

STATE OF WISCONSIN

PERSONNEL COMMISSION

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RICHARD H. NELSON,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 92-0310-PC

* * * * *

ORDER

The Commission, after reviewing the Proposed Decision and Order and the objections thereto, and after consulting with the hearing examiner, adopts the Proposed Decision and Order as its final resolution of this matter with the following added for purposes of clarifying the first full paragraph on page 12:

Although this appeal does not present an issue of just cause or discrimination/retaliation, evidence relating to Ms. Klusendorf's statements to and conflicts with appellant could be relevant to determining her objectivity in evaluating and reporting appellant's performance. In fact, evidence to this effect was received into the hearing record here for this purpose. However, the record as a whole does not support appellant's contention that Ms. Klusendorf's evaluations of appellant's performance were colored to any significant extent by her conflicts with appellant, and the objective evidence of record, i.e., the productivity records, sustain Ms. Klusendorf's assessments of appellant's performance.

Dated: September 17, 1996

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:lrn


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Richard H. Nelson
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Jon Litscher
Secretary, DER
PO Box 7855
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NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the

Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.

2/3/95

* * * * *

RICHARD H. NELSON,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 92-0310-PC

* * * * *

PROPOSED
 DECISION
 AND
 ORDER

This is an appeal of a reallocation decision. A hearing was held on April 18 and 19, and September 20, 21, and 22, 1995, and January 29 and 30, 1996, before Laurie R. McCallum, Chairperson. The parties were permitted to file post-hearing briefs and the briefing schedule was completed on July 22, 1996.

1. In August of 1987, appellant was appointed to the subject position which was located in the Aids Audit Unit, External Audit Section, Bureau of Finance, Department of Natural Resources (DNR). The position was then classified as an Auditor 3 with responsibility for conducting complex desk and field audits of public and private organizations, and providing consulting services to the DNR relating to auditing standards and federal cost principles. The function of the Aids Audit Unit is to perform financial audits of grantees of DNR funds, including the Wisconsin Fund.

2. During the course of a project funded by a Wisconsin Fund grant, the grantee requests interim payments which are reviewed and approved by an Auditor in the Aids Audit Unit. At the end of the project, the grantee submits a final payment request. The assigned Auditor reviews this request and prepares an audit report which is required to be completed before final payment can be authorized and disbursed.

3. In an evaluation of appellant's performance for the period August 31, 1987, to December 8, 1987, Patrick Sheahan, his supervisor, stated as follows, in pertinent part:

Quality of the work remains good. Quantity is greatly increased and just about where I would expect it to be. Dick should continue to evaluate procedures to spend time efficiently.

* * * *

We have agreed that IB [prepare audit reports during FY 1987-88] will be changed from 7 to 5 grant audits because of the fact that Dick began in the second quarter of FY 87-88.

4. In an evaluation of appellant's performance for the period August 31, 1987, to March 1, 1988, Mr. Sheahan stated as follows, in pertinent part:

Quality and quantity of work remain good. I expect Dick to continue to evaluate procedures to find ways and new ideas to be more effective and efficient.

Dick has completed the first of five final MMSD audits that will be conducted this fiscal year. The audit work was of high quality and the working papers met all standards. I expect Dick to conduct four more such audits this fiscal year.

5. Appellant completed two (2) audit reports in fiscal year 1987-88 and didn't complete the last of the five (5) audits referenced by Mr. Sheahan in this performance evaluation until August of 1989.

6. Effective August 27, 1989, appellant's position was reclassified to the Auditor 4 level. One of the bases for this reclassification was appellant's assignment to audit the Milwaukee Metropolitan Sewerage District (MMSD) component of the Wisconsin Fund. Of the 800 Wisconsin Fund grants, MMSD accounted for 100 of them. The justification for this reclassification stated that appellant's position now "compares favorably to other Auditor 4's in our department." Appellant's request for reclassification had been submitted by Mr. Sheahan, his supervisor at the time.

7. Joyce Klusendorf became appellant's first-line supervisor in June of 1989. When she was appointed to this position, she was advised by her supervisor Jim Stenz that MMSD had not been sending in final payment requests, and was directed by him to get things moving since the Wisconsin Fund was winding down and certain deadline dates were approaching. During 1989 and 1990, appellant was the only Auditor in the Unit assigned exclusively

to MMSD grants. In December of 1990, Jeff Krebs was appointed to an Auditor position in the Unit and assigned exclusively to MMSD grants. After Mr. Krebs' appointment, all MMSD grants were generally assigned either to appellant or to Mr. Krebs. As time went on and more projects were completed, fewer MMSD interim payment requests and a larger number of MMSD final payment requests were received by the Unit; and completing audit reports became an increasingly higher priority.

