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LLOYD ROSE, *

Complainant, *

v. *

Secretary, DEPARTMENT OF *

CORRECTIONS, *

Respondent. *

Case No. 93-0200-PC-ER *

* * * * *

DECISION
AND
ORDER

Nature of the Case

This is a complaint of handicap discrimination. A hearing was held on June 2, 1995, before Laurie R. McCallum, Chairperson.

Findings of Fact

1. Complainant was appointed to a Supervising Officer 2 (Captain) position at Oakhill Correctional Institution (OCI) effective May 31, 1992. Complainant was required to serve a probationary period in this position. On and after June 28, 1992, Cindy O'Donnell, OCI Security Director, was complainant's first-line supervisor.

2. On June 1, 1992, complainant signed a position description for this Captain position. This position description described in general terms the duties and responsibilities of an OCI Captain position.

3. On August 3, 1992, complainant signed a Performance Planning and Development (PPD) form which described the duties and responsibilities and performance expectations of a Captain at OCI. This form described duties and responsibilities assigned to OCI Captains located at OCI as well as to OCI Captains located at the University of Wisconsin Hospital and Clinics (UWHC) Security Unit (Unit).

4. Effective September 9, 1992, complainant was assigned to the Unit. In this Unit, inmates under the supervision of the Department of Corrections and certain other correctional entities were provided medical treatment. OCI

provided staff to carry out the security function and UWHC provided staff to carry out the medical treatment function of the Unit.

5. Prior to January 25, 1993, OCI management became aware of certain problems with complainant's performance. These included:

a. Complainant failed to consistently advise Ms. O'Donnell of unusual incidents in a timely manner despite repeated reminders. As a result, Ms. O'Donnell was unable to prepare to respond when these matters were brought to her attention from other sources.

b. Ms. O'Donnell received reports from Connie Rigdon, the nursing supervisor of the Unit, that complainant was interfering with the the delivery of medical treatment by her staff;

c. Complainant was assigned to update the Unit's post orders but failed to produce a satisfactory work product;

d. Ms. O'Donnell was advised by Rita Smick, OCI Personnel Director, that complainant was not responding to employee grievances in a timely manner. When Ms. O'Donnell brought this to complainant's attention, he explained that he had been computing the required response time using work days, not calendar days.

e. Complainant was assigning Officers to work overtime without determining first whether there was a "floater" Officer available.

6. Ms. O'Donnell discussed each of these concerns with complainant.

7. Evaluations of the work performance of probationary employees are required at 6 months.

8. In December of 1992, respondent was aware that complainant had a very serious, and possibly life-threatening, health condition; that, beginning in January of 1993, he would be taking a medical leave to undergo and recover from lung surgery; and that complainant was very frightened about this situation. During this period of time, Ms. O'Donnell discussed her concerns with complainant's work performance with Ms. Smick and with Catherine Farrey, OCI Warden, and they agreed that it would be insensitive, given his health condition, to present complainant with a performance evaluation detailing these concerns until he returned from his medical leave.

9. Complainant took his first medical leave from January 25, 1993 through February 24, 1993.

10. On March 4, 1993, complainant permitted an attorney who was visiting his client on the Unit to use a tape recorder. OCI procedure at the time

required that prior approval of the OCI Warden be obtained before a tape recorder was permitted on the Unit. Complainant failed to obtain this prior approval of the OCI Warden. Complainant was counselled about this incident by Ms. O'Donnell.

11. Complainant took his second medical leave from March 6, 1993 through June 13, 1993.

12. On April 21, 1993, complainant came to OCI to complete and sign various forms relating to his medical leave and employment status. Also on this date, complainant met for about a half hour with Ms. O'Donnell to discuss two PPDs she had completed. One covered part of the period of his second medical leave and indicated that, due to the medical leaves he had taken, his probationary period was being extended eleven weeks. The other was an evaluation of his work performance from May 31, 1992, through March 10, 1993. This evaluation indicated that his performance had met expectations in certain areas but did not meet expectations/needed improvement in the following areas:

Captain Rose has been tentative in handling issues involving staff from other DAI institutions. He did not deal proactively with problems initially. However, he has shown improvement in this area by meeting with all transportation officers and reviewing expectations.

Post orders were updated and are in need of further revision. Language not applicable to UWH&C was utilized (ex: carry cellular phone with you at all times). Captain Rose will be expected to meet with each employee, review post orders, and submit draft revisions to the Security Director by October 1, 1993.

