

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 PATRICIA A. BRIDGES, *
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 Complainant, *
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 v. *
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 Secretary, DEPARTMENT OF *
 HEALTH AND SOCIAL SERVICES, *
 *
 Respondent. *
 *
 Case No. 85-0170-PC-ER *
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INTERIM
 DECISION
 AND
 ORDER

This matter is before the Commission following the issuance of a proposed decision by the hearing examiner. Both parties have filed objections and arguments. The Commission has consulted with the hearing examiner.

While some minor changes have been made to clarify the findings and better reflect the record, the Commission finds that the proposed findings of fact and conclusions of law are accurate and correct. For ease of reference, the Commission will reiterate the findings as amended, including those findings which have not been amended:

FINDINGS OF FACT

1. Complainant, Patricia A. Bridges, a black female, is an employe of the Department of Health and Social Services, (DHSS), the respondent.
2. Respondent DHSS is a state agency with program responsibilities as referenced in §15.191, Wis. Stats.
3. On February 28, 1985, respondent fired complainant from her position at Green Bay Correctional Institution (GBCI) for off-duty conduct which it believed violated certain work rules.
4. On December 26, 1985, complainant filed a charge of discrimination with this Commission claiming respondent had discriminated against her on the basis of race, color and/or sex.

5. Complainant was hired by respondent in June 1983 as a correctional officer. After completing training school, on July 24, 1983, she was assigned to respondent's Green Bay Correctional Institute (GBCI), a maximum security penitentiary for adult males.

6. The correctional officer position at GBCI was male dominated and the atmosphere of the workplace was hostile to females.

7. Complainant was only the second black female to be employed as a correctional officer at GBCI. The first black female officer left in February, 1985 after being subjected to racial and sexual harassment.

8. The language used in the GBCI workplace was coarse, filled with sexual slurs, insults and innuendos. Disparaging black epithets frequently were used by correctional officers and inmates alike.

9. Complainant was personally the object of verbal sexual and racial harassment by fellow correctional officers, including some supervisors. Often she was the target of sexual and racial jokes.

10. Fellow officers were more receptive to complainant when she grinned and brushed off denigrating remarks than when she responded in the same coarse, obtrusive manner.

11. Complainant began getting anonymous sexually and racially harassing telephone calls.

12. Unsolicited articles, circulars and other publications containing denigrating black ethnic jokes were found in her mail box.

13. On one occasion, a GBCI employee followed complainant home and propositioned her for sexual favors.

14. Complainant reported several sexual and racial harassment incidents to GBCI supervisory personnel. She received various responses,

including, that such acts were a form of hazing and that she would have to put up with them. Nothing was done.

15. Complainant advised her supervisor that she had been informed by an inmate of a gun in the institution. Respondent shut down GBCI to search for the gun and complainant was suspended for three weeks with pay during the shut-down for suspicion of bringing a gun and drugs into the institution. Nothing was found as a result of the shut-down and complainant was instructed to return to work.

16. Complainant was suspended one day without pay on January 30, 1985, for threatening a male officer on January 6, 1985.

17. In April 1984 complainant bought a .25 caliber Raven pistol, because she was concerned about her safety.

18. On February 3, 1985, complainant was accosted by a male patron in a tavern in Milwaukee. An altercation ensued, and she was shot in the hand.

19. Complainant was charged by police authorities with the misdemeanor criminal offense of carrying a concealed weapon.

20. Complainant immediately reported the incident on February 4, 1985, to the GBCI personnel manager.

21. The shooting incident was reported in a Milwaukee newspaper and GBCI's newspaper, an in-house publication, which was distributed to GBCI employes and inmates. Neither article indicated complainant had committed any offense.

22. After complainant recovered from the injury received in the fracas, respondent held a fact-finding interview, pre-disciplinary hearing and imposed discipline upon complainant. These events took place on the

same day she returned to work, February 28, 1985. This rapid sequence of conducting the disciplinary process was unusual.

