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STATE OF WISCONSIN  
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No. 84-264

STATE OF WISCONSIN IN COURT OF APPEALS  
DISTRICT IV

ROGER E. ALFF,

Petitioner-Appellant,

v.

STATE PERSONNEL COMMISSION,

Respondent.

**FILED**

NOV 25 1985

**RECEIVED**

SEP 18 1987

CLERK OF COURT OF APPEALS  
OF WISCONSIN

**Personnel  
Commission**

APPEAL from a judgment of the circuit court for Dane County: ANGELA B. BARTELL, Judge. Affirmed.

Before Gartzke, P.J., Dykman, J., and Bruce F. Beilfuss, Reserve Judge.

PER CURIAM. Roger Alff appeals a judgment of the trial court which affirmed an order of the State Personnel Commission. The commission had upheld his suspension and discharge from Bureau of Municipal Audit, a subdivision of the Department of Revenue. The department terminated Alff for his failure to conduct several audits in compliance with generally accepted auditing standards (GAAS). The commission determined that the department had established a sufficient basis for the discharge. The trial court

concluded that substantial evidence supported the determination of the commission. On appeal, Alff argues that the commission erroneously applied generally accepted auditing standards to evaluate his performance at the bureau and that his actions did not warrant his suspension and discharge. We have reviewed the record and agree with the determination of the trial court. We therefore affirm the judgment.

In 1970, Alff became a licensed Certified Public Accountant in Wisconsin and was made director of the Bureau of Municipal Audit. Under sec. 73.10(5), Stats., the bureau must audit the books of a town, village, city, county, school district, board of education, or other local public body. Under the statute, an audit will be conducted upon the request of a local public body, upon motion of the bureau, or upon a contractual arrangement with a state or federal agency which has responsibility for conducting an audit. Sec. 73.10(5), Stats. The statute does not require a unit of local government to use the services of the bureau. A local governing body may employ an auditor of its own choice which is licensed under chapter 422, Stats. Sec. 73.10(5), Stats. The department discharged Alff for his

deficient administration of the bureau and its effect on several audits.

A state employee with permanent status may be suspended or discharged only for just cause. Sec. 230.34(1)(a), Stats. An employe may appeal a suspension or demotion to the commission. Sec. 230.44(1)(c), Stats. The commission must determine whether the employe was guilty of misconduct and whether the misconduct constitutes just cause for discharge. Safransky v. Personnel Board, 62 Wis.2d 464, 472, 215 N.W.2d 379, 383 (1974). The appointing officer must present evidence to sustain the discharge and has the burden of proving just cause. Id. The commission must make findings which are proven by the greater weight of the credible evidence. Id. The credibility of witnesses and the weight of the evidence are matters exclusively for the determination of the board. Id. at 473, 215 N.W.2d at 383. A court reviews the record as a whole for substantial evidence which supports the findings of the commission. Id.

The specific requirements of a governmental position define the misconduct which would be just cause for suspension or termination. Id. at 475, 215 N.W.2d at 384. The misconduct must undermine the efficient performance of

the duties of employment. Id. There must be a rational connection or nexus between the misconduct and the deleterious effects on job performance. Id. at 474, 215 N.W.2d at 384. The requirement of a rational connection avoids arbitrary and capricious action by the appointing authority and protects the rights of the employee to due process of law. Id. at 474-75, 215 N.W.2d at 384. Misconduct which undermines public confidence in government may be just cause for suspension or termination. Id. at 475, 215 N.W.2d at 384.

The commission evaluated Alff's performance by the requirements of generally accepted auditing standards (GAAS). The standards are approved and adopted by the American Institute of Certified Public Accountants. Codification of Statements on Auditing Standards AU s.150.02, at 7 (1979) (hereinafter cited AU). The AICPA Auditing Standards Board has the responsibility to promulgate auditing standards and procedures observed by members of the AICPA. Id. Appendix A, at 533. The standards promulgated by the board define the nature and extent of the auditor's responsibilities, provide guidance to the auditor in carrying out his duties and enable him to express an opinion on the reliability of representations,

and have regard for the costs which the standards impose on society in relation to the benefits derived from the audit. Id. The board provides auditors with guidance in the implementation of its pronouncements by issuing interpretations of its statements and guidelines. Id. Auditing standards measure the quality of performance, the objectives of the performance, and the judgment of the auditor. Id. AU s.150.01, at 7. 2 AICPA Professional Standards ET s.202.01 (1978) preclude the association of a member's name with financial statements which have not been audited in compliance with GAAS.

