STATE OF WISCONSIN PERSONNEL COMMISSION

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MICHAEL F. CONLEY,

Complainant,

v.

Secretary, DEPARTMENT OF HEALTH AND SOCIAL SERVICES,

Respondent.

Case No. 84-0067-PC-ER

* * * * * * * * * * * * * * * * *

DECISION
AND
ORDER

This matter is before the Commission following the promulgation of a proposed decision and order by the hearing examiner. The Commission has considered the parties' arguments and objections as to the proposed decision and order, and has consulted with the examiner.

The proposed decision determined that respondent terminated complainant's employment because of his handicap, but that the termination was not illegal employment discrimination because the action came within the exception set forth at §111.34(2)(a) and (c), Stats.; i.e., the handicap was reasonably related to complainant's ability to adequately undertake the job-related responsibilities of the complainant's employment, which employment involved a special duty of care. The proposed decision also determined that respondent had not violated its duty under §111.34(1)(b), Stats., as to accommodation.

In his response to the proposed decision, complainant objects to the proposed conclusions of law on the ground that they fail to reflect that complainant satisfied his initial burden of establishing that he was handicapped and that respondent terminated his employment because of his

handicap, thus shifting the burden of proof to respondent with respect to what amounts to an affirmative defense under §111.34(2), Stats. (inability to perform). The proposed conclusions fail to adequately reflect this analysis,[1] and will be modified accordingly.[2]

Complainant further argues that it was established through respondent's own admission that it did not and could not satisfy its burden of proving that complainant could not perform the job due to limitations imposed by his handicap:

> Extraordinarily egregious is Regan's admission that he failed to evaluate the new Tower 1 assignment to determine whether Mr. Conley could perform the job. Regan's admission is direct evidence of illegal conduct insofar as it proves that respondent made absolutely no effort whatsoever to evaluate Conley's ability to undertake the job duties of the new Tower 1 assignment. Regan could not have known whether or not Conley could not perform his job because he did not even consider Conley for the job. This is illegal. The employer must prove that at the time of discharge, it knew complainant could not do the job. This is clearly the respondent's burden of proof and it did not and cannot satisfy it. Complainant's brief in support of objections to proposed decision, p. 3.

The "admission" to which complainant refers is contained in Mr. Regan's testimony as follows:

> Q. Do you admit that you made no effort to identify specific job duties that Conley would be unable to perform?
>
> A. As an officer?
>
> Q. Yes.
>
> A. Yes
>
> * * *
>
> Q. ...what are the responsibilities in that tower that -- that you feel the complainant would not be able to perform?

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[1] Brown Co. v. LIRC, 124 Wis. 2d 560, 564, 369 N.W. 2d 735 (1985).

[2] The "Opinion" portion of the proposed decision reflects that the examiner in fact did go through the analysis set forth in Brown Co., although this was not captured precisely in the conclusions.

> A. Well, at this point, without having a -- a doctor's report to determine, y'know, what his restrictions might be, I couldn't make that judgment. T., Vol. 2, pp. 121-122, 168.

By way of background, two factors relied on by respondent when it decided to terminate complainant's employment were the requirement that an Officer 2 be able to perform all the duties set forth in the standard Officer 2 position description, not just the duties associated with a specific post,[3] and the statements provided by complainant's orthopedic surgeon. These statements, in the context of complainant's repeated absences and respondent's policy that required injured employes to have a statement from their physicians indicating they were physically able to return to work, were completely consistent with the conclusion that complainant simply could not perform Officer 2 duties:

> ...Michael Conley will most likely never return to his old job duties. He can, however, at this time, engage in sedentary work.... Letter dated May 21, 1984, from Dr. Keene.
>
> ...The problem he is currently having is a result of his old injury and he should not be considered able to perform his normal duties. Mr. Conley, in my opinion, should be considered for vocational rehabilitation. Note from Dr. Keene dated September 30, 1983.

The respondent was justified in, and the record supports, the conclusion that complainant was physically unable to perform Officer 2 duties. There is no reason why respondent could not rely on the more general statements of complainant's physician about complainant's condition and physical capabilities rather than attempt to analyze each specific duty in question. Respondent was entitled to assume, and it can be inferred, that

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[3] As will be discussed below, in the Commission's view, this requirement is proper.

Dr. Keene's May 21, 1984, opinion encompassed complainant's assignment to the "new" Tower 1 post, because complainant had received that assignment in January 1984.

In the proposed decision, the examiner scrutinized the particular physical aspects of the duties and responsibilities associated with the "new" Tower 1 post in the context of complainant's limitations. While in light of the above, it probably was unnecessary to have done this, it was not objectionable.

Complainant contends that the examiner erroneously based his conclusion as to the new Tower 1 post solely on the accident that occurred on or before May 16, 1984, in which complainant reinjured his knee:

> The Examiner also erred in concluding that the complainant could not safety perform Tower 1 duties based on the incident of May 16, 1984. (Proposed Decision, at 17).
>
> As will be argued seriatum, the employer cannot meet its burden of proof on the attenuated relationship between this incident and the inability to perform the Tower 1 assignment. Equally important, and the crux of this objection is the fact that the May 16th incident was not known to the respondent at the time it terminated him. This evidence was not disclosed until the hearing and was not considered by the respondent in its decision to discharge the complainant. Accordingly, such evidence is after-the-fact and not relevant to prove that the employer's decision was justified.
>
> Furthermore, irrespective of the relevance of the above evidence, it is submitted that the Examiner reached a generalized conclusion about the complainant's ability to perform Tower 1 duties based entirely on this one event. The Examiner's conclusion simply does not follow. Evidence of a single isolated injury does not prove that complainant cannot perform day-to-day job responsibilities in the new Tower 1. Complainant's physician indicated that Mr. Conley could perform sedentary work. The Examiner concluded that the new Tower 1 assignment was primarily sedentary. (Proposed Decision, at 16.) Therefore, in the absence of any convincing medical evidence to the contrary, the work to be performed within the new Tower 1 is the work within complainant's medical restrictions per Dr. Keene's report. The Examiner erroneously relied upon a single, isolated incident as an ultimate finding of complainant's inability to perform his job. Respondent was not even aware of this incident until this proceeding. Since the Examiner found that the Tower 1 job was sedentary work and the respondent failed to introduce any convincing evidence to the contrary, complainant submits that

> respondent failed to satisfy its burden of proving that the complainant was unable to perform the job-related duties of the Tower 1 assignment...." Complainant's Brief, pp. 3-4.