23. At the pre-disciplinary hearing, complainant disclosed her purchase of a .25 caliber pistol and her involvement in the shooting incident. The accounting of the shooting by complainant to respondent was accurate and true, but respondent did not believe her.

24. On February 28, 1985, respondent terminated complainant's employment at GBCI. This was before any resolution of the criminal charge referred to in finding #19. The stated reason for complainant's discharge was that she had engaged in disorderly or illegal conduct and failed to provide accurate or complete information when requested by management.

25. Complainant had, in fact, given a complete and accurate account of the shooting episode, including the caliber of gun she had purchased. Complainant's "disorderly and illegal" conduct resulted in her attempt to defend herself.

26. Complainant was treated differently from a white male GBCI correctional officer, Gale Poulson, who was arrested for pointing a pistol and threatening a couple in a tavern. He was convicted of carrying a concealed weapon and given 2 years probation in lieu of a 9 month jail sentence in February 1982, which was in the third month of his probationary employment. GBCI took no disciplinary action against this employe.

27. GBCI's treatment of complainant can be distinguished from its treatment of a white male GBCI employe, Donald Lumaye, who was arrested for stealing a car and stealing money from a purse in the car. GBCI suspended this employe with pay pending review of the incident, two weeks later invited him back to work, but terminated him after deciding to terminate complainant.

28. Complainant's conduct of February 3, 1985 is distinguishable from that of two white female GBCI Food Production Assistants who harbored and assisted an escaped GBCI inmate and were discharged for violating respondent's fraternization policy. The acts of these two employees, unlike complainant's, were directly connected to the security of GBCI.

29. Complainant's conduct also is distinguishable from that of a white male Division of Corrections employe who was discharged by respondent after being arrested for taking a person from his home at gun point under threat of death. Complainant's conduct is also distinguishable from that of a white male correctional officer at Waupun Correctional Institution who was discharged for stealing a table setting, lamp, and a sugar container from a supper club while in uniform; for being repeatedly absent from work without approval; and because of his previous disciplinary record.

30. Respondent's personnel policy changes and proposals in 1982 with respect to employes who were convicted of a crime and placed on probation did not affect complainant who was charged with a misdemeanor and discharged before being convicted of any offense.

31. Complainant grieved her discharge. An arbitrator reduced the discharge to a 30 day suspension because he concluded that complainant's discharge could not be reconciled with the employer's handling of the other employe charged with carrying a concealed weapon (finding #26, above), under the clause in the contract requiring uniform application and interpretation of work rules to all employes under like circumstances. See Respondent's Exhibit 13.

32. Respondent, through its supervisors at GBCI, treated complainant differently from its GBCI white male correctional officers.

ADDITION TO DISCUSSION

The Commission is in agreement with the conclusions reached by the examiner, and adds a few additional comments.

In attempting to draw parallels between complainant's off-duty altercation and that set forth in finding #26, respondent argues that complainant drew her pistol "without provocation." However, the only real evidence of what occurred on that occasion was complainant's testimony that her assailant had been harassing other patrons in the tavern and then lunged at her while knocking things out of his way. Whether her action of drawing the revolver constituted "self-defense" in a technical sense, it certainly was a defensive action as compared to the Paulson incident.

Respondent also made much of the fact that there was a discrepancy between complainant's account to the institution that the pistol in question was .25 caliber while the police report referred to it as .22 caliber. Respondent argues that she did not "offer an explanation or excuse." Since in both her statements to the police and to the respondent, complainant in effect admitted carrying a concealed weapon, the discrepancy between describing the weapon as .22 or .25 caliber seems rather marginal. Also, if the description of the weapon in the police report was due to an error on the part of the police, there was no way that complainant could "offer an explanation or excuse" for this.