8. In a performance evaluation signed by Ms. Klusendorf on May 24, 1990, she stated as follows in regard to appellant's performance, in relevant part:

Dick is very timely in making payments to MMSD. He has taken the responsibility of training Tim Swan and Tim Meeusen on how to make interim payments to MMSD. He coordinates the payment request project. He has done an excellent job with this.

* * * *

[Strong skills]

1. Professional attitude.
2. Audit knowledge and background.
3. Organizational skills.
4. Precision--attention to details.
5. Good awareness of grantee (MMSD)--its background, problems, and goals.

[Areas for improvement]

1. Develop advanced computer skills to help speed the audit process.

[Directions for the year ahead - July 1, 1990-June 30, 1991]

1. Continue to conduct audits in accordance with established standards.
2. Make a strong effort to do several final audits for MMSD.

9. Appellant completed one (1) audit report between July 1, 1990, and June 30, 1991, on May 1, 1991. Appellant did not complete any audit reports between August of 1989 and May of 1991. There were at least sixteen (16) final payment requests ready for completion of an audit report between August of 1989 and May of 1991.

10. On March 26, 1991, Ms. Klusendorf and appellant met and discussed how appellant could increase his production of audit reports. On March 27, 1991, Ms. Klusendorf and appellant met again. During this second meeting, Ms. Klusendorf noted that appellant had not completed an audit report since August of 1989; indicated that appellant was to begin devoting all his time to processing interim payment requests and completing audit reports; and directed that any issue relating to MMSD which arose that would consume more than a day of appellant's time be brought to Ms. Klusendorf for her to address personally. Later in March, after these meetings with appellant, Ms. Klusendorf met with the DNR's Management Assistance Team (MAT) at her request to discuss her concerns relating to appellant's productivity. DNR's MAT was established to provide a forum for supervisors to meet with representatives of the Employee Assistance Program, employment relations, affirmative action, classification and compensation, personnel attorney, and personnel director to discuss and receive guidance in relation to workplace issues, including subordinate employee performance. The MAT assigned James Federhart of DNR's personnel unit to work with Ms. Klusendorf to develop a plan to address her concerns.

11. In a performance evaluation signed by Ms. Klusendorf on May 21, 1991, she stated as follows in regard to appellant's performance, in relevant part:

Dick is timely in making interim payment request payments to MMSD. He has had the majority of the payments to process this past fiscal year. He has also had to spend a lot of time "servicing" many grants (figuring 95-99% payments, reviewing difficult grants for payment, large, complicated contract modifications, contracts with MMSD and DAM employees).

Dick has written one audit report this fiscal year.

* * * *

[Strong skills]

1. Good historic knowledge of MMSD grant department.
2. Sense of customer service as it relates to MMSD.
3. Professionalism.
4. Good knowledge of audit procedures.

[Areas for improvement]

1. Work on productivity--increasing amount of audit reports completed.
2. Continue to develop computer skills in relation to producing workpapers with the computer.

[Directions for year ahead]

1. Continue to conduct interim and final audits at MMSD of their Wisconsin Fund Grant projects.
2. Continue to work with special MMSD projects as they arise.
3. Work at increasing the number of initial audit reports written.

12. In a memo to appellant dated August 8, 1991, Ms. Klusendorf stated as follows, in pertinent part:

We met yesterday, August 7, 1991, to discuss possible training vehicles that might be helpful toward improving your productivity. . . .

I explained the Performance Improvement Planning program that the Department follows in working with employees who need to improve their performance. . . .

Upon taking your concerns into consideration, we have arrived at the following plan which I would like to discuss with you in person in the near future. This plan will come under the Department's Performance Improvement Planning process, but will be tailored to meet our needs. It will consist of the following two steps:

1. We will jointly identify and prioritize your work load with the possibility of reassigning some of your tasks so that the majority of your time can be spent preparing audit reports.
2. We will work thru the audit process on an MMSD grant, step by step, under my guidance.