Despite the relevance of GAAS to a CPA's performance, courts generally do not accord the standards of voluntary associations the status of law. Compliance with professional standards may not immunize all actions of an accountant from their consequences. See, e.g. S.E.C. v. Arthur Young & Co., 590 F2d 785, 788-89 (9th Cir. 1979). Courts have considered compliance with the standards evidence, which may be persuasive but not necessarily conclusive of actions in good faith; and the weight, credibility, and persuasiveness extended to the proof by the fact-finder depends on the authoritativeness of the precedents, the applicability of the circumstances, and the

impact of the expert witnesses. United States v. Simon, 425 F.2d 796, 805-08 (2d Cir. 1969). Courts have recognized the essentially hearsay nature of the standards of voluntary associations. Muncie Aviation Corp. v. Party Doll Fleet, Inc., 519 F.2d 1178, 1183 (5th Cir. 1975); Jorgensen v. Horton, 206 N.W.2d 100, 103 (Iowa 1973). In negligence cases, courts often employ the standards as evidence of unacceptable conduct. Violations of the standards are not considered per se unacceptable conduct. Jorgensen, 206 N.W.2d at 103, McComish v. De Soi, 42 N.J. 274, 280, 200 A.2d 116, 120 (1964). Courts have considered the standards as exceptions to the hearsay rule for their "inherent trustworthiness." Muncie Aviation, 519 F.2d at 1183.

Under the Safransky decision, the question is whether Alff's actions were misconduct which justified discharge. We discern no requirement that failure to follow GAAS in itself would automatically constitute misconduct and warrant dismissal. The standards of self-regulatory organizations do not carry the weight of law. Violation no more requires automatic dismissal than compliance provides an automatic shield from liability. The evidence and specific circumstances control each case. Noncompliance with GAAS may be persuasive evidence of misconduct under

certain circumstances, but it does not provide irrefutable proof of misconduct. The fact finder must consider the noncompliance as evidence as well as other evidence of misconduct.

Under the weight accorded standards of voluntary associations, we conclude that Alff's compliance or noncompliance with GAAS does not by itself preclude or require his suspension or discharge from the bureau. The nature of each standard and the circumstances of a particular violation may justify a departure from the standard and preclude a finding of misconduct. We now address Alff's arguments and review the record for evidence which supports the determination of misconduct. Except for the argument on hearsay which we address last, we address the arguments in the order that Alff presents them in his brief.

1. Alff issued a City of Milwaukee audit report which contained the date of typing rather than the date of completion of the audit. His superior Sylvan Leabman had instructed Alff that audit reports should be dated under the requirements of GAAS. In general, an auditor should date his independent auditor's report with the date of completion

of field work. Codification of Statements on Auditing Standards AU s. 530.01, at 295 (1979). The standard embodies the principle that an auditor should not express an opinion on financial statements for a time period which extends beyond the examination of his audit. Unusual circumstances may justify a deviation from sound and standard practice, but nothing in the record establishes a justification for a variance in this proceeding. The City of Milwaukee audit posed no exceptional circumstances which would warrant the unorthodox dating of the report. The report violated the principles of GAAS.

2. The audit of the Jefferson Meadows Care Center contained a \$55,000 error. Adequate review of the field work was not conducted by the bureau. AU s. 150.02 requires a supervisory review of field work. The review determines whether the work was adequately performed and evaluates whether the results are consistent with the conclusions to be presented in the auditor's report. AU s. 311.11, at 38. The bureau reviewed the report only for grammar and punctuation. GAAS was not satisfied by the review of the bureau for punctuation and grammar. A proper supervisory examination may have disclosed the error. The



record shows no unusual circumstances which would justify a departure from GAAS.