To begin with, the examiner's discussion of the "new" Tower 1 post on pp. 16-17 of the proposed decision is inconsistent with the conclusion that he based his conclusions solely on the May 16th incident. Furthermore, the Commission disagrees that the May 16th incident cannot be considered because it was not known to respondent at the time of termination. The record reflects that Dr. Keene examined complainant on May 17, 1984, and noted the injury. In his May 21, 1984, letter to Mr. Regan, Dr. Keene stated his opinion that complainant "will most likely never return to his old job duties. He can, however, at this time, engage in sedentary work...." The May 16th injury obviously was part of complainant's medical history at the time Dr. Keene wrote this letter and proffered this opinion. It simply does not follow, either because Dr. Keene did not detail this injury in his letter or because the injury did not become known to respondent at the time by other means, that respondent is somehow estopped from now pointing this out in attempting to defend its decision.

Also, the Commission disagrees with the assertion that because the examiner concluded that the post was primarily sedentary that "in the absence of any convincing medical evidence to the contrary, the work to be performed within the new Tower 1 is the work within complainant's medical restrictions per Dr. Keene's report." Dr. Keene said the complainant could engage in sedentary work. There is a difference between sedentary work and primarily sedentary work. Mr. Regan testified about activities associated with this post, including an incident where the assigned officer became involved in stopping an escape attempt and discharged his weapon from the catwalk. T., Vol. 2, p. 156. This was not a sedentary activity. Also,

as adverted to above, complainant had sought and obtained this posting in January 1984. When Dr. Keene rendered his opinion on May 21, 1984, that complainant could not return to his Officer 2 duties and could only perform sedentary work, it certainly can be inferred that he did not feel this posting was sedentary work. Finally, Mr. Regan testified (T., Vol. 2, p. 133), that he did not consider any officer post to be sedentary, because any officer was subject to being called on to respond to an emergency, or to work overtime in any position. In a correctional setting, the need to respond to an emergency that might transcend the parameters of a given post is always present. Furthermore, the usual relative infrequency of forced overtime in which an employe might be required to work outside his or her normal post assignment is not a basis for disregarding this factor in evaluating the question of the employe's capability to perform his or her job. That argument is further undercut by Mr. Regan's testimony (T. Vol. 2, p. 171) that in addition to the use of forced overtime to replace absent officers, in cases of a disturbance or threatened disturbance, the institution might hold over an entire shift to respond. Regardless of the frequency of such occurrences, the need for a correctional institution to have the latitude to utilize its security staff to respond to emergency situations is clear and cannot be gainsaid.

Therefore, the Commission concludes that the respondent sustained its burden of proof of showing that complainant was unable to adequately perform the duties and responsibilities properly expected of an Officer 2. That portion of proposed finding #29 which states: "Respondent did not consider whether complainant could perform the new Tower 1 assignment...," is somewhat misleading in view of the record, as discussed above, and

should be modified to read: "Respondent did not analyze each specific component of the new Tower 1 assignment to determine whether it could be performed by complainant in light of his physical limitations."

With respect to the issue of accommodation, complainant argues that respondent admitted it made no effort to consider whether it could accommodate complainant's handicap, and there is a per se violation of §111.34(1)(b), Stats.

Proposed finding #29 includes the following: "Prior to terminating complainant's employment, respondent made no effort to consider whether it could accommodate complainant in a CO 2 assignment...." The hearing transcript includes the following testimony by Mr. Regan:

> Q. Sir, do you admit that you made no effort to consider whether complainant's condition could be accommodated?
>
> A. As an officer?
>
> Q. Yes.
>
> A. Yes. Vol. 2, p. 122
>
> * * *
>
> Q. ... it is your testimony -- testimony isn't it, that you made no effort to accommodate Michael Conley in the job of Correctional Officer 1 and 2.
>
> A. Correct. Vol. 2., p. 193.

This testimony must be considered in light of all the circumstances surrounding complainant's employment since his problems with his knee began to affect his ability to work and up to the time of his termination. Respondent had granted complainant extensive leaves of absence, beyond what was required by the collective bargaining agreement. It had considered whether there were other, non-security, more sedentary positions that complainant could fill. It stood ready, in accordance with its practice, to have allowed him to work with a prosthetic device if his doctor had

released him for return to duty on that basis. However, at the time of termination, the complainant's doctor's opinion was simply that the complainant could not perform officer work, and was limited to a sedentary job. It seems clear on this record that if he had said that complainant could have returned to work with a knee brace or other prothesis, the agency would have permitted it.

Based on this record, it can be concluded that respondent did make efforts at accommodating complainant's handicap and at determining whether further accommodations would be possible, but when it received Dr. Keene's letter of May 21, 1984, it made no further inquiry as to whether accommodation was available.

Under the circumstances, the Commission cannot conclude that respondent violated its accommodation obligation. As has already been discussed, the respondent, not improperly, expected complainant to be able to perform the full range of Officer 2 duties as set forth on the standard position description. This involves a range of strenuous and demanding physical activities. Dr. Keene, as complainant's orthopedic surgeon, obviously was in a good position to have known what kind of accommodation, if any, would have permitted complainant to have returned to work. He did not suggest anything in his letter. Given this, the taxing physical demands of this employment, complainant's medical and work background, and the fact that at no time has complainant suggested any form of accommodation that would have permitted him to have performed Officer 2 duties,[4] the Commission does not

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[4] While the respondent has the burden of proof on the accommodation issue, it certainly met its burden of proceeding with this record which is inconsistent with there being any sort of possible accommodation in the Officer 2 classification. At this point, it is significant that complainant could not adduce any evidence that there was an accommodation that would have permitted him to perform as an Officer 2.

believe the respondent's failure to have pursued the question of accommodation beyond Dr. Keene's letter can be considered a violation of its accommodation obligation under the FEA.

ORDER

The proposed decision and order, a copy of which is attached hereto, is incorporated as the final disposition of this matter with the following changes:

A. Conclusions of law #4 - #6 are deleted and the following are substituted in their place:

4. Complainant has the burden of showing that his employment was terminated because of his handicap.

5. Complainant has sustained his burden of proof.

6. Respondent has the burden of establishing that the employment in question involves a special duty of care for the safety of the general public and that the complainant's handicap was reasonably related to complainant's ability to adequately undertake the job-related responsibilities of his employment.

7. Respondent has sustained his burden of proof.

8. Respondent has the burden of establishing it did not refuse to reasonably accommodate complainant's handicap.

9. Respondent has sustained its burden.

B. Finding #29 is modified to read as follows:

Prior to terminating complainant's employment, and after receiving Dr. Keene's letter of May 21, 1984 (see finding #27), respondent made no further effort to consider whether it could accommodate complainant in a CO 2 assignment. Respondent did not analyze each specific component of the new Tower 1 assignment to

determine whether it could be performed by complainant in light of his physical limitations. Respondent only looked at whether complainant could adequately perform all of the duties listed on the standard CO 2 position description.

