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JOAN BARKER,

Appellant,

v.

Secretary, DEPARTMENT OF  
REVENUE,

Respondent.

Case No. 89-0116-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

This matter is before the Commission on appellant's claim that she was demoted in violation of the "just cause" requirement provided in §230.44(1)(c), Wis. Stats. A hearing was held on appellant's charge, testimony was given, exhibits were received into evidence, respondent gave a post-hearing oral argument, and appellant submitted a post-hearing brief. The following findings of fact, conclusions of law, opinion, and order are based on the record of that hearing. To the extent any of the opinion might constitute a finding of fact, it is adopted as such. And, to the extent any finding of fact might constitute conclusions of law, it is adopted as such.

FINDINGS OF FACT

1. Appellant, Joan Barker, began working in respondent's Lake Michigan District Equalization office in Green Bay, WI, as a Property Assessment Specialist (PAS) 1 Trainee in March 1985.
2. Respondent, Department of Revenue, is a state agency and has the responsibility of administering all state tax laws, except the insurance premiums tax.

3. From March 1985 to August 1986, appellant went through an eighteen-month training program and became certified at the Assessor 2 level.

4. At the completion of the training program August 31, 1986, appellant was appointed as a PAS 1 and began a six-month probationary period.

5. Appellant's supervisor was Thomas Janssen, who was the office assistant supervisor and field supervisor.

6. From the beginning as a PAS 1 trainee, appellant's work progress was reviewed and evaluated. During the eighteen-month training program, periodically, approximately every three months, appellant's supervisor would write up a report on appellant's work performance.

7. At the end of each time period, this report, called a Trainee/ Probationary Employee Performance Evaluation Report, was discussed by Janssen with appellant and then given to appellant for her signature, attesting to having read and discussed it with her supervisor.

8. Appellant's six- and nine-month performance reports indicated that she had not independently completed enough projects to assign quality and quantity rating to her work.

9. Appellant's twelve-month evaluation report showed that she was below the minimal quantity rating of 2.0 for field projects.

10. Appellant's fifteen-month evaluation report showed the projects she was independently working on, although not completed.

11. At the end of eighteen months, Janssen wrote that appellant was having problems in field productivity, but he recommended advancing her to the objective (PAS 1) classification.

12. On August 31, 1986, appellant was appointed a PAS 1 and began a six-month probationary period.

13. For the 0-3 month probationary period, appellant's field review work, which had a 1.2 average quantity rating, was not meeting the PAS 1 quantity rating standard minimum of 2.0.

14. Mr. Janssen, noting appellant's low field work review production, recommended that she have daily supervision of field review projects by her field supervisor, including developing appellant's daily activity plans, reviewing appellant's daily activity flow, accompanying appellant during field work and monitoring her progress.

15. On February 26, 1987, prior to the end of appellant's six-month probationary period, Mr. Janssen wrote his supervisor and recommended appellant's probationary period be extended for three months. Janssen noted, since he began close daily supervision, appellant had increased her work productivity to the minimum quality rating standard, but he believed more time was needed to evaluate appellant's ability to effectively plan and organize her work.

16. Janssen's recommendation to extend appellant's probationary period was approved by his supervisor and sent to the central office, where it was rejected and returned with a directive either to terminate or promote appellant to PAS 1. The district office decided to promote appellant.

17. For the 1986-1987 year, Janssen rated appellant's work performance as being below standards for a PAS 1. This rating was written up in appellant's Discretionary Performance Award Report, dated June 15, 1987, and discussed with appellant. In this report, Janssen concluded appellant's field review productivity was significantly lower than the 2.0 minimum standard.

18. Again in appellant's 1987-1988 Employee Performance Evaluation Report, Janssen wrote, under the heading "General Evaluation Comments," that appellant's final review quantity rating of 1.0 for projects completed during the review period was significantly below the 2.0 standard for a PAS 1.

19. On April 27, 1988, Mr. Janssen discussed three job performance reports with appellant: Appellant's 1987-1988 Employee Performance Evaluation Report, its Supplement to Performance Evaluation Reports, and an Exceptional Performance Report, of the same date. Each report indicated appellant was performing below minimum field review productivity job standards for a PAS 1. The format of this discussion was like other discussions with appellant about her job performance reports.

20. In May 1989, appellant received another "unsatisfactory" annual job performance rating. This job performance rating, written in appellant's 1988-1989 performance evaluation report, was also discussed with her. And at some point, in response to a question, appellant was informed that the implications of the unsatisfactory rating included the possibility of termination.

21. Subsequently, appellant's job performance history was discussed by Mr. Janssen; Janssen's supervisor, Mr. Phil Sanders; and Mr. Glenn Niere, the Chief of the Equalization Section. That discussion was followed by a memorandum from Sanders to Niere recommending appellant's employment termination.

22. The recommendation to terminate appellant was approved by Mr. Niere and sent to the Director of the Bureau of Property Tax, Mr. Glenn Holmes.

23. On January 28, 1989, Glenn Holmes wrote a memorandum to the Division Administrator, James Behrend, concurring with the recommendation to terminate appellant's employment with the agency. Behrend, in a

memorandum to Holmes dated July 10, 1989, said he concurred and directed Holmes to contact Agnes Cammer to assist in the transaction.

24. On July 18, 1989, appellant wrote Mr. Behrend, as he suggested in an earlier telephone conversation, expressed her beliefs about her field work performance and requested an extension of three or six months with a full workload before any decision was made on the recommendation to terminate her employment.