3. Alff did not establish written policies and procedures for the evaluation of internal control of BMA clients. GAAS endorses the promulgation of policies and procedures for planning and control. AU s. 160.11, at 13-14. An analysis of BMA audits by Murray Dropkin & Company, Certified Public Accountants, reached the conclusion that there was no indication that the internal control of BMA clients had been reviewed. GAAS requires evaluation of internal control. Working papers should generally show that the client's system of internal control had been reviewed and evaluated. AU s. 338.05, at 212. The evaluation helps determine the extent of the tests to which auditing procedures were restricted. Id. Absence of written procedures and policies may have contributed to the inadequate evaluation of internal control by the bureau. The record shows no reason for departure from GAAS.

4. Alff did not establish written policies and procedures for obtaining client representations. GAAS requires client representations if the auditor believes that they are necessary to complement other auditing procedures.

AU s. 333.03, at 147. The representations are part of the evidentiary matter that the auditor obtains, but they are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for his opinion on financial statements. AU s. 333.02, at 147. GAAS makes written representations a requirement. AU s. 333.01, at 147. Written policies and procedures on client representation letters may have emphasized the need for the letter and improved the quality of BMA audits. They may have imposed guidelines on the need for the representations in a particular audit. Their absence is evidence of misconduct.

5. Alff issued a 1978 City of Milwaukee unqualified opinion despite BMA's failure to conduct a complete review of the working papers. GAAS requires the exercise of due professional care, AU s. 230.01, at 25, and review of the work of assistants. AU s. 311.11, at 38. The extent of supervision appropriate in a given instance depends on many factors, including the complexity of the subject matter and the qualifications of persons performing the work. AU s. 311.09 at 38. The review determines whether the work was adequately performed and evaluates whether the results are consistent with the conclusions to

be presented in the auditor's report. AU s. 311.11, at 38. The evidence indicated that there was no review of the papers for compliance with GAAS. Nothing in the record justifies the failure to conduct a proper review. These failures are evidence of misconduct.

6. Alff did not develop a plan for completion of the 1979 City of Milwaukee audit. His superior Sylvan Leabman had directed the preparation of the plan. GAAS permits the development of policies and procedures, AU s. 160.12, at 14, and requires adequate planning of field work. AU s. 311.01, at 35. Alff issued a four sentence memorandum which addressed the date, review, and release of the 1979 report. The memorandum was not a plan. It established no steps to assure the correct implementation of its goal. It provided no guidance to subordinates. It was a bare statement of policy. The department could reasonably determine that Alff's memorandum did not comply with Leabman's directive.

7. From June 1977 until June 1978, Alff dated audit reports using the date of typing rather than the date of completion of the audit. GAAS makes the date of completion of the field work the correct date. AU s.

530.01, at 295. The requirement prevents the issuance of an opinion for material not covered by the audit. Unusual circumstances may allow a variance from this procedure, but nothing in the record warranted a deviation from the practice. The subsequent correction by Alff does not justify the original deviation from GAAS. The issuance of an opinion for material not covered by the audit was evidence of misconduct.

8. Alff did not establish written policies and procedures for working papers which would document the examination of records and performance of tests in an audit. Working papers are the record of the audit. They show the tests performed, the information obtained, and the conclusions reached. AU s. 338.03, at 211. They should be designed to meet the circumstances and the auditor's needs of an individual engagement. AU s. 338.01, at 211. They should fit the circumstances and the auditor's needs on the engagement to which they apply. AU s. 338.04, at 211. They aid the conduct of the audit and provide support for the opinion of the auditor. The testimony and report of Murray Dropkin identified the inadequacies of the working papers and documentation of the bureau. Inadequate working papers undermine the reliability of an audit and prevent a

comprehensive evaluation of the sufficiency of the audit. The absence of written policies and planning likely contributed to the inadequate working papers and was evidence of misconduct. GAAS recommends the establishment of policies and procedures for planning and control. AU s. 160.11, at 13-14.