C. The first sentence in the last paragraph on page 19 is modified to read as follows:

In this case, while Mr. Regan testified that he gave no consideration to whether complainant could have been accommodated in a Correctional Officer assignment, this was in the absence of any indication from either complainant or his doctor that any accommodation was possible, and in the context of the extensive physical demands of the Officer 2 standard position description, complainant's past background with respect to health and ability to work, and Dr. Keene's statements that complainant should be considered for vocational rehabilitation, that complainant would most likely never return to his old job duties, and that complainant could engage in sedentary work.

Dated: June 29, 1987 STATE PERSONNEL COMMISSION

Dennis P. McGilligan
DENNIS P. McGILLIGAN, Chairperson

AJT:jmf
JANE/2

Attachments

Laurie R. McCallum
LAURIE R. McCALLUM, Commissioner

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STATE OF WISCONSIN PERSONNEL COMMISSION

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MICHAEL CONLEY,

Complainant,

v.

Secretary, DEPARTMENT OF HEALTH AND SOCIAL SERVICES,

Respondent.

Case No. 84-0067-PC-ER

* * * * * * * * * * * * * * * * *

PROPOSED
DECISION
AND ORDER

In a complaint filed on June 22, 1984, complainant alleged that he was discharged from employment with the respondent as a Correctional Officer 2 due to his handicap. In an initial determination issued on July 31, 1985, an Equal Rights Officer employed by the Commission concluded that there was probable cause to believe that discrimination had occurred. Efforts to conciliate the matter were unsuccessful and the parties agreed to the following issue for hearing:

> Whether the respondent discriminated against complainant with respect to handicap, in violation of the Fair Employment Act, with respect to his termination from employment at KMCI effective May 25, 1984.

A hearing was conducted on March 6 and July 29, 1986. The parties stipulated that the sole issue properly before the Commission is one of liability, i.e. whether discrimination occurred. They agreed that, in the event discrimination was found, the parties would have an opportunity to negotiate an appropriate remedy, before the Commission addresses that issue. (Transcript II-210)

The final post-hearing brief was received on December 9, 1986. However, the transcript was not received until December 15, 1986 and one exhibit was not submitted in complete form until February 12, 1987.

FINDINGS OF FACT

1. Complainant suffered an injury to his left knee while playing high school football, approximately in 1968.

2. Complainant began his employment as a Correctional Officer 1 (CO 1) at Waupun Correctional Institution on January 8, 1979.

3. During the seventeen month period before June 20, 1980 when he left Waupun Correctional to work at Kettle Moraine Correctional Institution (KMCI), complainant actually worked at Waupun only six months. For the remainder of the seventeen month period, complainant was on leave due to an injury.

4. From June 20, 1980 until approximately June of 1981, complainant's assignment as a CO 1 at KMCI was "utility officer". He filled in throughout the institution wherever he was needed.

5. From approximately June of 1981 until June of 1982, complainant's assignment at KMCI was perimeter security.

6. On August 22, 1981, complainant injured his left knee while playing football with his children. Complainant commenced a medical leave of absence from KMCI on that date. He underwent anterior cruciate ligament reconstruction surgery for his left knee on October 14, 1981. During the course of the surgery, complainant's left kneecap cracked (intraoperative patellar fracture) and was wired together.

7. Complainant's medical leave of absence lasted until October 15, 1982. However, on June 3, 1982 his physician, Dr. Keene, gave him a note

"to return to light work, but to refrain from contact activities." Complainant did not take the note to his employer.

8. At the time he returned to work at KMCI in October of 1982, complainant was classified as a Correctional Officer 2 (CO 2). The standard position description for all CO 1's and 2's at KMCI is attached hereto and incorporated in this finding as if fully set out below. The summary of the objectives and tasks reads, in part:

> Responsible for completion of standard duties for an assigned Officer 1 or Officer 2 post. Responsibilities and time % will vary according to post assignments and may include any or all of Tasks on attached sheets.

9. In October of 1982, complainant's post assignment was "Tower relief". This assignment was primarily to occupy either observation tower 1 or 2 during a work shift. Access to the top of the tower was via a 139 step enclosed stairway. The tower person could sit or stand while observing the facility for unusual inmate behavior or for problems on the institution grounds. During periods of low visibility due to fog, the officer on tower duty had to walk along the perimeter fence at the institution rather than remain in the tower.

10. Late in May of 1983, complainant aggravated his knee injury while climbing hills during a weekend. Complainant went on a medical leave of absence beginning on May 26, 1983 and in June, underwent surgery for removal of the wires that had been used to repair the cracked kneecap. In mid-August of 1983, complainant again had surgery on his left knee.

11. Early in September of 1983, complainant presented Terry Regan, KMCI Personnel Manager, a handwritten note from Dr. Keene that read: "Michael Conley may return to work on 9-20-83. He is recovering from surgery." Mr. Regan approved the complainant's return to work.

12. On his first day back to work and as he was about to begin his shift as a tower officer, complainant hurt his left knee when he stepped up a distance of between 24 to 30 inches to enter Tower 1. A section of stairs going up to the tower had been removed during some construction at the institution.

13. Complainant attempted to call Dr. Keene the next day but left a message when he did not reach him. Complainant continued to work until October 4, 1983.

14. On September 30, 1983, Dr. Keene wrote the following note addressed "To Whom it May Concern":

> My patient, Michael Conley, attempted to go back to work on 9/20/83 as indicated on insurance forms dated 9/29/83. However, at that same time, Mr. Conley incurred a problem with his knee in resuming his duties and his attempts to reach me were unsuccessful. I attempted to reach him on 9/30/83 but was unable to do so to instruct him not to work. The problem he is currently having is a result of his old injury and he should not be considered able to perform his normal duties. Mr. Conley, in my opinion, should be considered for vocational rehabilitation.

15. Before Dr. Keene's September 30th note reached Mr. Regan, complainant was able to converse with Dr. Keene. Subsequent to that conversation but still before the September 30th note reached Mr. Regan, complainant met with Mr. Regan. During that meeting with Mr. Regan, complainant stated that Dr. Keene had permitted him to return to the tower position as long as complainant could use a cane or crutches when using the tower stairs. Mr. Regan told complainant that he had to be able to perform all duties of a correctional officer as listed on the position description and that he needed a note from his physician indicating that he could return to work.

16. KMCI policy is to permit correctional officers to return to work, even while wearing a cast, as long as they have a physician's release permitting them to return to work.

17. Complainant commenced a medical leave of absence on October 3, 1983. At that time he was experiencing a lot of knee pain when climbing stairs or running.

18. Complainant did not actually see Dr. Keene after the September 20th incident until as late as mid-November during a regularly scheduled appointment.