Captain Rose has not effectively utilized OCI officers who are "floaters" at UWH&C to reduce overtime. Specifically, he has filled overtime without first checking availability of OCI floaters.

Captain Rose should continue to work closely with the UWH&C Nursing Supervisor assuring that security and medical concerns are met. Communication could be improved.

[Report, follow on, and/or rectify problems or concerns with DOC and UWH&C staff.] Does not meet expectations. There have been various violations/problems from smoking on the unit to issues with MMHI and Oxford Federal Prison that Captain Rose has not adequately reported to his supervisor through the use of incident reports. It is expected that written documentation will be utilized on all unusual events and occurrences.

[Establish and maintain a professional and effective working relationship with all inmates and non-DOC patients. Establish and maintain a professional working relationship with all UWH&C and DOC staff coming onto the unit.] Captain Rose needs to improve in this area. He must deal more consistently with all staff. He must work at avoiding the perception that he favors UWH&C staff and compromises security concern for medical concerns. He must also hold all DOC staff accountable for adhering to policies and procedures. This can be achieved with better communication between himself and OCI staff. He will be expected to meet more regularly with OCI staff to discuss concerns they may have.

On March 4, 1993, Captain Rose authorized the use of a tape recorder at the UWH&C Security Unit by an attorney. An officer was not properly apprised of the decision and was taped. The use of taping devices is not authorized at DOC institutions and Captain Rose did not properly review this request with his supervisor or OCI administration prior to approval.

A recent audit of security procedures revealed that most areas are functioning properly. However, entrance procedures to the unit were not being uniformly adhered to and Captain Rose will be expected to improve compliance in this area.

Complainant signed these PPDs and was provided a copy of them to take with him. Complainant was still recovering from his medical condition at this time and was on multiple medications.

13. On June 11, 1993, complainant provided to respondent an authorization from his physician permitting him to return to work. This authorization contained no restrictions and complainant requested no accommodations.

14. On June 17, 1993, Ms. O'Donnell received a complaint from University Station (an outpatient clinic associated with UWH&C) that two inmates had been accompanied there for scheduled appointments by a single Officer. A long-standing agreement between OCI and University Station, which had resulted from an attack on a patient by an inmate, required that each inmate be accompanied by at least one Officer. When Ms. O'Donnell brought this to complainant's attention, he blamed the incident on a subordinate.

15. On July 13, 1993, complainant signed an updated position description which described his duties and responsibilities in the Unit with more specificity than the 1992 position description.

16. In July of 1993, Ms. O'Donnell received a complaint from Fox Lake Correctional Institution (FLCI) that complainant had called and requested that they send a vigil officer to accompany one of their inmates who was being released from the Unit, and that, when the vigil officer arrived at the Unit, he was advised that the inmate was not being released and the vigil officer could return to FLCI. FLCI incurred overtime expenses in sending this vigil officer to the Unit. It was the practice, in order to prevent this type of result, not to request a vigil officer until a physician had actually signed an inmate's release. Complainant had not followed this practice. Ms. O'Donnell counselled complainant in regard to this incident.

17. On July 19, 1993, in anticipation of the release of an inmate, complainant brought the inmate's property bag to him. Contrary to standard procedure, complainant did not open the bag, check the contents against the property inventory list prepared upon the inmate's admission, and have the inmate sign that the contents of the bag matched the property inventory list. As a result, the inmate later claimed that some of his property was missing and respondent was required to pay him \$125 for this allegedly missing property. Complainant did not follow standard procedure because he feared that this inmate had a serious contagious disease. Complainant did not obtain permission from OCI not to follow standard procedure. This inmate was not actually released until eight days later. Complainant did not file an incident report regarding this incident until June 21, 1993. Standard OCI procedures require that an incident report be prepared and filed on the same shift or the same date that the incident occurred.

18. On June 16, 1993, Ms. O'Donnell signed a Discretionary Award Report for complainant which indicated that his performance met expectations. Ms. O'Donnell understood the practice to be that an employee would only be recorded on this form as not meeting expectations if he or she was on a concentrated PPD; and that an employee would be considered as meeting expectations if he met some of the expectations of the position.

19. In July of 1993, complainant learned that a second shift MRI appointment had been scheduled for an inmate. The informal agreement between Unit security staff and nursing staff had been that nursing staff would try to schedule inmate appointments during the first shift since more Officers were available on the first shift to accompany inmates. Complainant brought this to the unit clerk's attention but she indicated that MRI

appointments in general, including this one, were very difficult to schedule and it was not possible to re-schedule it. Complainant then took it upon himself to cancel the appointment. Ms. O'Donnell received a complaint from Unit nursing staff regarding this incident and it was brought to complainant's attention.