9. Alff submitted an audit report to the U. S. Department of the Treasury which indicated compliance with GAAS in 12 revenue sharing audits in 1978. The 12 audits had not evaluated internal control, had not obtained client representation letters, and had not employed adequate references in the working papers. GAAS shows that adequate working papers, client representation letters, and evaluation of internal control are essential ingredients of an acceptable audit opinion. Internal control helps establish the reliability of the records of the client, and the working papers help establish the reliability of the examination of the auditor. Client representation letters may be a useful procedure for evaluation of internal control and may help establish the scope of the examination of the auditor. The justification for the auditor's opinion rests on the conformity of his examination with generally accepted auditing standards. AU s. 509.03, at 259. Noncompliance

with GAAS may require the auditor to qualify his opinion on the financial statements. AU s. 509.10, at 262. The lack of these auditing methods contradict the bureau's assertion to the Department of the Treasury that the bureau conducted the audits in compliance with GAAS. It was evidence of misconduct.

10. The suspension and discharge of Alff did not require formal prior warnings. Under Safransky, misconduct, incompetence, and just cause are the appropriate considerations for suspension and discharge. These concepts do not automatically require a series of warnings. Under Safransky, the circumstances of the particular case determine the requirements of just cause. As a certified public accountant and director of the bureau, Alff had specialized knowledge and a responsibility to discharge his duties without constant supervision. Under the circumstances, Alff's noncompliance with GAAS did not require prior warnings under the test of just cause. In any event, the commission found that a supervisor warned Alff of his dissatisfaction with Alff's performance. Alff has not disputed this finding.

11. Alff could be dismissed without a prior order by the department. Under Safransky, the circumstances of the particular case determine the requirements of just cause. Just cause in this case does not require an employer before discharge of an employe to inform him formally of every requirement of employment. As a certified public accountant and director of the bureau, Alff had assumed significant responsibilities. Because of his position of significant responsiblity, the absence of a prior order did not deny Alff just cause. An employe in his position has a responsibility to observe certain standards without continuous reminders and oversight by the employer.

12. Alff is not the victim of an ambiguous policy in the department. GAAS sets basic principles of auditing performance. Dating of reports, client representation, letters and the requirements of working papers are not ambiguous matters for a professional accountant. Planning and supervision of the audit are also basic requirements. As a CPA, Alff should have had knowledge of basic standards of conduct needed to assure the reliability of an audit. As the director of the Bureau of Municipal Audit, Alff has a responsibility to implement basic professional standards or to justify his departure from the requirements.

Departmental policy need not expressly notify Alff of standards within his field of expertise.

13. The conduct of Alff was not measured by a paragon of excellence. The department did not hold him accountable for minute discrepancies in the audits of the bureau but for fundamental and unjustified departures from standard practice. The dating of reports, client representation letters, proper working papers, and the planning and supervision of audits do not require performance which exceeds minimum requirements. These requirements did not require extraordinary procedures by Alff, whose actions may have undermined the quality, reliability, and effectiveness of the audits of the bureau. Errors in an audit were not the basis of dismissal. More fundamental omissions in basic procedures were the cause of dismissal. The department evaluated Alff by the standard of just cause, not by a model of perfection.

14. Progressive discipline is not a prerequisite to dismissal from employment. Counseling, reprimands, and conduct reports are available alternatives to dismissal but are not required for just cause in every instance. In some instances, the nature of the employment position,



ambiguities in job requirements, or other factors may require progressive discipline before dismissal. The circumstances of this case do not require progressive discipline. As the director of the bureau, Alff had assumed a position of significant responsibility which required competent performance without levels of discipline scaled to provide repeated opportunities for improvement. The gravity of his position and the importance of his work was a sufficient impetus to appropriate conduct.