13. After appellant was placed on this informal Performance Improvement Plan (PIP), Ms. Klusendorf conducted detailed reviews of his work product and met with appellant weekly to review his progress. The decision to place appellant on the informal PIP was made jointly by Ms. Klusendorf, Mr. Stenz, and Margie Devereaux, the Director of the Bureau of Finance, based on a recommendation from Mr. Federhart.

14. In a memo to appellant dated January 10, 1992, Ms. Klusendorf stated as follows, in pertinent part:

We started your performance improvement plan on August 8, 1991, with the intent of helping you find ways in which your audit report productivity could be increased. The two steps we agreed to follow were:

* * * *

We have fulfilled these two steps. Your work load now consists of working on MMSD grant audits and preparing interim payment requests for MMSD. Payment request work usually takes two to three days a month. You submitted the first initial audit report under this plan on October 7, 1991, and a second one on November 1, 1991.

We met with Jim Stenz on November 13, 1991 to discuss how the process was working. At that meeting, it was mutually agreed that you would be able to complete two more initial audit reports by January. We did not set a specific date at that time, but we have since agreed on January 31, 1992.

15. In a memo to appellant dated April 21, 1992, Ms. Klusendorf stated as follows, in pertinent part:

I have been reviewing your work effort and want to give you an assessment of where I feel you stand with your performance in the unit at the present time. We have been working since August 8, 1991, on your performance improvement plan. Some progress has been made, but some additional effort will need to be made before you meet the average standards of output for the unit.

Following is an analysis of the audit reports written on the Wisconsin Fund program by you and the other 4 auditors working on the program. The data covers the period 7/1/91 to 4/20/92, (YTD for the current fiscal year).

	<u>Initial</u>	<u>Draft</u>	<u>Final</u>
Dick (total)	4	3	3
Others (total)	40	40	41
Others (average)	10	10	10

The other auditors have done special audit projects, worked on other programs, or have done assigned administrative tasks besides working on their Wisconsin Fund projects. Your only assignment has been to work on payment requests and audit reports for MMSD.

On 4/16 you handed in the last one of the two audit reports that you were to have completed by January 31, 1992. You missed your deadline for the last report by two and a half months. Your two reports, however, were well thought out, well written, and backed up with relevant workpapers. . . .

Your productivity needs to be increased in order for you to become an effective auditor in the unit. You have made progress, but are not meeting the average output of the unit. It appears that you have difficulty organizing your time. Procrastination and lack of motivation also may be factors.

As an example, you said at our MMSD staff meeting on 4/15/92 that you could have grant #5400-03 finished during the week of 4/20/92. When I talked to you on 4/20 you said that you could probably have it finished by 4/30. I believe we need to work out more definite time schedules. There appears to be large blocks of time where nothing much is accomplished.

I see five things that I want to implement that should make it possible for you to increase your audit report output:

1. Weekly reviews with concentration on what work will be done in the upcoming week and an assessment of whether the previous week's goals were met.
2. Daily time sheet of items worked on.
3. Review of work papers to see if some work could be eliminated.
4. Close scrutiny of information from MMSD that is holding up audit closure.
5. Time management training course.

The goal for the remaining months of this fiscal year, until June 30, 1992, would be to finish grant #5400-03, work on and complete grants #859-31 and 859-94. This would give you a total of 7 Initial Reports for the fiscal year. This is still not up to standard, but appears to be the most you can accomplish. New goals for fiscal year 1992-93 will be set at your annual review in May.

16. Between January 1 and June 30, 1991, Mr. Krebs completed five (5) audit reports and appellant completed one (1) audit report. Mr. Krebs was a probationary employee during this period of time.

17. For calendar years 1988 through 1992 (5 years), appellant completed fourteen (14) audit reports. For calendar years 1991-92 (2 years), Mr. Krebs completed twenty-three (23) audit reports.

18. During fiscal year 1991-92, a workload analysis of Wisconsin Fund audit reports completed by Auditors in the Aids Audit Unit showed the following:

<u>Auditor</u>	<u># Audit Reports</u>	<u>\$ Amount</u>
Nelson	5	1,408,768
Krebs	10	13,080,458
Miller	14	7,088,173
Goodno	12	12,675,992
Klein	20	11,322,347

19. There was no significant difference between the complexity of the audit reports or the interim payment requests assigned to appellant and to Mr. Krebs. During the 1991-92 fiscal year, Mr. Krebs and appellant handled a comparable number of interim payment requests. During the 1991-92 fiscal year, appellant was assigned to work only on interim and final payment requests/audit reports while Mr. Krebs had these responsibilities as well as special audit assignments such as systems auditing at MMSD and at MMSD's Program Management Office, and a review of the audit work done by MMSD's financial accountants. As relevant to the duties and responsibilities of an Auditor position in the Aids Audit Unit, appellant's qualifications and experience were comparable to those of Mr. Krebs.