20. In June or July of 1993, there was a heated argument, including profanity, which occurred in complainant's presence on the Unit. Complainant did not intervene in any way and did not file an incident report. Ms. O'Donnell learned of the argument from one of the Officers involved and counselled complainant about his failure to intervene; his representation, once she brought it to his attention, that it was a relatively mild exchange; and his failure to file an incident report.

21. In June or July of 1993, complainant ordered an Officer from Columbia Correctional Institution (CCI) to remain with an inmate he had escorted from CCI after this inmate had been admitted to the Unit. This was contrary to standard procedure and Ms. O'Donnell received a complaint about this from CCI. Complainant did not report this deviation from standard procedure to OCI or request approval from OCI to deviate from standard practice.

21. Ms. Rigdon, during complainant's tenure in the Unit, reported the following to Ms. O'Donnell:

- a. Complainant, on more than one occasion, contacted a physician to come to the Unit to examine/treat a high-risk inmate. This was contrary to standard procedure, i.e., only the Unit's nursing staff was to make this type of arrangement for medical treatment.
- b. On one occasion, complainant called a physician out of an emergency surgery to ask him/her a scheduling question about an inmate's surgery. This physician was irate and complained to Ms. Rigdon.
- c. Complainant was advised that work orders for the Unit were to be signed by Ms. Rigdon but he repeatedly failed to obtain her signature.
- d. Contrary to standard procedure, complainant failed on one occasion to give Ms. Rigdon 24-hour notice of an armed escort of an inmate to the Unit.
- e. On one occasion, complainant called an inmate's home institution and requested a transportation officer despite the fact

that it had already been determined that the home institution could not care for this inmate. Ms. Rigdon, once it had been determined that the home institution could not care for this inmate, had contacted respondent and asked them to make alternative arrangements. Ms. Rigdon so advised complainant and told him the name of the institution to which she believed respondent was trying to arrange a transfer. Complainant took this information and called this institution and requested a transportation officer despite the fact that the transfer had not yet been approved. Complainant had also not cancelled the transportation officer from the home institution.

f. Complainant was not following standard procedure in that he was summoning the transportation officers from home institutions without notifying the Unit's nursing staff. This prevented the nursing staff from completing required discharge teaching for inmate patients.

Ms. O'Donnell discussed each of these complaints with complainant.

23. On July 27, 1993, as the result of the number and frequency of complaints she was receiving about complainant's performance, Ms. O'Donnell scheduled a meeting with complainant; Administrative Captain Lemke; and Lieutenant Houser, second shift supervisor in the Unit. At this meeting, Ms. O'Donnell made it clear to complainant that his performance was not meeting expectations. Complainant told Ms. O'Donnell that none of the incidents discussed was his fault. Ms. O'Donnell told complainant that the responsibility for the Unit was his and she didn't expect to hear any more excuses from him or to hear him blame others for the problems.

24. Ms. O'Donnell assigned Mr. Lemke to investigate the situation at the Unit. On July 28, 1993, Mr. Lemke filed his investigative report with Ms. O'Donnell which summarized information he had obtained from the Unit nursing supervisor who was now Cynthia Rampetsreiter, and the unit clerk Ruth Brown. Ms. Rampetsreiter and Ms. Brown reported to Mr. Lemke that complainant did not set proper priorities, interfered with scheduled medical appointments, generated complaints from the nursing staff due to his monopolizing a room in the Unit shared by complainant and the nursing staff, and failed to carry out standard procedures. They also reported that the Unit would be much better off without complainant and that the Unit worked much better when he wasn't there.

25. Ms. O'Donnell prepared an evaluation of complainant's work performance for the period of June 14, 1993, through July 30, 1993. It specified those areas for which complainant's performance had met expectations, and

the following areas in which complainant's performance had not met expectations:

Overtime has not been hired or scheduled properly. On one occasion, overtime was hired by Captain Rose although an officer was available at OCI for redeployment. On another occasion, Captain Rose informed an officer that he should expect to be ordered for overtime by leaving a message on his answering machine thereby jeopardizing adequate shift coverage.

[Administer labor contract agreements and enforce work rules.] Does not meet expectations. On June 17, 1993, one officer was allowed to escort two minimum security inmates off of the security unit to the University Station. This occurred on Captain Rose's shift and violates OCI Policy and Procedures #421.03 and hospital policy.