Finally, the Commission notes that the arbitrator who heard complainant's grievance of her discharge reduced it to a 30 day suspension because of his conclusion that it could not be squared with the institution's failure to have disciplined Paulson (see Respondent's Exhibit 13). While respondent argues that a more complete record was made at this hearing,

there is still an insufficient basis to account for the difference in treatment, as discussed in the proposed decision.

In its objections, respondent contends with respect to the Paulson case that: "...the employe essentially claimed a handicap when he offered that he was an alcoholic and drunk at the time of the incident and that thereafter, he was receiving treatment." However, there is nothing in the record that would support a finding that respondent based its decision in his case in whole or in part on concerns about his handicap.

Respondent also objects to the findings concerning the hostility encountered by complainant at the institution. While this is not a harassment case as such, evidence of the overall atmosphere at the institution with respect to racial and sexual harassment has some relevance to a discharge. Where racial and sexual harassment is pervasive in the institution, as is strongly indicated by this record, it is inferential of a poor attitude by management with respect to race and sex discrimination.

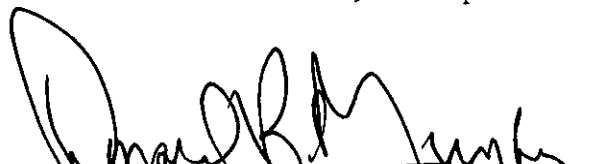
ORDER

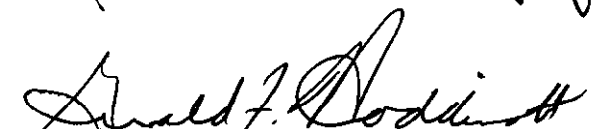
The proposed decision and order, a copy of which is attached hereto, is incorporated by reference as the Commission's disposition of this matter, with the amendments to the findings reflected in the revised findings as set forth above, and with the addition of the aforesaid comments.

Dated: March 30, 1989 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr
RCR02/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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PATRICIA A. BRIDGES, *

Complainant, *

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Secretary, DEPARTMENT OF *

HEALTH AND SOCIAL SERVICES, *

Respondent. *

Case No. 85-0170-PC-ER *

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PROPOSED
DECISION
AND
ORDER

Plaintiff, Patricia A. Bridges, brought suit against her employer, the Department of Health and Social Services (DHSS) claiming that DHSS unlawfully discriminated against her on the basis of her race, color and/or sex when it terminated her employment and when it retaliated against her for filing a complaint with this Commission. A hearing was held on complainant's claims, testimony was given, exhibits were received in evidence and posthearing briefs were filed with the Commission. The following findings, conclusions, decision and order are based upon the record of the said hearing.

FINDINGS OF FACT

1. Complainant, Patricia A. Bridges, a black female, is an employe of the Department of Health and Social Services, (DHSS), the respondent.
2. Respondent DHSS is a state agency with program responsibilities as referenced in §15.191, Wis. Stats.
3. On February 18, 1985, respondent fired complainant from her position at Green Bay Correctional Institution (GBCI) for off-duty conduct which it believed violated certain work rules.

4. On December 26, 1985, complainant filed a charge of discrimination with this Commission claiming respondent had discriminated against her on the basis of race, color and/or sex.

5. Complainant was hired by respondent in June 1983 as a correctional officer. After completing training school, on July 24, 1983, she was assigned to respondent's Green Bay Correctional Institute (GBCI), a maximum security penitentiary for adult males.

6. The correctional officer position at GBCI was male dominated and the atmosphere of the workplace was hostile to females.

7. Complainant was only the second black female to be employed as a correctional officer at GBCI. The first black female officer left in February, 1985 after being subjected to racial and sexual harassment.

8. The language used in the GBCI workplace was coarse, filled with sexual slurs, insults and innuendos. Disparaging black epithets frequently were used by correctional officers and inmates alike.

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22. At a pre-disciplinary hearing, complainant disclosed her purchase of a .25 caliber pistol and her involvement in the shooting incident. The

accounting of the shooting by complainant to respondent was accurate and true, but respondent did not believe her.