20. In a performance evaluation signed by Ms. Klusendorf on June 18, 1992, she stated as follows in regard to appellant's performance, in relevant part:

Dick has done an excellent job in seeing that MMSD payment requests have been turned around in a timely fashion. He has taken the responsibility for seeing that all payment requests get assigned to one of the three MMSD auditors. Dick reviewed and approved 105 payment requests totaling \$20,322,544. He has completed 5 initial audit reports and has 2 more nearly completed. This is an increase over last fiscal year. This was one of his objectives for this year. Dick's audit reports are well written and documented.

* * * *

[Strong skills]

1. Organizational skills.

2. Professional attitude.

3. Customer service orientation.
4. Knowledge of Wisconsin Fund program.
5. Knowledge of audit procedures.

[Areas for improvement]

1. Productivity of audit reports.

[Directions for the year ahead]

1. Continue to conduct interim and final audits of MMSD's Wisconsin Fund grants.
2. Complete 10 initial audit reports.
3. Assist with systems audits to MMSD.

21. Effective April 5, 1992, appellant's position was reallocated to the Auditor Senior (PR 1-15) classification as the result of a personnel management survey conducted by the Department of Employment Relations (DER). Each of the other Auditors in the Unit was reallocated to the Auditor-Advanced (PR 1-16) classification. The new Auditor classification series established as the result of the survey was a progression series. The differences between the entry, developmental and objective classification levels within a progression series are the degree of review and supervision provided by the supervisor, and whether the employe satisfactorily performs the full range of duties assigned to that position type. The performance of the employe, and whether or not such performance is satisfactory, is a major factor in identifying the appropriate class level for an employe within a progression series. As the result of the survey, the Auditor-Advanced classification was designated as the objective level for Auditor positions in the Aids Audit Unit and the Senior classification as the developmental level.

22. Appellant's position was classified at the Senior level because he was receiving closer supervision and review than a position at the objective level, because his supervisor reported that there were problems with the quantity of his work product, and because his supervisor reported that there were certain Advanced level duties, e.g., MMSD systems auditing and auditing of MMSD's financial accountants, which were assigned to and performed by other Auditor-Advanced positions, including Mr. Krebs', which were not assigned to nor performed by appellant during the time period relevant to the survey.

23. The classification specification for the Auditor-Senior classification states as follows, in pertinent part:

This is the senior level for professional positions performing complex auditing duties which require the knowledge and application of professional accounting and auditing theories and principles. Positions at this level plan, conduct and/or lead lower level Auditors in financial, compliance, operational, rate analysis and setting, or investigative audits of organizations either internal or external to state service; develop audit programs and procedures; conduct office or field audits; prepare working papers; assign, train and review the work of lower level Auditors and/or Financial Specialists or other positions; review and/or prepare schedules, tables, graphs and other exhibits for interim and final audit reports; monitor progress of other Auditors, including reviewing and approving audit workpapers; conduct entrance and exit meetings with audited entities; conduct investigations; advise management on methods to improve accounting or other operational procedures; and prepare exhibits and other documents and provide oral testimony in the prosecution of audited entities.

24. The classification specification for the Auditor-Advanced classification states as follows, in pertinent part:

Positions at this level differ from those at the lower Auditor levels in that these positions conduct and/or lead audits of programs or organizations which deal with contracts and agreements with external implications; confer with management on recommendations and the implementation process; make independent decisions and recommendations for all audit aspects; test and evaluate interrelated systems and data; and make recommendations to various levels of management on internal or external controls and program requirements.

25. Appellant and Ms. Klusendorf did not have a smooth working relationship and on more than one occasion engaged in heated discussions relating to complainant's work performance and other work-related matters. On May 10, 1991, appellant filed a grievance relating to a disagreement he and Ms. Klusendorf had concerning a work-related matter. On October 31, 1991, appellant, in a memo to Mr. Stenz, complained that Ms. Klusendorf had made inappropriately disparaging remarks to him in conversations they had engaged in during the previous several days.

