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ALLEN COHN, \*

Appellant, \*

v. \*

Secretary, DEPARTMENT OF \*  
HEALTH & SOCIAL SERVICES, and \*  
Secretary, DEPARTMENT OF \*  
EMPLOYMENT RELATIONS, \*

Respondents. \*

Case No. 88-0028-PC \*

\* \* \* \* \*

DECISION  
AND  
ORDER

This matter is before the Commission as an appeal of the denial of a reclassification request. The appellant had sought reclassification from Officer 1 to Officer 2. After a hearing, the parties were provided an opportunity to file briefs.

FINDINGS OF FACT

1. The Columbia Correctional Institution (CCI) is a maximum security prison operated by respondent DHSS. CCI was opened at the end of 1986.

2. Commencing in approximately October of 1986, appellant was employed as an Officer 1 in the Special Management Unit of CCI. The purpose of the Special Management Unit is to provide a correctional environment for up to 100 maximum security inmates who have mental health problems, are mentally handicapped or are developmentally disabled.

3. At all times relevant to the proceeding, appellant's supervisor was Kay McGuire, Special Management Unit Manager. Ms. McGuire was not always on duty at the same time as the appellant. but she made an effort to observe the work of each of her approximately 17 subordinates.

4. The definition portion of the class description for the Officer 1 classification includes the following language:

This is security work performed in a maximum psychiatric hospital or in a correctional institution. Employees in this class have responsibility for maintaining order and supervising the conduct of patients or inmates through regulations of their activities and providing for their general welfare. Assignments vary from that of tower officer, in which there is limited or no inmate contact, to positions in which major emphasis is placed upon supervision of inmates or patients within the institution. Employees in this class receive direction from higher level officers. Work instructions are received through specified regulations and oral instructions of supervising officers who review work by observation. Advancement to the next level is based on the demonstrated ability to work with inmates in a wide variety of situations. Positions at this level who work as tower or night officers would remain at this level unless an equal amount of time is spent in positions and on shifts which will allow them the opportunity for considerable inmate contact of a constructive nature.

5. The definition statement for the Officer 2 class description reads as follows:

This is responsible security and rehabilitative work performed in a maximum security psychiatric hospital or correctional institution. Employees in this class have responsibility for supervising inmate or patient activities and work programs for security and rehabilitative purposes. This class is distinguishable from the Officer 1 class by its rehabilitative and inmate supervisory responsibilities. Work is performed in accordance with established rules, regulations, and oral instructions of supervising officers but with more independence of action and responsibility for patient or inmate leadership and guidance than an Officer 1. Officers 1 move to this class only upon demonstrated ability to perform advanced level rehabilitative or security services indicated herein as observed and recorded by supervisors.

6. With the approval of both the Department of Health and Social Services and the Department of Employment Relations, four additional specific training and performance standards (Respondent's Exhibit 3) have been imposed for reclassification from the Officer 1 to 2 level.

a. "[Eighty] hours of required training as determined by the Division of Corrections, Office of Human Resources."

b. "Completion of 2 years of employment as an Officer 1 with DHSS."

c. "Formal discipline free work record for the last 6 months [prior to the reclassification target date].... Note: Formal discipline is defined as a disciplinary action resulting from the violation of a DHSS Work Rule, which has been documented or formalized in writing and included in the employee's personnel file." This requirement has been regularly interpreted as meaning written discipline, i.e., a written reprimand, suspension or involuntary demotion.

d. "Satisfactory job performance as specified in the performance planning and development process." The time-frame for review is listed as "[a]nnually or more often if performance indicates a need for evaluation."

7. The reclassification requirements have not always been strictly applied at CCI.

a. At least three Officer 1's were reclassified to the 2 level even though the only assignments they had held were 2nd and 3rd shift tower assignments.

b. One officer (Boyles) was reclassified without having completed the 80-hour training requirement as of the effective date of reclassification. Officer Boyles had commenced at least some of the required training in the week prior to the end of the 2-year period. He was reclassified and then completed the training during the following week.

c. One officer was reclassified in August or September of 1987 despite receiving a written reprimand for a work rule violation during the prior 6-month period. At that time, CCI management had interpreted the reclassification standards as providing some latitude to the appointing authority in applying the 6-month, discipline-free

provision. However, before the appellant's reclassification request was considered, the CCI personnel director was informed by the Office of Human Resources in the Division of Corrections that the 6-month provision was mandatory.

8. Based on the date the appellant commenced working as an Officer 1, he had been employed in that classification for a period of two years by January 22, 1988. By that same date, the appellant had successfully completed the 80 hours of training required for reclassification to the Officer 2 level.