[Advise and counsel staff and initiate disciplinary action as warranted.] Does not meet expectations. On July 23, 1993, an OCI officer and transportation officer engaged in an argument on the unit in the presence of Captain Rose. He took no affirmative action to immediately stop the argument, took no further action with the staff involved and failed to submit any documentation or report to his supervisor regarding the incident.

[Facilitate the access and provision of medical care to all Security Unit in-patients and out-patients.] Does not meet expectations. UWH&C hospital staff report that Captain Rose interferes with the scheduling of medical appointments by attempting to change or cancel procedures. On one occasion during the week of July 19-23, 1993, Captain Rose told the RN that he could not provide coverage for two MRI appointments scheduled for that afternoon. The RN told him she would review it, but Captain Rose went to the Unit Clerk and told her to cancel the appointments. Captain Rose's attempt to intervene in the area of scheduling medical appointments has been inappropriate and could result in the lengthening of an inmate's stay at the hospital as well as the delay in surgery schedules.

[Report, follow on, and /or rectify problems or concerns with DOC and UWH&C staff.] Does not meet expectations. Captain Rose has not developed a cooperative relationship with UWH&C staff and, in fact, has alienated many staff by interfering with medical duties, monopolizing the nursing office thereby requiring the nurses to chart on a nearby table and failing to meet with UWH&C staff when requested.

[Establish and maintain a professional working relationship with all UWH&C and DOC staff coming onto the unit.] Does not meet expectations. Captain Rose, as noted, has inappropriately intervened in medical issues and the relationship with DOC and UWH&C has deteriorated under his supervision.

[Report orally or in writing to the OCI administration and UWH&C staff regarding unusual incidents or events; maintain close contact with the Associate Warden-Security and Administrative Captain on all non-routine issues and concerns.] Does not meet expectations. During the 6 week period since his return from a medical leave, Captain Rose has been the supervising officer during a number of unusual events. Yet, he failed to inform his supervisor either verbally or in writing of these events. He is not forthcoming with pertinent information and it is not believed that he can be entrusted with the responsibility of the Security Unit as he fails to properly report to his supervisor.

[Coordinate the reception and transfer of inmates to or from the Security Unit or other parts of UWH&C.] In July, Captain Rose ordered FLCI to send a vigil officer as one of their inmates was to be moved off of the unit. The officer was sent from FKCI but was sent back as the inmate remained on the unit. This resulted in needless overtime for FLCI due solely to Captain Rose's failure to wait for the transfer off unit or a doctor's written order that this was to occur. On another occasion, Captain Rose attempted to delay the discharge of a DIS inmate until the following day so that transportation would be available for the inmate to RCI. Again, this type of negotiating is inappropriate and unwarranted.

On July 23, 1993, Captain Rose ordered CCI to maintain an officer escort on an inmate who had been admitted to the Security Unit, in direct violation of unit policy. Once an inmate is admitted to the unit, OCI assumes responsibility for coverage. Despite the fact that CCI staff raised questions regarding Captain Rose's decision and the fact that he was told the CCI Security Director was going to place this on the next Security Director's meeting agenda, Captain Rose failed to report this to his supervisor either verbally or in writing and failed to consult with OCI Administrative Staff prior to pursuing this course of action.

[Insure that proper control measures for keys, tools, weapons, and drugs are routinely followed.] On July 19, 1993, property valued at \$125.00 was lost while under the direct control of Captain Rose. Captain Rose exhibited poor judgment in removing the property from the unit. He stated that it was anticipated that the patient would be discharged. The patient was not discharged until July 27, 1993. Secondly, Captain Rose failed to inventory the property prior to releasing it to the inmate and failed to have the inmate sign for his property. Consequently, OCI reimbursed the patient \$125.00. In addition, Captain Rose failed to file a written report until 2 days later, in violation of OCI Policy and Procedure #109.01.

[Helps and encourages others who need assistance. Shares ideas willingly. Shows ability to work with a variety of staff.] Captain Rose is viewed by his peers as being a weak supervisor who avoids supervisory responsibilities and fails to deal proactively with problems.

[Shows ability to be supervised.] Captain Rose has exhibited significant deficiencies in this area. He has failed to properly report significant events to his supervisor and has shown extremely poor judgment on numerous occasions. When confronted with situations, he becomes defensive and shows no insight into how his action or behavior contributed to the problem. He fails to modify his actions to meet acceptable performance levels. Captain Rose has not supported the established policies of the institution but has stubbornly persisted in doing things "his way," in the process alienating UWH&C staff, line staff and staff from various DOC institutions. He has not met the expectations for this position and does not exhibit the proper aptitude or attitude to do so.