26. The amount of time required to complete an audit report for a non-MMSD Wisconsin Fund grant should, on average, be comparable to the time required to complete an MMSD audit report. On average, the higher the dollar

amount of an interim or final Wisconsin Fund payment request, the more time it will consume to audit the request and/or prepare the audit report.

27. It is not unusual to set numerical productivity goals for professional employees. Productivity is a factor typically used to evaluate the work performance of professional employees.

Appellant's position was reallocated pursuant to the implementation of a personnel management survey of the classifications of certain financial positions by respondent DER. When a position is surveyed for classification purposes, its duties and responsibilities are evaluated during a discrete and limited period of time immediately prior to the effective date of the survey, i.e., a "snapshot" of the position is taken during this period of time. As a result, only the duties and responsibilities actually assigned to the position during this period of time will determine its classification.

The Auditor series created by respondent as the result of the survey under consideration here is a progression series. Classification within a progression series is dependent upon an employee's level of proficiency. This level of proficiency is typically reflected in the level of supervision and the types of duties and responsibilities assigned to the position, and is typically measured through evaluation of the quality and quantity of an employee's work product.

The record here shows that, during the time period immediately prior to the effective date of the survey, i.e., April 5, 1992, appellant was meeting with his supervisor on a weekly basis and reviewing in detail with her his work product. (See paragraph 13, above). The record further shows that this was a much closer level of supervision than that assigned to other Auditors in the Aids Audit Unit during this period of time, and that this level of supervision fails to meet the requirement of the Auditor-Advanced classification that a position "make independent decisions and recommendations for all audit aspects." (See paragraph 23, above). The record here also shows that, during this period of time, other Auditor positions in the Aids Audit Unit were assigned certain Advanced level duties and responsibilities, e.g., MMSD systems auditing and auditing of MMSD's financial accountants, but that appellant's duties and responsibilities during this period of time did not include any comparable auditing duties and responsibilities but instead were limited to auditing interim and final payment requests and

preparing audit reports, both of which are Auditor-Senior level duties. Appellant has failed to show that the level of supervision and the duties and responsibilities he was assigned during the relevant time period satisfied certain requirements of the Auditor specifications or were comparable for classification purposes to those assigned to the other Auditor positions in the Aids Audit Unit during this period of time.

Appellant has offered a variety of arguments here, many of which are couched in terms applicable to discrimination/retaliation or just cause issues. However, the issue under consideration here is whether respondent made a correct classification decision, not whether appellant was discriminated or retaliated against or whether there was just cause for a personnel action. Appellant argues that it is contrary to public policy to permit the civil service classification system to be used to address performance issues. However, although the general rule is that classification is based on the nature and level of assigned duties and responsibilities, not on the manner in which such duties and responsibilities are performed by the position incumbent, an exception to this rule is made when reviewing classification within a progression series, such as the series under consideration here. In addition, an employee's work performance can have an impact on the assigned level of supervision and on the types of duties and responsibilities assigned, both of which are key classification considerations. See, Stemrich v. DER, 91-0058-PC (6/24/93).

Appellant argues that his classification at the Senior level was the result of retaliation by his supervisor for his filing a grievance and a complaint against her. Even though this is not a case of retaliation, it should be noted that Ms. Klusendorf discussed her productivity concerns with appellant on March 26 and 27, 1991, and brought her concerns to DNR's Management Assistance Team during March of 1991, but that appellant did not file his grievance until May 10, 1991, and his complaint until October 31, 1991. As a result, the filing of the grievance/complaint could not have motivated Ms. Klusendorf to raise concerns relating to appellant's productivity. In addition, the recommendation to place appellant on an informal PIP was made by Mr. Federhart, not by Ms. Klusendorf, and was concurred in by Mr. Stenz and Ms. Devereaux, neither of whom was the subject of a grievance or complaint filed by appellant.

Appellant contends that it was not fair to measure his productivity solely by counting the number of audit reports he completed. However, the completion of audit reports was the unit's highest priority during the time period relevant here and this was clearly communicated to appellant. In addition, appellant had only two assignments, i.e., the processing of interim payment requests and the completion of audit reports, and the record shows that, in regard to interim payment requests, his productivity was comparable to that of Mr. Krebs. As a consequence, appellant has failed to show that the use of audit report statistics as a measure of performance was not reasonable here.