15. The department may discharge Alff without including professional auditing standards in his civil service classification. A civil service classification is intended to provide a general description of a position. It cannot list every requirement and standard of conduct for a position. The limited scope of a civil service classification would unnecessarily restrict the ability of the department to discharge an employe for misconduct and incompetence. Public employes, especially those in a position of responsibility who have professional qualifications, can be obligated to know the requirements for adequate performance. The description of a civil service classification does not define the limits of just cause.

16. Suspension and discharge were not an excessive disposition of the matter. If the circumstances provide just cause for suspension or discharge, these remedies are not excessive. The remedy must bear a rational connection to the conduct of the employe. Alff's dating of audit reports, incomplete working papers, failure to obtain client representation letters, and failure to plan and review the audits performed by subordinates had deleterious effects on job performance and undermined the reliability of the audits. The credit markets and consequently the economy in general place considerable reliance on opinions issued by independent auditors on accounting records. Uncertainty caused by inadequate audits can potentially inhibit the efficient flow of capital and increase interest rates. Citizens State Bank v. Timm, Schmidt & Co., 113 Wis.2d 376, 384, 335 N.W.2d 361, 365 (1983). Alff's conduct allowed his suspension and discharge.

17. Present or past harm from improper conduct is not a prerequisite for discharge. Just cause requires only a rational nexus between the misconduct and the deleterious effects on job performance. Safransky, 62 Wis.2d at 474, 215 N.W.2d at 384. Discharge is a rational and appropriate disposition to prevent future harm. Auditors may incur

liability to third parties from inadequate audits. Citizens State Bank v. Timm, Schmidt & Co., 113 Wis.2d 376, 335 N.W.2d 361 (1983). Alff's inability to meet standard procedures impaired the quality of the bureau's audits. Just cause does not require the bureau and the state to incur liability caused by inadequate audits before eliminating the cause.

18. The introduction in evidence of consultants' reports does not require reversal of the termination. Statutory or common law rules of evidence do not bind an agency. Sec. 227.08(1), Stats. While the evidentiary restrictions on hearsay govern proceedings before administrative agencies, City of Superior v. ILHR Department, 84 Wis.2d 663, 672 n.6, 267 N.W.2d 637, 643 n.6 (1978), an agency has broad discretion to consider evidence attacked as hearsay. Beloit Education Asso. v. WERC, 73 Wis.2d 43, 69, 242 N.W.2d 231, 243 (1976). In any event, a court will not consider issues and alleged errors not raised before the agency. Goranson v. ILHR Department, 94 Wis.2d 537, 545, 289 N.W.2d 270, 274 (1980). Alff offered no objection based on hearsay to most of the reports.

We note that due to their frequently high level of truthworthiness, reports have received increased acceptance as evidence in other courts despite the hearsay nature. See, e.g., Moffett v. McCauley, 724 F.2d 581 (7th Cir. 1984); Debra P. By Irene P. v. Turlington, 730 F.2d 1405 (11th Cir. 1984). The ability to cross-examine the author of the report mitigates the effect of hearsay. Johnson v. Misericordia Community Hosp., 97 Wis.2d 521, 548, 294 N.W.2d 501, 515 (Ct. App. 1980). Alff cross-examined one co-author and stipulated to the testimony of another co-author of the only report which he challenged for hearsay. He received the opportunity to cross-examine the co-authors and cannot raise an objection based on hearsay.

Under all of the circumstances, we conclude that the record supports the determination of the commission that Alff's termination was based on just cause. The commission could legitimately determine that the department had sustained by the greater weight of the credible evidence its burden of proof on the existence of misconduct. The evidence allowed the commission to hold that Alff's conduct undermined the efficient performance of the bureau and could have undermined public confidence in its audits. The extensive testimony and other evidence provides support for

a conclusion that noncompliance with accepted professional standards had a direct effect on the unsatisfactory completion of several audits and could cause inadequate future audits. The record shows no special circumstances which justified a departure from GAAS. Alff's suspension and termination were supported by substantial evidence and, measured by the nature of the misconduct, were not excessive resolutions of the problem. We discern no error in the determinations of the trial court and the commission.

By the Court.--Judgment affirmed.

Publication in the official reports is not recommended.