19. The medical leave provisions in the October 30, 1983 to June 30, 1985 union contract for the Security and Public Safety bargaining unit that included the complainant's position read:

> Employes shall be granted a medical leave of absence without pay, up to a maximum of six (6) months, upon verification of a medical doctor that the employe is not able to perform assigned duties. Upon review by the Employer the leave may be extended. Any extension of the medical leave of absence or application for a medical leave of absence within one (1) year of the employe's return to work shall be at the Employer's discretion.

20. On November 28, 1983, complainant requested a leave without pay for the period from October 3, 1983 until April 3, 1984 for medical reasons which were explained as: "Knee Injury (Left) recovering from surgery". The leave was approved by the respondent on December 21, 1983.

21. In January of 1984, despite the fact that he was still on a medical leave of absence, complainant bid for and, on the basis of his seniority, was selected for a permanent assignment to new Tower 1.

22. The post orders (i.e. assignments associated with a specific post) for the new Tower 1 position include responsibility for controlling entrance to and egress from the institution through the main gate, for surveillance in a 360° arc which includes viewing the institution, the

perimeter area outside the institution's fence and the parking lot behind the tower. The interior of the tower's glassed-in observation area is approximately 10 feet by 12 feet. There is a control panel in the center of the observation area. The tower officer sits at a stool in front of the control panel to operate the institution's gate and gets off the stool to observe the parking area. The new tower also has a catwalk around its perimeter. The officer assigned to the new tower does not leave the post in days with limited visibility. The new tower officer must remain in the tower in order to operate the institution's gate. In contrast to the old towers, there are 20 to 30 stairs from the bottom of new tower 1 to the observation area.

23. Although complainant received the new Tower 1 post assignment, the position was filled on an interim basis by utility officers and by assigning overtime because the complainant was on medical leave.

24. In March of 1984, Dr. Keene told complainant that complainant could not return to work for an indefinite period of time.

25. Complainant requested and received an extension of his medical leave from April 3, 1984 through May 2, 1984.

26. On or before May 16, 1984, complainant twisted his knee passing out tests while he was working as a volunteer for a hunter safety program. In notes describing an examination on May 17, 1984, Dr. Keene wrote: "Twisting injury, left knee, with possible lateral meniscus tear."

27. In a letter dated May 21, 1984, Dr. Keene wrote Mr. Regan as follows:

> This letter should serve to inform you that Michael Conley will most likely never return to his old job duties. He can however, at this time, engage in sedentary work. If you have any questions, please feel free to contact me. Thank you.

28. On May 25, 1984, the acting superintendent at KMCI, Donald W. Gudmanson, wrote complainant a letter, stating in part:

> Your formal leave of absence without pay expired on May 2, 1984. We have continued this leave on a daily basis pending receipt of your physicians report which was dated May 21, 1984.
>
> Your doctor informs us that you will most likely never return to your old duties as a Correctional Officer. We are not approving any further medical leave of absence under Article 13, Section 8, Paragraph 13 of the WSEU Agreement.
>
> In accordance with your doctor's opinion that you can engage in sedentary work, we have reviewed our current position vacancies for a suitable alternative, and have found none. Therefore, under Ch. 230.37 (2) Wis. Statutes we are terminating your employment as an Officer 2, effective May 25, 1984 because of your inability to perform those duties.

29. Prior to terminating complainant's employment, respondent made no effort to consider whether it could accommodate complainant in a CO 2 assignment. Respondent did not consider whether complainant could perform the new Tower 1 assignment. Respondent only looked at whether complainant could adequately perform all of the duties listed on the standard CO 2 position description.

30. Prior to terminating complainant's employment, respondent considered the following non-officer positions for the complainant: Institutional Business Administrator II, Institutional Supervisor II, Recreational Leader II and Librarian II. Mr. Regan considered all of these positions to be sedentary. He concluded that none were consistent with his understanding of complainant's areas of training: fiscal accounting and insurance.

31. At the time of complainant's termination, the new Tower 1 assignment was being filled by utility officers and by assigning overtime to other officers. Overtime assignments cause additional expense to the facility.

32. If an officer fails to report to work and no one volunteers to work overtime to fill the vacant assignment, the least senior officer in that classification already on the grounds is required to work the double shift. In addition, officers from one shift may be required to work a second shift if the institution is confronting an actual or expected disturbance by the inmates. Officers may also be forced to work overtime if there is an open slot when the schedule is being made up and if no volunteers come forward.

33. During the 31 months he was actually on duty as a correctional officer, complainant was required to work overtime for the respondent on two occasions.

34. In July of 1984, complainant underwent a fourth surgery: arthroscopic resection of the medial meniscus of the left knee.

35. On April 11, 1985, Dr. Keene signed a worker's compensation form ("Practitioner's Report on Accident or Industrial Disease in Lieu of Testimony") stating he had last examined complainant on October 25, 1984. On that part of the form in which the practitioner is to "describe the accident...to which patient attributes his condition", Dr. Keene wrote:

> Walking at work in late September, 1983 aggravated and accelerated Mr. Conley's pre-existing condition beyond a normal progression requiring arthroscopic surgery on his left knee.

Dr. Keene's report also stated that complainant suffers a 15% "[p]ermanent disability based on persistent chondromalacia, i.e. pain with use of knee," and has a "[g]uarded prognosis with regard to resolution of left knee pain." Dr. Keene wrote that complainant was able to return to "[s]edentary work only" as of October 25, 1984, with the following limitations: "Nothing that involves any substantial time on feet, either walking or standing."

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to s.230.45(1)(b), Stats.

2. Respondent is an employer within the meaning of s. 111.32(6), Stats.

3. The complainant is handicapped within the meaning of s. 111.32(8), Stats.

4. The complainant has the burden of showing the respondent discriminated against the complainant when it terminated his employment effective May 25, 1984.

5. Complainant has not met his burden of proof.

6. The respondent did not discriminate against the complainant when it terminated his employment effective May 25, 1984.

OPINION

The Wisconsin Fair Employment Act provides that it is employment discrimination to refuse to hire or employ an individual on the basis of handicap, or to refuse to reasonably accommodate a prospective employe's handicap (unless the employer can show that accommodation would pose a hardship to its program). However, the statute makes certain exceptions regarding handicap discrimination. The relevant portions of the Fair Employment Act provide:

§111.34 Handicap; exceptions and special cases.

(1) Employment discrimination because of handicap includes, but is not limited to:

* * *

(b) Refusing to reasonably accommodate an employe's or prospective employe's handicap unless the employer can demonstrate that the accommodation would pose a hardship on the employer's program, enterprise or business.