23. After complainant recovered from the injury received in the fracas, respondent held a fact-finding interview, pre-disciplinary hearing and imposed discipline upon complainant. These events took place on the same day. This rapid sequence of conducting the disciplinary process was unusual.

24. On February 28, 1985, respondent terminated complainant's employment at GBCI. The stated reason for complainant's discharge was that she had engaged in disorderly or illegal conduct and failed to provide accurate or complete information when requested by management.

25. Complainant had, in fact, given a complete and accurate account of the shooting episode, including the caliber of gun she had purchased. Complainant's disorderly and illegal conduct resulted in her attempt to defend herself.

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27. GBCI's treatment of complainant can be distinguished from its treatment of a white male GBCI employe who was arrested for stealing a car and stealing money from a purse in the car. GBCI suspended this employe with pay pending review of the incident, two weeks later invited him back to work, but terminated him after deciding to terminate complainant.

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assisted an escaped GBCI inmate and were discharged for violating respondent's fraternization policy. The acts of these two employes, unlike complainant's, were directly connected to the security of GBCI.

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30. Respondent's personnel policy changes and proposals in 1982 with respect to employes who were convicted of a crime and placed on probation did not affect complainant who was discharged before being convicted of any offense.

31. Respondent, through its supervisors at GBCI, treated complainant differently from its GBCI white male correctional officers.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to §230.45 and §§111.31 - 111.37, Wis. Stats.

2. The burden of persuasion is on complainant to show by a preponderance of credible evidence that respondent discriminated against her on the basis of sex, color and/or race.

3. The complainant met her burden of persuasion showing that respondent discriminated against her on the basis of sex, color and/or race when it discharged her as an employe.

4. Respondent's discharge of complainant as an employe at GBCI was sexually and racially motivated.

DECISION

Patricia Bridges, complainant, alleges that the Department of Health and Social Services, respondent, violated Secs. 111.321 and 111.322 of Wis. Stats. by discharging her, a black female employe, as a result of discrimination on the basis of race, color, and/or sex. In McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed 2d 668, 5 FEP Cases 965 (1973), the Supreme Court, in delineating the order and allocation of proof, held that complainant must carry the initial burden under the statute (Title VII) of establishing a prima facie case of discrimination. The burden then shifts to the employer to present some legitimate, non-discriminatory reason for its actions. Complainant then has the burden of showing that the employer's reason was a pretext for discrimination.

It is clear that complainant in this matter met her burden of establishing a prima facie case of discrimination on the basis of race, color and/or sex. Respondent discharged complainant, a black female, under circumstances similar to those of Gale Paulson. Gale Paulson, a white male, was hired by GBCI in November, 1981. Between his date of hire and first day of work, Paulson was arrested for pulling a .357 caliber Magnum pistol on a couple who was playing pool in a bar. Paulson notified GBCI staff about the incident on February 11, 1982. He said he'd been drinking, blacked out and remembered very little about the incident. He was convicted of carrying a concealed weapon and placed on two years probation. The Paulson incident was published by the media. Paulson was retained and no disciplinary action was taken by respondent.

Respondent argues that if complainant was treated differently from other employes at GBCI, these differences were not caused by complainant's sex or race. Respondent argues: The personnel policy was changed after the Paulson incident. The Paulson incident involved more mitigating circumstances than complainant's. In 1985, white employes were discharged by respondent for similar off-duty conduct.

The evidence does not support any claim that personnel policy changes put in place after the Paulson incident resulted in different treatment of employe off-duty conduct. While it is true respondent centralized the Division of Corrections' personnel functions, no policy changes occurred which explained the difference in treatment received by Paulson and complainant. Evidence on this point centered upon a policy draft which called for a change in the hiring practice of persons who had committed felonies. Clearly this proposed policy did not affect complainant's case since she was terminated prior to being convicted of any offense. Nor did it affect Ronald Lumaye, a white GBCI Officer 2 who was asked back to work after being arrested for stealing an automobile.