25. In attendance at the scheduled August 7th meeting were appellant, Mr. Behrend, Mr. Holmes, and Mr. Niere. They discussed appellant's work performance history and discussed recommendations to demote or terminate appellant's employment with the agency. Mr. Behrend told appellant he would review the information and then notify her of his decision.

26. On August 9, 1989, Mr. Behrend wrote appellant, informing her that she was being demoted, effective August 25, 1989, at the end of her work day. He gave as reasons for her demotion the items discussed at the August 7th meeting and items identified in her performance evaluations.

28. Appellant was directed to report to the Wausau District Equalization Office on August 28, 1989, to begin work as a Property Assessment Technician 2.

29. On September 25, 1989, appellant appealed Behrend's decision to demote her from Property Assessment Specialist 1 to Property Assessment Technician 2.

#### CONCLUSIONS OF LAW

1. This Commission has jurisdiction over appellant's appeal pursuant to §230.44(1)(c), Wis. Stats.

2. Respondent has the burden of proving, by establishing to a reasonable certainty by the greater weight or clear preponderance of evidence, that the imposed discipline was for just cause, and that such discipline was not excessive.

3. Respondent has satisfied its burden.

#### OPINION

The issue in this appeal is whether respondent had just cause to demote appellant. In State ex rel. Gudlin v. Civil Service Commn., 27 Wis. 2d 77, 87, 133, N.W. 2d 799 (1965), the court defined the test for "just cause" as follows:

" ... one appropriate question is whether some deficiency has been demonstrated which can reasonably be said to have a tendency to impair his performance of duties of his position or the efficiency of the group with which he works...."

Again in Safransky v. Personnel Board, 62 Wis. 2d 464 (1974), the court defined "just cause" within the context of employe conduct and its deleterious effect on job performance. However, the present appeal before this Commission does not involve allegations of employe misconduct in connection with job performance, but instead the failure of an employe to perform her assigned tasks. Consequently, unlike misconduct cases, in this instance it is unnecessary to show a nexus between the alleged misconduct and its harmful effect on job performance, because the conduct complained about is the inadequate job performance. Accordingly, it is only necessary to meet the requirement of "just cause" by showing appellant failed to adequately perform her assigned tasks. Also, because this appeal arises from a demotion based on alleged inadequate performance, the question of whether the level of discipline was excessive is effectively answered if the respondent is able to establish that the level of performance was in fact inadequate and containing.

The evidence clearly shows appellant failed to satisfactorily perform her assigned duties. Appellant's immediate supervisor, Thomas Janssen, testified that from the time she began as a PAS 1 Trainee in March 1985, and evaluations were made of her job performance, appellant failed to meet the minimum field review quantity rating standard for a PAS 1. Janssen's testimony was documented in appellant's performance evaluation reports for that same period. Mr. Janssen also testified that early on in 1988 he began assisting appellant in organizing her work, developing short-term goals, reviewing, and providing feedback. He also testified appellant spent considerable time working after regular office hours, but her efforts failed to produce an acceptable amount of final completed appraisal projects.

The evidence presented by respondent was undisputed. The appellant did not testify or present witnesses in her behalf. She only cross-examined respondent's witnesses and presented documentation of her field review projects from April 1986 to March 1989. This evidence produced by appellant through cross-examination and her exhibit was not inconsistent with the evidence presented by respondent.

Appellant argues that, until 1988 when she was under a doctor's care and on medication, which produced counter-indicated side effects, she had completed all of her work assignments. And that it doesn't matter whether her work assignments were completed within the time allotted because they were completed in time for implementation by her office. Also, appellant argues that respondent was "derelict in its responsibilities to fully disclose expectations."

Little, if any, evidence was presented which supports appellant's arguments. Appellant did not testify nor did anyone testify in her behalf. There is no evidence in the record indicating appellant was in 1988-1989 job

performance evaluation year on medication, which produced side effects causing her not to be able to complete her assigned tasks. There is no evidence that appellant, from the start of her employment with respondent, was not informed, periodically, at regular intervals, of her low field review productivity. Also, appellant's arguments notwithstanding, the evidence shows that appellant was provided work plans which delineated the year in quarters and the time to complete a project and perform at the minimum standard in days.

In Maloney v. State Personnel Board, 25 Wis. 2d 311, 130 N.W. 2d 245 (1964), the court held that failure to perform assigned tasks was just cause for discharge. In the instant case, appellant failed to perform at the minimum standard required of her position. The Commission believes as stated in Ruff v. State Pers. Commn., Case No. 81-CV-4455 (Cir. Ct. Dane Cty. 7/23/82) that a person in public service is expected to perform the duties of the position and if a person fails to do so, the public service suffers. Appellant's inability to perform at the PAS 1 level is enough reason to demote and replace her with someone else who can perform the duties of the position.



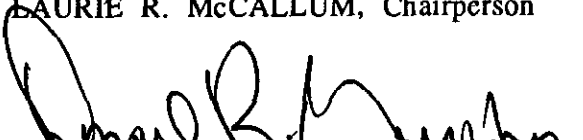
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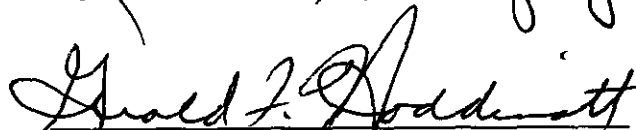
Respondent's demotion of appellant is affirmed and this appeal is dismissed.

Dated: May 16, 1990

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

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