(2) (a) Notwithstanding §111.322, it is not employment discrimination because of handicap to refuse to hire, employ, admit or

> license any individual, to bar or terminate from employment, membership or licensure any individual, or to discriminate against any individual in promotion, compensation or in terms, conditions or privileges of employment if the handicap is reasonably related to the individual's ability to adequately undertake the job-related responsibilities of that individual's employment, membership or licensure.
>
> (b) In evaluating whether the handicapped individual can adequately undertake the job-related responsibilities of a particular job, membership or licensed activity, the present and future safety of the individual, of the individual's co-worker and, if applicable, of the general public may be considered. However, this evaluation shall be made on an individual basis and may not be made by a general rule which prohibits the employment or licensure of handicapped individuals in general or a particular class of handicapped individuals.
>
> (c) If the employment, membership or licensure involves a special duty of care for the safety of the general public, including but not limited to employment with a common carrier, this special duty of care may be considered in evaluating whether the employe or applicant can adequately undertake the job-related responsibilities of a particular job, membership or licensed activity. However, this evaluation shall be made on an individual case-by-case basis and may not be made by a general rule which prohibits the employment or licensure of handicapped individuals in general or a particular class of handicapped individuals.

The analytical structure for determining whether a complainant was discriminated against because of handicap, is set out in Brown County v. LIRC, 124 Wis 2d 560, 564 n.5:

> In a handicap discrimination case arising under the W.F.E.A., secs. 111.31 et seq., Stats. 1979-80, there are three essential elements of proof. First, there must be proof that the complainant is handicapped within the meaning of the Fair Employment Act. The burden of proving a handicap is on the complainant. Second, the complainant must establish that the employer's discrimination was based on the handicap. The burden then shifts to the employer to establish, if it can, that its alleged discrimination was permissible under sec. 111.32(5)(f), Stats. 1979-80, which allows an employer to refuse to hire a handicapped applicant if "such handicap is reasonably related to the individual's ability adequately to undertake the job-related responsibilities of that individual's employment...." (citations omitted)

To satisfy the first element, the complainant must meet the definition of "handicapped individual" set forth in s.111.32(8), Stats.:

> "Handicapped individual" means an individual who:

> (a) Has a physical or mental impairment which makes achievement unusually difficult or limits the capacity to work;
> (b) Has a record of such impairment;
> (c) Is perceived as having such an impairment.

The respondent has conceded that the complainant is handicapped because of his knee.

As to the second element, it is undisputed that respondent terminated complainant's employment effective May 25, 1984. Respondent argues that the record suggests that complainant's employment was terminated "because he had many extended medical leaves without pay, and because neither he nor his doctor offered reasonable evidence that he could then perform all of the duties of a correctional officer", rather than because of his handicap. However, the termination letter, set out in finding #28, specifically states that complainant's employment is terminated because of his inability to perform Officer 2 duties. The respondent's perception that complainant could not perform CO 2 duties was premised upon the existence of a handicapping condition, i.e. complainant's left knee. An employer cannot prevent a complainant from establishing the second element to this case simply by stating that its motivation for discharging the complainant was his inability to perform his duties where any such inability has resulted directly from the handicapping condition. The termination here clearly was "based on" complainant's handicap. To conclude otherwise would allow the respondent to shift the burden of proof on the issue of ability to perform from itself (as element three in the analytical structure set out in Brown County, supra) to the complainant (as element two in that structure).

With respect to the third element, §111.34(2)(a), Stats., provides, inter alia, as follows:

> "Notwithstanding §111.322, it is not employment discrimination because of handicap to... terminate from employment... any individual... if the handicap is reasonably related to the individual's ability to

> adequately undertake the job-related responsibilities of that individual's employment...."

Applying this standard to the instant case, if the complainant was unable to adequately perform his job because of his handicap, the termination would not be improper under the FEA. The burden of proof is on the respondent on this point, Samens v. LIRC, 117 Wis. 2d 646, 664 (1984), and unless there is a special duty of care, the standard is to a "reasonable probability". Dairy Equipment Co. v. DILHR, 95 Wis. 2d 319, 332 (1980).

In Dairy Equipment, the Supreme Court applied a predecessor statute to s.111.34(2)(a), Stats. The 1973 version, s. 111.32(5)(f), Stats. provided:

> The prohibition against discrimination because of handicap does not apply to failure of an employer to employ or to retain as an employe any person who because of a handicap is physically or otherwise unable to efficiently perform, at the standards set by the employer, the duties required in that job.

The Court quoted Bucyrus-Erie Co. v. DILHR, 90 Wis. 2d 408, 423 (1979) for the proposition that the "ability to efficiently perform" involves more than possessing the requisite physical strength and dexterity:

> It embraces the ability to perform without a materially enhanced risk of death, or serious injury to the employee or others in the future and the statute must be so construed. We do not believe that the legislature when proscribing discrimination against those physically handicapped intended to force an employer into the position of aiding a handicapped person to further injury, aggravating the intensity of the handicap or creating a situation injurious to others. Such an interpretation would compromise not only the best interests of the handicapped but all concerned.

These considerations were subsequently embodied in s. 111.34(2)(b) and (c), Stats., which are set out on page 10. In its brief, respondent argues that it only need "show a 'rational relationship' between the alleged handicap or physical condition and the decision not to employ or terminate because of safety conditions." (Brief, p. 40). Respondent contends that the nature of prison employment means that employment as officers involves a "special duty of care for the safety of the general public" that is comparable to that of common carriers as referred to in s. 111.34(2)(c),

Stats. In support of this contention, respondent points to "common sense" and statutes regulating prisons and correctional institutions including Chs. 53, 56, and 57, Stats., and ss. 40.02(48)(c), and 40.65, Stats.

In s. 53.07, Stats., the responsibility for maintaining order in state prisons is assigned as follows:

> Maintenance of order. The warden or superintendent shall maintain order, enforce obedience, suppress riots and prevent escapes. For such purposes he may command the aid of the officers of the institution and of persons outside of the prison; and any person who fails to obey such command shall be punished by imprisonment in the county jail not more than one year or by a fine not exceeding $500. The warden or superintendent may adopt proper means to capture escaped inmates.

According to an attorney general's opinion, correctional staff have the authority of peace officers in pursuing and capturing escaped inmates. 68 OAG 352.

These provisions suggest that there is a special duty of care associated with the safety of the general public that applies to employment in the prison setting. The special duty is derived from the dangerous nature of the inmates within the institution. In addition, correctional officers have a special duty of care based upon the manner in which their responsibilities affect the safety of their co-workers. Correctional officers must be able to rely upon each other for protection from dangerous inmates.

The respondent's contention that complainant could not adequately perform his job responsibilities was based primarily on the September 30, 1983 note from Dr. Keene, see finding #14, and the May 21, 1984 note to Mr. Regan from Dr. Keene, see finding #27. In addition, respondent relied upon the absence of any correspondence from Dr. Keene indicating that complainant could perform his job responsibilities, despite Mr. Regan's instructions to complainant that in order to return to work he needed a note

from his physician (see finding #15). There is also other information, presumably not known by the respondent at the time the termination decision was made in May of 1984, that relates to complainant's physical abilities at that time.

