

return to work, we will require you to submit to a psychiatric evaluation by a doctor of our choice to assist in determining whether you are able to work and interact with co-workers in a safe and efficient manner. You agreed that you would cooperate in such an evaluation. The cost of the evaluation will be paid by this department.

Since our meeting, Mr. Sprang has contacted Dr. Leigh Roberts, Psychiatric Department, University of Wisconsin Clinical Sciences Center, who has agreed to do the evaluation. You are to contact Dr. Roberts at his office, B6/240 Clinical Science Center, (Tel: 263-6077) to schedule an appointment. If additional time is needed beyond the ten-day suspension to allow Dr. Roberts to complete the evaluation and his report, a leave of absence will be considered.

(2) Mr. Sprang testified that the length of complainant's suspension was related to the nature of the behavior exhibited by complainant and to the fact that respondent was "asking for a psychiatric evaluation during that time period."

(3) Mr. Rice and Mr. Sprang participated in the imposition of the requirement that complainant undergo a psychological evaluation and had previously participated in the imposition of similar requirements in relation to other employees.

The Commission inferred from the language of Mr. Rice's letter and Mr. Sprang's testimony that respondent believed that the evaluation could be completed during the ten-day suspension period. The Commission inferred from the fact of Mr. Rice's and Mr. Sprang's previous participation in the imposition of similar requirements that such belief on the part of respondent was based on such previous experience with other employees. The Commission concluded, on the basis of these inferences and in the absence of any directly contradictory evidence in the record, that the psychiatric evaluation could have been completed within the 10-day suspension period. There is evidence in the record that the subject psychiatric evaluation of complainant was not

completed within the ten day period but the record is not clear as to the reason for this. From the evidence in the record, it is just as possible to conclude that the delay was attributable to the complainant as it is to conclude that the delay was attributable to some other factor. In his petition for rehearing, the complainant fails to point to any evidence in the record which would show that the Commission's conclusion in this regard was erroneous or to any reason why complainant did not make a record or did not have an opportunity to make a record to sustain his position that the subject psychiatric evaluation could not be completed within the ten day period. To allow the complainant, in the absence of such a showing, to now have an opportunity to augment the record in this regard would not conform to the requirements for granting a petition for rehearing and would defeat the policy which favors finality. It should be noted in this regard that complainant, in alleging that the psychological evaluation requirement was "disciplinary" in nature, had the burden to show that the psychological evaluation requirement itself, as imposed by respondent, interfered with complainant's employment in a significant way. The only evidence introduced by complainant in this regard was vague both as to the time period involved and the allocation of responsibility for the delays experienced in completing the psychological evaluation. Finally, to put this issue in the proper perspective, the finding of fact under consideration here was made in support of the Commission's conclusion that the psychological evaluation requirement was not "disciplinary" within the meaning of the Whistleblower Law. The Commission went on to conclude , however, that, even if it was "disciplinary", it was not retaliatory.

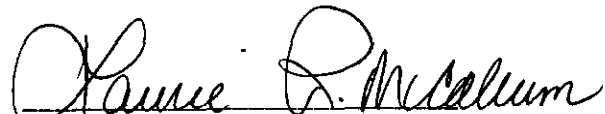
Complainant cites a similar argument in regard to the Commission's conclusion that complainant had it within his power to return to work status by agreeing to release the results of his psychiatric evaluation to respondent. The Commission reached this conclusion on the basis of the testimony in the record that respondent would have allowed complainant to return to work status after he released the results of his psychiatric evaluation to respondent and respondent had a chance to review the evaluation and on the basis of the evidence that complainant was returned to work status once he did release the results of his psychiatric evaluation to respondent and respondent had a chance to review the evaluation. As above, the complainant has not pointed to any evidence in the record which shows that the Commission's conclusion in this regard was erroneous or to any reason why complainant did not make a record in this regard or did not have an opportunity to make a record in this regard. The Commission concludes that complainant has failed to offer a sufficient basis for granting a petition for rehearing in this regard as well.


Finally, complainant argues that the Commission has failed to find just cause for respondent's imposition of the involuntary leave without pay after the expiration of the 10 day suspension. However, the issue under consideration here is not one of just cause and a determination as to just cause is not necessary in the determination of the issue under consideration here, i.e., whether complainant had been retaliated against in violation of the Whistleblower Law as alleged.

On the basis of the above, the complainant's petition for rehearing is denied.

Dated: December 29, 1988

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


GERALD F. HODDINNOTT, Commissioner

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