9. On October 21, 1987, appellant was issued a written reprimand for failure to follow CCI policy on submitting time sheets (Respondent's Exhibit 6). The letter of reprimand specified that the decision was appealable through the grievance procedure established by the collective bargaining agreement covering the appellant's position. The appellant failed to grieve the letter of reprimand. The letter also indicated that the appellant had violated the time sheet policy earlier in October of 1987 and had been sent a reminder notice about the policy at that time.

10. On December 22, 1987, and for the first time since appellant commenced working in the Special Management Unit, Ms. McGuire issued a Performance Planning and Development Report (PPD) for the appellant. (Respondent's Exhibit 4). The report indicated that the appellant "[d]oes not meet standards" as to eight of twenty performance standards: Enforces rules in a fair, firm, and consistent manner; Awareness of inmate concerns and needs, and makes appropriate referrals; Accurate and objective reporting; Sensitivity to others and their problems, feelings and rights; Courteous and tactful; Responds positively to constructive criticism and supervision;

Attendance; Complies with work rules. Ms. McGuire made the following written comments on the PPD:

Officer Cohn does recognize the importance of conducting both pat and room searches. In doing these searches, he does a thorough inspection.

Officer Cohn is aware of the atmosphere within his unit. He is able to recognize the mood swings of inmates in the Special Management Unit. Officer Cohn at times does not use this information in a constructive way. At times he will refer his concerns to appropriate staff in a positive way; however, there are times when he feels the inmate has nothing coming to him and he discounts the concerns of the inmate. In these situations, a power struggle often develops between Officer Cohn and the inmate. Given the nature of some of the SMU inmates, when this power struggle develops, they tend to respond reactively and end up acting out with negative behavior.

Officer Cohn's communication is timely and understandable. [W]riting skills are adequate and his report writing is legible. In most cases, his information is accurate and objective, however, at times his discounting of inmate concerns and needs results in communication which are skewed.

At times Officer Cohn can be very courteous, tactful and respond to both staff and inmates in an appropriate manner. However, there have been incidents with both staff and inmates where he has been rude, tactless and insensitive to inmates rights, feelings, and their problems. Officer Cohn's discounting of the inmates in this way has had a negative influence on the atmosphere of the Special Management Unit.

Officer Cohn could use any training which deals with interpersonal skills.

Although Officer Cohn at times is very appropriate in his behavior with staff and inmates, his overall effect on the Special Management Unit has been negative. Officer Cohn does have the attitude that the inmates have nothing coming. This comes across to inmates, and it sets a negative atmosphere in the unit. Officer Cohn needs to work on developing a positive attitude with both staff and inmates. Until Officer Cohn improves in this area, he will not be a constructive element of the Special Management Unit. Officer Cohn has not met the performance standards of an Officer 1.

11. The appellant's December 22, 1987 PPD was based in part on the following:

a. In April of 1987, an inmate had accused the appellant of stealing a red pen. Ms. McGuire investigated the allegation and concluded that it was unfounded. Later, a Sgt. Murawski reported to

Ms. McGuire that the appellant had pulled a red pen out of his pocket and waved it at the inmate who had previously filed the complaint against the appellant.

b. On April 28, 1987, Ms. McGuire counseled the appellant and instructed him not to bring a handball on the unit. The appellant had previously been observed with a handball on the unit. Staff reported observing the appellant throwing a handball at an inmate's cell on May 7, 1987. On May 12, the inmate reported that the appellant had repeatedly bounced a ball off his cell. The CCI superintendent suspended the appellant one day for his conduct. (Respondent's Exhibit 7). The suspension has been grieved.

c. On October 7, 1987, Ms. McGuire counseled the appellant that when he was serving as security in a classroom setting, he should remain at his desk rather than walk about the classroom. On October 13, 1987, a CCI teacher filed a written complaint with Ms. McGuire about appellant's behavior, stating that the appellant had refused the teacher's request to return a math book to a student, that appellant had been "circulating among the students again," and that the appellant had inappropriately looked through the teacher's record book.

d. On December 1 or 2, 1987, Ms. McGuire received a written complaint from another staff member about the appellant. That report stated that the appellant had been observed reading an inmate's mail. The appellant had previously been counseled by Ms. McGuire about reading inmates' mail. The staff member also reported observing the appellant kicking the door of the control area in the Special Management Unit.

e. During the summer of 1987, the CCI superintendent, James Murphy, informed Ms. McGuire that the Special Management Unit, and specifically the appellant, had submitted a large number of inmate conduct reports and that it was his opinion that things could be handled more effectively in a more informal way rather than by filing the reports. Ms. McGuire counseled the appellant and also held a staff meeting on this subject.

f. During the period from March of 1987 to December of 1987, Ms. McGuire also counseled the appellant on at least three occasions for swearing at inmates.

g. The appellant did not properly accept criticism of his performance or suggestions as to how he could improve his performance. The appellant often was not tactful in his dealings with inmates and staff.