Appellant also argues that it was not fair to compare the number of audit reports completed by MMSD and non-MMSD Auditors. However, the record shows that the variables affecting the complexity and length of time required to complete an audit of an MMSD and a non-MMSD project generally balance each other out. Moreover, even if the audit reports generated by non-MMSD Auditors were factored out, appellant failed to show that the number of audit reports he completed was comparable to the number completed by Mr. Krebs, another MMSD Auditor.

Appellant also argues that the alleged problems with appellant's productivity were not mentioned in appellant's performance evaluations and, as a result, must have been "manufactured" by Ms. Klusendorf. However, the performance evaluation signed by Ms. Klusendorf on May 21, 1991, prior to the imposition of the informal PIP, specifically references appellant's productivity as an area for improvement and sets as a goal for the upcoming year an increase in the number of audit reports. In addition, previous performance evaluations completed not only by Ms. Klusendorf but also by appellant's other supervisors set goals for him of completing a certain number of audit reports, and the record shows that appellant consistently failed to meet these goals. Finally, the record contains multiple documents relating to appellant's productivity and the fact that the content of such documents was not duplicated in appellant's performance evaluations does not lead to a conclusion that the productivity issue was not a performance concern.

Appellant goes on to argue that the performance evaluations in the record indicate that appellant was performing his work on a timely basis. However, these references were to appellant's work in processing interim

payment requests and it is not disputed that appellant did complete this aspect of his work on a timely basis.

Finally, in regard to his performance evaluations, appellant argues that the fact that his previous supervisors had praised his performance and had not raised the issue of completion of audit reports as a concern demonstrates that Ms. Klusendorf "manufactured" this problem. However, as noted above, previous supervisors did set goals for appellant's completion of audit reports which he failed to meet. In addition, the completion of audit reports became an increasingly higher priority for the unit at the time Ms. Klusendorf became the unit supervisor and thereafter and it is not surprising, therefore, that this became an increasingly important measure of performance.

Appellant also argues that being placed on the PIP and the corresponding increase in the amount of time he spent explaining and reviewing his work product with others prevented him from completing more audit reports. However, the record shows that the amount of time appellant spent on PIP-related activities was more than compensated for by the removal from his position of all other duties and responsibilities except those relating to the processing of interim payment requests and the completion of audit reports.

Appellant argues that the fact that the justification for his 1989 reclassification to the Auditor 4 level stated that he was performing auditing work of the same nature and complexity as the other Auditors in the Aids Audit Unit demonstrates that he should have been reallocated to the same classification as these other Auditors pursuant to the subject survey. However, as stated above, the proper inquiry is what duties and responsibilities were assigned to appellant's position in late 1990 and early 1991, not in 1989. An employee's previous classification does not determine his or her proper classification upon reallocation pursuant to a survey.

The record here shows that the number of audit reports completed by appellant was not comparable to the number completed by non-MMSD Auditors or by Mr. Krebs, the other MMSD Auditor. Despite all the excuses and arguments offered by appellant, the statistics relating to the number of audit reports completed provide an objective measure of productivity. These statistics show that appellant consistently failed to meet productivity goals set by Ms. Klusendorf and previous supervisors; that, despite numerous projects being ready for final audit, appellant failed to complete a single audit report

for the 20-month period between August of 1989 and May of 1991; that, during the period of time that Mr. Krebs was a probationary employee (January-July of 1991), he completed five (5) audit reports compared to appellant's one (1); and that, during fiscal year 1991-92, Mr. Krebs completed twice as many audit reports for 10 times the dollar amount as appellant even though he was performing special audit assignments and appellant was not.

Appellant has failed to show that the assigned duties and responsibilities and assigned level of supervision during the time period relevant to the survey were comparable to those assigned to the other Auditors in the Aids Audit Unit or satisfied the requirements stated in the Auditor specifications for classification at the Auditor-Advanced level; or that the characterization by respondent of the level of supervision or of the duties and responsibilities assigned to appellant's position during the relevant time period was not accurate; or that the assigned level of supervision or the assigned duties and responsibilities were not justified by appellant's demonstrated level of proficiency; or that the assessment of appellant's level of proficiency was not reasonably measured by his level of productivity of audit reports.

Order

The action of respondent is affirmed and this appeal is dismissed.

Dated: _____, 1996 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

LRM:lrn

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

Parties:

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