Respondent's arguments regarding distinctions between the Paulson and Bridges cases may have some validity, but it could be said, across the board, these distinctions favor the complainant. Complainant, unlike Paulson, was not the provocator in the bar incident. She did not threaten or point a gun at anyone. She acted in self defense. Also, she was not handling a pistol while drunk. Also, unlike Paulson, complainant immediately reported the incident to her supervisors and gave an accurate account of the affair and her prior purchase of the pistol. Notwithstanding detailed differences in these two cases, which favor complainant, it is

clear Paulson and complainant were arrested for the same offense, received similar media coverage, but were treated differently by respondent.

Respondent's argument that other employees disciplined during the same time frame -- 1985 -- were treated like complainant is not persuasive. While respondent presented several cases where an employee's off-duty conduct resulted in discharge, the misconduct of employees in these cases bears little resemblance to that of complainant. These cases involve the following off-duty conduct: auto theft, harboring an escaped prison inmate, kidnapping at gunpoint, stealing while in uniform and second degree sexual assault. Also, in three instances, the person disciplined was not a GBCI employee. These differences make comparisons with complainant's conduct difficult. However, it appears evident that the conduct in these cases was more serious or more directly connected to GBCI's institutional concerns and responsibilities. Also, two of these cases involve females and three cases involve employees at other institutions. Aside from these differences, the clear evidence in the Lumaye case shows that Donald Lumaye was treated differently from complainant. Lumaye, who stole an auto, stole money from a purse in the auto and drove the stolen auto while drunk, was suspended with pay pending a decision from the district attorney's office as to whether it would dismiss the criminal charge against him. GBCI supervisory personnel believed Lumaye's incomplete account of the event -- he said he'd blacked out. After fact-finding and a pre-disciplinary hearing, Lumaye was instructed to return to work with pay. Four days later, when Lumaye reported back to work as instructed, he was given another pre-disciplinary hearing and discharged. In contrast, complainant, who was hospitalized, was given a leave of absence without pay. Before conducting a fact-finding interview, GBCI decided to terminate complainant.

Complainant was never returned to pay status and her fact-finding interview and pre-disciplinary hearing were held on the same day was discharged.

In summary, the Commission believes that complainant met her burden of establishing a prima facie case of sexual and racial discrimination and demonstrated that respondent's reasons for discharging complainant were pretextual. In addition to the examples of disparate treatment discussed above, the record is replete with evidence showing that complainant worked in a sexually and racially hostile environment and that GBCI supervisors treated complainant's complaints about sexual and racial harassment in a perfunctory, sometimes indifferent manner. Complainant's supervisors responded to her complaints of sexual and racial harassment by requesting more specific information or dismissing the acts of harassment as being normal shop behavior. On one occasion, complainant took information to her supervisors of a reported weapon in the prison cells. In response, she was suspended for three weeks with pay under suspicion of bringing contraband into the prison. On another occasion, complainant was suspended for threatening a male co-worker, when she had a verbal confrontation over the telephone with him about failing to provide her food from the regular menu on two successive occasions. GBCI decided to discharge complainant before it had conducted its fact-finding investigation and this was agreed to by its division office. The attitude of GBCI supervisory personnel, illustrated by this behavior toward complainant, continued during its inquiry into the event which lead to complainant's discharge. The evidence clearly establishes that white male employes, disciplined under the same personnel policy, were treated less harshly than complainant.

ORDER

Complainant's claim of discrimination on the basis of race, color and/or sex by respondent is affirmed and this matter is to be scheduled for consideration of remedies.

Dated: _____, 1989 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DRM:jmf
JMF05/3

DONALD R. MURPHY, Commissioner

GERALD F. HODDINOTT, Commissioner

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