According to complainant's own testimony (Tr. I-134), on both his last day of work, October 4, 1983 and the date of his termination, May 25, 1984, he was able to perform all of the functions and duties outlined on his position description, see finding #8. The position description includes such duties and abilities as:

A. 2 Escort residents within the corrections facility.

A. 4 Transport residents to and from the corrections facility.

A. 5 Participate in crowd control squads under the direct control of superior officers.

C. 7 Inspect an assigned area of the facility including the perimeter for proper security, hazardous conditions or any other problems.

C. 8 Observe facility grounds from a tower or other position for any movement of residents or unusual occurrences.

Ability to walk and stand for extended periods.

Ability to physically restrain and control residents.

In subsequent testimony (Tr. I-145, 147) complainant stated that he would have experienced a lot of pain had he performed at least some of these activities as of his last day of work and the date of his termination.

Evidence produced at hearing also showed that the complainant suffered an injury to his knee on or about May 16, 1984 when he was passing out tests while working as a volunteer for a hunter safety program. Surgery was performed in July of 1984 in an effort to repair the injury.

In order to analyze the adequate performance element, it is helpful to look at the various job responsibilities associated with a particular posting.

At the time of his injury in September of 1983, complainant was assigned to tower relief. An important element of the tower relief position was walking along the perimeter fence whenever visibility was poor rather than remaining in the tower. The key item in terms of determining whether complainant could have adequately performed tower relief at the time his position was terminated is the May 21st letter from Dr. Keene which stated that complainant would

> most likely never return to his old job duties. He can, however, at this time, engage in sedentary work.

This letter alone provides a sufficient basis for concluding that complainant could not adequately perform tower relief work at the time his employment was terminated in May of 1984. The word "sedentary" is defined in Webster's New Collegiate Dictionary, 1977 Edition, as "doing or requiring much sitting". Walking the institution's perimeter fence for an entire shift due to fog is clearly not a sedentary activity.

At the time his employment was terminated, complainant was not assigned to tower relief. Three months after he stopped working in October of 1983 and four months before his employment was terminated, complainant sought and received the new Tower 1 assignment. This assignment required the officer to remain in the tower at all times to operate the main gate, regardless of atmospheric conditions. To operate the gate, the officer sits on a stool in front of a control panel. The officer will occasionally get off the stool to walk approximately nine feet to the back of the tower to observe the parking lot and access road and then return to watch the interior of the institution. New Tower 1 also has a catwalk around its perimeter, which is presumably used in the event a weapon has to be fired

from the tower. There are 20 to 30 steps to the top of new Tower 1 as compared to 139 steps to the top of the old towers.

Not all of the responsibilities for the new Tower 1 assignment can be performed sitting down, but the majority of the assignment still entails "doing... much sitting" and, therefore, meets the definition of "sedentary". Mr. Regan was asked which of the new Tower 1 responsibilities complainant was unable to perform and responded:

> Well, at this point, without having a -- a doctor's report to determine, y'know, what his restrictions might be, I couldn't make that judgment. (Tr. II-168)

Yet there are at least two aspects of the new Tower 1 post that complainant could not have adequately performed without risk of injuring himself. The first is simply climbing the 20 to 30 stairs to the top of the tower. This number of steps is far fewer than the 139 stairs associated with complainant's relief tower assignment. Yet climbing 20 to 30 steps at a time is not a sedentary activity. The Commission is unwilling to conclude, in the absence of any specific supportive medical evidence, that the complainant was capable of climbing these stairs on a regular basis without injury to himself and without accommodation. Dr. Keene's May 21st letter is sufficient basis for concluding that complainant could not safely climb the 20 to 30 steps.

The second aspect of the new Tower 1 post that complainant could not adequately perform was using the catwalk in order to fire a weapon. The ability to fire weapons from the tower was clearly an essential element of the new Tower 1 post. Although there was no specific testimony indicating how the catwalk is used, it is reasonable to infer that there in an emergency situation, the guard in the tower must be able to quickly move from the tower onto the catwalk, and around the catwalk and then assume a firing

position. If the new Tower 1 officer did not have responsibility for firing weapons in emergency situations, there would be no apparent use for the catwalk. Approximately ten days prior to his termination, complainant injured his knee passing out exams while working as a volunteer for a hunter safety program. The occurrence of the May 16th injury indicates that at the time his employment was terminated, complainant could not use the tower catwalk in an emergency situation without a significant risk of serious injury. The May 16th injury also places into question the complainant's ability to safely walk around the interior of new Tower 1 in order to observe the parking area, access road and interior of the institution.

Because the complainant was unable to adequately perform the new Tower 1 assignment at the time of his termination, the next question is whether any reasonable accommodation could have been made which would have made it possible for the complainant to adequately perform the duties of the position. It is illegal for an employer to refuse "to reasonably accommodate an employe's ... handicap unless the employer can demonstrate that the accommodation would pose a hardship on the employer's program...." S. 111.34(1)(b), Stats. The burden of proving inability to accommodate rests with the employer. Giese v. DNR, 83-0100-PC-ER, 1/30/84.

It is at least conceivable that by using crutches as an accommodation the complainant could have safely climbed the stairs to the top of new Tower 1. However, no accommodation was identified that would have permitted complainant to move quickly and safely around the catwalk of the tower, nor was an accommodation identified for assisting complainant to safely walk around the interior of the tower. Based on this record the Commission concludes that no accommodation was possible that would have permitted the

complainant to safely perform the duties of a CO 2 and, specifically the new Tower 1 duties.[1]

Even if the Commission were to have found that the complainant could safely and adequately perform the new Tower 1 post (with or without accommodation) he still would have to show that he could also perform the responsibilities assigned to him during forced overtime.