12. Ms. McGuire received substantially more complaints about the appellant's performance than she received about the performance of other staff on the unit.

13. Respondent DHSS declined to reclassify the appellant's position to the Officer 2 level, effective January 22, 1988, in light of the unsatisfactory PPD and the existence of written discipline during the preceding 6-month period.

#### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to s. 230.44(1)(b), Stats.

2. The appellant has the burden of establishing that respondents' decision to deny the reclassification of his position from Officer 1 to Officer 2 was incorrect.

3. The appellant has failed to sustain his burden.

OPINION

In contrast to the majority of reclassification decisions, the focus of the instant appeal is on the job performance of the appellant rather than on whether or not he has certain job assignments. The general language of the Officer 1 and 2 class descriptions has been supplemented by a very specific recitation of four reclassification standards (Respondent's Exhibit 3) which have been adopted by DHSS and DER. Two of the four standards are at issue in the present case; the 6-month, discipline-free work record and the satisfactory PPD. The respondent acknowledges that the appellant was in the position for the requisite 2-year period and that he had completed the 80-hour training requirement.

It is also undisputed that within 6 months of when the appellant completed the 2-year requirement, he received a letter of reprimand for failing to file a time sheet on two separate occasions. The letter of reprimand could have been grieved but was not. As a consequence, the appellant is not permitted to obtain a just cause review of the reprimand in the context of the instant reclassification appeal. Instead, the Commission must simply accept the accuracy of the information set forth in the letter of reprimand and may not disturb it.

The only possible basis on which the appellant could overcome the existence of the October 21st letter of reprimand is if he were able to establish that the respondent regularly ignored the 6-month, discipline-free work record requirement. The evidence shows that on one occasion, in August or September of 1987, the CCI did reclassify an employe to the Officer 2 level despite the existence of a 3- or 4-month-old written reprimand in his work record. Later, the institution was told that the



6-month requirement was mandatory. CCI's personnel manager testified that he was "pretty sure" that he was advised of the mandatory nature of the standard before the appellant's reclassification request was considered. Even if the sequence were reversed, it would be inappropriate for the Commission to require the respondent to reclassify the appellant despite his written reprimand and to repeat what has been acknowledged to have been an earlier incorrect decision. Danielski et al. v. DER, 85-0196-PC, 9/17/86.

Irrespective of the conclusion as to the discipline-free work record requirement, the appellant has failed to meet his burden of proof as to the unsatisfactory PPD completed by Ms. McGuire on December 22, 1987. The appellant offered testimony by an Officer 2 co-worker and by a sergeant who often directed the appellant's work in the Special Management Unit. Officer Smiley testified that the appellant performed as well as Officer Smiley. Sgt. Slovik testified that he would have completed appellant's PPD differently and said that appellant's performance was "better than most" officers. However, there was no indication that either witness was aware of the numerous complaints received by Ms. McGuire about the appellant's performance. In addition, Sgt. Slovik confirmed that the appellant needed "quite a bit of work" to become courteous and tactful and that appellant's immediate reaction to criticism was "not good." Given the nature of this testimony, the Commission cannot conclude that the appellant's PPD was incorrect.

The fact that Ms. McGuire did not have first-hand knowledge of many of the incidents which formed the basis of many of the adverse conclusions in the PPD does not mean that the PPD must be thrown out. Ms. McGuire did

have first-hand knowledge of some of the matters and she reasonably relied on complaints filed by other staff members regarding appellant's conduct.

Finally, the appellant noted that the time period between the PPD and his prior PPD (in May of 1986) was excessive. Ms. McGuire testified that the PPD covered the period from when appellant started in the Special Management Unit in approximately October of 1986 until December of 1987. As noted in Respondent's Exhibit 3, PPD's are to be completed "[a]nnually or more often if performance indicates a need for evaluation." It would have been preferable if the appellant had received PPD's more frequently, especially in light of the perceived performance problems. But the failure to give the appellant a PPD within 12 months of when he began in the Special Management Unit does not alter the fact that, as of January, 1988, his most recent PPD was unsatisfactory. The most that can be said of the appellant's argument is that the Commission should not consider events more than 12 months prior to the date of the December 1987 PPD. None of the incidents listed in Finding 11 precede that twelve-month period.

Based on the rationale set out above, the Commission issues the following

ORDER

The respondents' decision is affirmed and this matter is dismissed.

Dated: Jan 25, 1989 STATE PERSONNEL COMMISSION

KMS:rcr  
RCR03/2

  
DONALD R. MURPHY, Commissioner

  
GERALD HODDINOTT, Commissioner

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