit exceptions to this subsection.

Subsequent to publication, copies of §HSS 328.22(1) were issued to all unit supervisors in BCC including the appellant. This section of the administrative code was extensively discussed at unit supervisor meetings, which were attended by the appellant. At these meetings it was stressed that §HSS 328.22(1) Wis. Adm. Code required the taking into custody for public safety any client involved in assaultive behavior, however remote. By February, 1982 this particular interpretation of §HSS 328.22(1) had been articulated to all BCC unit supervisors.

8. At the time appellant failed to take the client in question into custody, he had full knowledge of the interpretation of §HSS 328.22(1) Wis. Adm. Code articulated by the Bureau of Community Corrections.

CONCLUSIONS OF LAW

1. This appeal is properly before the Commission pursuant to §230.44(1)(c) of the Wisconsin Statutes.

2. The burden of proof is on the respondent to show just cause for the discipline imposed.

3. Respondent has satisfied its burden.

4. There was just cause for the one day suspension without pay imposed in this matter.

OPINION

The evidence in this case is clear. Prior to the events at issue in this matter, DHSS, as a result of several assault cases involving parolees, developed and codified new administrative rules regarding parolees who were suspects in assaultive acts against a member of the public. These rules were widely discussed in the Bureau of Community Corrections. The appellant attended several BCC regional training sessions where the meaning and implementation of §HSS 328.22(1), Wis. Adm. Code was extensively discussed. At these training sessions it was stressed that a client must be taken into custody if he or she were, in any way connected to assaultive conduct. In addition, as unit supervisor, appellant received a copy of these rules. All of these events took place by February, 1982.

Based on uncontroverted evidence, on May 10, 1982 the appellant knew that the client in question was on supervision and was a suspect in an assault case. Had the appellant followed the bureau's interpretation of §HSS 328.22(1), Wis. Adm. Code, he should have detained that client, but he failed to do so.

The Commission is not persuaded by appellant's arguments that §HSS 328.22(1) is subject to many interpretations, he was confused ^{FN} and other staff personnel were not disciplined for similar offenses. The record does not support these arguments.

The purpose of §HSS 328.22(1) is to prevent parolees convicted of assaultive acts, and suspected of involvement in similar assaultive conduct, from causing further harm to the public. While no public harm was caused in this instance by appellant's failure to comply with the rule, the potential existed. Accordingly, the discipline imposed by the respondent was appropriate.

^{FN} The Commission adds the following footnote to the proposed decision and order to more clearly state the reasons for its decision: The appellant was given very specific training as to the respondent's interpretation of the new rule. The appellant was required to apply the rule in a manner consistent with the interpretation supplied by the respondent through the training sessions. Therefore, the Commission does not reach the question of whether the rule is subject to different interpretations.

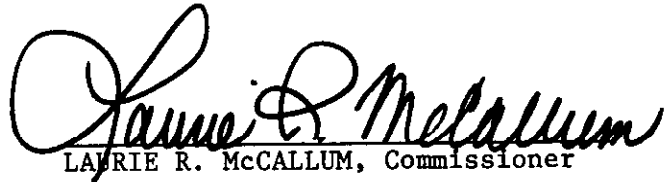
ORDER

The action of the respondent is affirmed and this appeal is dismissed.

Dated: July 21, 1983 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

DRM:lmr


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

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