Respondent pointed out that complainant was subject to working overtime at the correctional institution and, as a consequence, had to be able to perform all of the CO 2 duties listed in the standard position description rather than the duties associated with a particular post assignment. Testimony established that during the 31 months he was actually on duty as a correctional officer, complainant was only required to work overtime on two occasions. No evidence suggested that, in the future, complainant would not be required to work overtime at the same frequency. Therefore, if the frequency of required overtime remained constant, he would only be required to work outside of his standard work shift assignment once every fifteen months. The evidence indicated that the complainant could not adequately perform required overtime assignments, at least at the time of his termination, to the extent that the overtime assignments were not sedentary. This conclusion is based primarily upon the May 21st note to Mr. Regan and complainant's May 16th injury. The complainant himself testified that he could perform all of the duties on the CO 2 standard

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[1] Complainant cited Mantolete v. Bolger, 38 FEP Cases 1081 (1985) for the concept that respondent had to "gather sufficient information from the applicant and from qualified experts as needed to determine what accommodations are necessary to enable the applicant to perform the job safely" 38 FEP Cases 1081, 1087. Here respondent made no effort to gather that information, presumably because it felt that performance of CO 2 duties was invariably inconsistent with performing sedentary work. In the absence of the identification of even remotely feasible means to permit the complainant to safely use the catwalk of new Tower 1, the Commission cannot hold that the respondent has failed to prove an inability to accommodate.

position description although some duties might cause him considerable pain. The Commission doubts whether the complainant could have actually performed all these duties[2]. However, as noted above on page 12, the "ability to efficiently perform" standard should not be read to force an employer to allow an employe to aggravate an existing handicap. Dr. Keene's correspondence suggests that the handicapping condition would be aggravated if complainant were to continue performing the full range of CO 2 duties listed on the standard position description, even on a very occasional basis. This conclusion is made easier by the existence of a "special duty of care" as described on pages 12 and 13.

The follow-up question is whether the respondent could have accommodated the complainant's handicap in terms of the CO 2 duties which would otherwise be assigned to him approximately once every fifteen months, i.e. once every 325 work days.

In this case, Mr. Regan admitted that he gave no consideration to whether complainant could have been accommodated in a Correctional Officer assignment. At hearing, the only evidence relating to accommodation within non-management officer positions was that a few officers had been permitted to return to work wearing a cervical collar and arm cast or a hand cast, as long as they had been cleared by their physician to perform the officer

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[2] The credibility of complainant's testimony is undermined by his failure to explain a discrepancy found on Dr. Keene's "Practitioner's Report on Accident or Industrial Disease in Lieu of Testimony", dated April 11, 1985. Two copies of the report are in the record. They are identical except that the estimated percentage of permanent disability is listed as 15% on page 5 of Exhibit 25, while page 2 of Exhibit 24 refers to 25%. However, the numeral 2 in the 25% figure is raised off the typing line and is clearly from a different typewriter than was used for the rest of the document. The Exhibit 25 copy appears to be from complainant's medical file maintained by the hospital or clinic. Exhibit 24 appears to have been submitted by the complainant to the respondent. The third page of Exhibit 24 is a letter from Dr. Keene to the respondent stating: "Item 15 on my previously submitted WC-16-B report dated 11 April 1985 should read 15%." While complainant denied changing the 15% figure to 25% and denied ever having the original of the form after it was signed by Dr. Keene (Tr. II-41), complainant failed to offer any explanation of this discrepancy.

assignment. In addition, one officer who was injured while on the job, and who therefore was entitled to full compensation even if he did not return to work, was allowed to work in the institution library for a period of up to six months. This evidence indicates that respondent's requirement that all CO 2's be able to perform all the possible CO 2 assignments was, with only one possible exception, uniformly applied. Because we have concluded that complainant could not have performed adequately or safely all of the Officer 2 tasks that would normally be assigned to him once every fifteen months, the question here is whether his assignments could have been limited on these special occasions to tasks that he could safely perform. There was no evidence indicating that there are any CO 2 assignments that are more sedentary than the new Tower 1 post. If, as was concluded above, the complainant could not adequately perform the responsibilities of the new Tower 1 post, and if there are no assignments less rigorous than the tower posting, then no accommodation would be possible for complainant in an emergency overtime situation.

Respondent is not required to exempt complainant from forced overtime as long as it is an essential job duty. Case law indicates that the duty to accommodate does not include utilizing other employes to actually perform a job duty for the handicapped individual. McFayden v. MEOC /University Book Store, No. 81-CV-3744 (Dane County Circuit Court 11/15/82); Bento v. I.T.O. Corp. of Rhode Island, 599 F. Supp. 731, 740, 36 FEP Cases 1031 (D.C.R.I., 1984). The Commission is unwilling to second guess the respondent's decision to require that all CO 2's be able to perform all CO 2 assignments.[3] If it were to conclude otherwise, the

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[3] Complainant cites Mercury Marine v. LIRC (Poeschl), No. 82-889 (Ct. App 10/4/83) for the concept that an employer cannot justify a discharge by showing a possibility that an employe might be bumped into a more strenuous job that he could not perform. In the present case, the emergency or forced overtime duties have been established as responsibilities of each CO 2 position. They are not separate jobs but are included within the existing CO 2 assignments. Therefore, the facts of Mercury Marine are distinguishable.

Commission would be undermining the reserve strength available to the institution in the event of a prison uprising. There clearly is no basis on which the Commission could conclude that the reserve strength at KMCI would be adequate even if CO 2's were not required to be able to perform all CO 2 assignments.

Complainant suggested that respondent should have extended his medical leave rather than terminating his employment. However, this contention fails to account for Dr. Keene's letter stating that complainant would "most likely never return to his old job duties". This letter, along with other evidence, suggested that complainant's handicapping condition was permanent rather than temporary and that, therefore, complainant would not have been assisted by a further extension of leave.

Based upon its conclusion that the complainant was unable to adequately perform the overall responsibilities of a CO 2 and the specific responsibilities associated with the new Tower 1 assignment, the Commission issues the following

ORDER

The respondent's decision terminating the complainant's complaint is affirmed and this complaint is dismissed.

Dated: _____,1987 STATE PERSONNEL COMMISSION

_____
DENNIS P. McGILLIGAN, Chairperson

JGF002/2
KMS:baj

_____
DONALD R. MURPHY, Commissioner

Attachments

_____
LAURIE R. McCALLUM, Commissioner

Parties:
Michael F. Conley
547 E. Bank Street
Fond du Lac, WI 54935

Tim Cullen
Secretary, DHSS
P. O. Box 7850
Madison, WI 53707

POSITION DESCRIPTION
AD-PERS-10 (Rev. 2/77)
State of Wisconsin
Department of Administration
STATE BUREAU OF PERSONNEL

IMPORTANT: PLEASE READ INSTRUCTIONS ON BACK.

1. Position No.	2. Cert/Reclass Request No.	3. Agency No.

4. NAME OF EMPLOYE

5. DEPARTMENT, UNIT, WORK ADDRESS
Kettle Moraine Correctional Institution
P.O. Box 31
Plymouth, WI 53073

6. CLASSIFICATION TITLE OF POSITION
Officer 1

7. CLASS TITLE OPTION *(To be Filled Out By Personnel Office)*

8. NAME AND CLASS OF FORMER INCUMBENT
Standard Position Description

9. AGENCY WORKING TITLE OF POSITION

10. NAME AND CLASS OF EMPLOYES PERFORMING SIMILAR DUTIES
Other Officer 1's & 2's

11. NAME AND CLASS OF FIRST-LINE SUPERVISOR
Officer 5 - Shift Supervisor
or Officer 4 - Asst. Shift Supervisor

12. FROM APPROXIMATELY WHAT DATE HAS THE EMPLOYE PERFORMED THE WORK DESCRIBED BELOW?

13. DOES THIS POSITION SUPERVISE SUBORDINATE EMPLOYES IN PERMANENT POSITIONS? YES ☐ NO ☒ IF YES, COMPLETE AND ATTACH A SUPERVISORY POSITION ANALYSIS FORM (AD-PERS-84).

14. DESCRIBE THE OBJECTIVES AND TASKS OF THIS POSITION *(Please see sample format and instructions on other side.)*

—**OBJECTIVES:** Describe the major achievements, outputs, or results. List them in descending order of importance.

—**TASKS:** Under each objective, list the work activities performed to meet that objective.

—**TIME %:** Include for objectives and major tasks.

(Continue on attached sheets if necessary)

TIME %	OBJECTIVES AND TASKS
	Summary- Responsible for completion of standard duties for an assigned Officer 1 or Officer 2 post. Responsibilities and time % will vary according to post assignments and may include any or all of Tasks on attached sheets. Assignment in housing units as relief will include responsibilities listed on the Standard Position Description for Officer 3 and Officer 3 Trainee. SEE Attached.

RECEIVED
DEC 9 1985
Personnel Commission

RESPONDENT'S EXHIBIT # 17

15. SUPERVISORY SECTION – TO BE COMPLETED BY THE FIRST LINE SUPERVISOR OF THIS POSITION *(See Instructions on Back)*

a. The supervision, direction, and review given to the work of this position is [ ] close [x] limited [ ] general.

b. The statements and time estimates above and on attachments accurately describe the work assigned to the position. *(Please initial and date attachments.)*

Signature of first-line supervisor John R. Turkey Asst Supt Security Date 12-23-77

16. EMPLOYE SECTION – TO BE COMPLETED BY THE INCUMBENT OF THIS POSITION

I have read and understand that the statements and time estimates above and on attachments are a description of the functions assigned my position. *(Please initial and date attachments.)*

Signature of employe _____ Date _____

17. Signature of Personnel Manager _____ Date 12/23/77

P-FILE

OFFICER - 1

Standard Position Description

10% A. Direction of the Correctional Facility's Residents

A.1 Warn residents verbally of improper conduct.

A.2 Escort residents within the corrections facility.

A.3 Direct the movements of residents during meals, sick calls and other events.

A.4 Transport residents to and from the corrections facility.

A.5 Participate in crowd control squads under the direct control of superior officers.

A.6 Establish and maintain effective working relationships with residents.

A.7 Memorize the personal characteristics of a large number of residents.

10% B. Counseling and Treatment of Residents

B.1 Counsel residents regarding limited personal and family problems.

B.2 Interpret correctional facility regulations and procedures for residents.

B.3 Orient new residents to the regulations, procedures and standards of the facility.

B.4 Administer emergency first-aid to residents in preparation for professional medical treatment.

B.5 Listen to and interpret residents' complaints, questions and comments.

B.6 Memorize the personal characteristics of a large number of residents.

B.7 Refer residents' problems to supervisors.

60% C. Inspection of the Facility and Residents for Proper Security, Health and Safety Precautions.

C.1 Inspect residents' living quarters for any violations of cleanliness or security standards.

C.2 Search and screen the personal belongings of residents.

C.3 Search residents for contraband.

C.4 Inspect and occasionally monitor residents' mail in accordance with Division regulations.

C.5 Determine whether packages received by residents are acceptable under standard regulations.

C.6 Inspect and maintain weapons, crowd control and restraint equipment.

C.7 Inspect an assigned area of the facility including the perimeter for proper security, hazardous conditions or any other problems.

C.8 Observe facility grounds from a tower or other position for any movement of residents or unusual occurances.

5% D. Reporting to Superiors, Adjustment Committees, etc., regarding Residents and Incidents.

D.1 Report orally to superiors and the treatment staff regarding incidents.

D.2 Write conduct reports on minor and major incidents of residents' misbehavior.

D.3 Write incident reports for the information of the adjustment committee or administrative staff.

D.4 Appear before adjustment committee hearings to describe resident behavior.

D.5 Provide information when requested about residents for the program review committee.

D.6 Describe observed situations or incidents accurately in writing.

5% E. Maintenance of the Facility's Records and Record Keeping Systems.

E.1 Maintain records of supply usage and supply needs.

E.2 Log telephone and radio messages received at the Facility.

E.3 Maintain records of scheduled appointments for residents.

E.4 Complete time slips and other payroll information records.

E.5 Record all vehicle arrivals and departures.

E.6 Log visitors in and out of the facility.

E.7 Write brief and accurate notes from telephone conversations or other verbal communications.

5% F. Establishment of proper Public Relations with Visitors to the Facility.

F.1 Check the identification of residents' visitors against the lists of allowable visitors.

F.2 Direct visitors to appropriate visiting areas.

F.3 Question visitors regarding their destinations and status within the Facility.

F.4 Answer visitors questions about facility regulations, procedures and treatment/rehabilitation programs.

Knowledge and Abilities

Knowledge of the correctional program resources for the care and rehabilitation of residents.

Knowledge of crowd control formations, procedures and policies.

Knowledge of basic first-aid techniques.

Knowledge of the attitudes and experience of residents within the Wisconsin Correctional System.

Knowledge of the general background of corrections facility residents.

Knowledge of the terminology associated with the rehabilitation and treatment programs.

Ability to read training, instructional and procedural materials.

Ability to write understandable information on reports and forms.

Ability to clearly describe information and situations orally.

Ability to walk and stand for extended periods.

Ability to drive cars, vans and small trucks, including manual transmissions.

Ability to communicate clearly over radio and telephone systems.

Ability to comprehend verbal instructions.

Ability to tolerate criticism including verbal, mental and physical harassment without loss of self-control.

Ability to maintain work schedules.

Ability to clearly explain the intent of rules.

Ability to interpret rules, regulations and procedures.

Ability to observe and memorize a large amount of visual information.

Ability to identify changes in human behavior.

Ability to recognize hazardous conditions in equipment, buildings and grounds.

Ability to present information clearly in a formal proceeding.

Knowledge of the basic illicit drugs and their symptoms.

Ability to interpret non-verbal communications.

Ability to qualify under the Division requirements with pistol, rifle and shotgun.

Ability to physically restrain and control residents.

Ability to establish and maintain effective working relationships with other officers.

Ability to maintain an alert watch during an entire shift.

Ability to maintain effective work habits during a wide variety of shift assignments.

Ability to implement orders regardless of personal opinions.