Complainant and Ms. O'Donnell discussed in detail this PPD document; and signed it on August 16, 1993.

26. In a letter dated August 19, 1993, complainant was advised by Warden Farrey that he was being removed from his OCI Supervising Officer 2 position effective August 21, 1993, for failure to meet probationary standards. Complainant was restored to his former position and assigned to Oshkosh Correctional Institution.

27. During complainant's entire tenure in the Supervising Officer 2 position at OCI and thereafter, another OCI Supervising Officer 2 was on leave. During this leave, this position was pool-coded which allowed the position to be filled.

Conclusions of Law

1. This matter is properly before the Commission pursuant to §230.45(1)(b), Stats.
2. Complainant has the burden to show that he was discriminated against on the basis of handicap as alleged.
3. Complainant has failed to sustain this burden.

Opinion

As the Commission stated in Harris v. DHSS, Case Nos. 84-109-PC-ER, 85-0115-PC-ER (2/11/88), a typical handicap discrimination case will involve the following analysis:

- (1) Whether the complainant is a handicapped individual;
- (2) Whether the employer discriminated against complainant because of the handicap;

(3) Whether the employer can avail itself of the exception to the prescription against handicap discrimination in employment set forth at §111.34(2)(a), Stats., -- i.e., whether the handicap is sufficiently related to the complainant's ability to adequately undertake the job-related responsibilities of his or her employment (this determination must be made in accordance with §111.34(2)(b), Stats., which requires a case-by-case evaluation of whether the complainant "can adequately undertake undertake the job-related responsibilities of a particular job");

(4) If the employer has succeeded in establishing its discrimination is covered by this exception, the final issue is whether the employer failed to reasonably accommodate the complainant's handicap.

The first question then is whether complainant is handicapped within the meaning of the Fair Employment Act. Section 111.32(8), Stats., defines a "handicapped individual" as an individual who:

- (a) Has a physical or mental impairment which makes achievement unusually difficult or limits the capacity to work;
- (b) Has a record of such impairment; or
- (c) Is perceived as having such an impairment.

The Wisconsin Supreme Court provided an analytical framework for applying this definition of handicap in LaCrosse Police Comm. v. LIRC, 139 Wis. 2d 740 (1987). The Court held that to establish that a particular physical condition constitutes a handicap, the complainant must first show there is an impairment by showing there is "a real or perceived lessening, deterioration, or damage to a normal bodily function or bodily condition, including absence of such function or condition." Although the record shows that complainant had a serious health impairment in late 1992 and early 1993 and, to obtain treatment for this impairment, took two medical leaves (1/25/93-2/14/93, 3/6/93-6/13/93), the record does not show that complainant continued to suffer from this impairment, or suffered from any other impairment, after his return from his second medical leave on June 14, 1993. Complainant returned to work on June 14, 1993, without any medical restrictions and made no request for accommodation.

In addition, the evidence in the record is insufficient to support a conclusion that complainant's impairment made achievement unusually

difficult for complainant or limited his capacity to work during the period of time prior to his first medical leave and between his first and second medical leaves. Although complainant testified that he had a serious, even life-threatening health condition during this period of time, he offered no specifics as to how this health condition placed a "substantial limitation on life's normal functions or a substantial limitation on a major life activity" or limited his capacity to work.

Finally, the evidence in the record does not support a conclusion that any of complainant's supervisors or co-workers perceived him as handicapped at any time relevant to this matter. This conclusion is particularly strong for the period of time after complainant returned from his second medical leave without medical restrictions or a request for any type of accommodation.

The Commission concludes that the record does not show that complainant was handicapped within the meaning of the Fair Employment Act or perceived as handicapped by his supervisors or co-workers.

If complainant had succeeded in showing that he was handicapped, the next issue to be resolved would be whether the respondent discriminated against the complainant because of his handicap. There are two ways that discrimination on the basis of handicap under this element can occur. The first would occur if respondent's discharge of complainant had been motivated by complainant's handicap. The second would occur if respondent terminated complainant for performance reasons that were causally related to his handicap. See Conley v. DHSS, 84-0067-PC-ER (6/29/87).

The record does not support a conclusion that respondent was motivated to terminate complainant by anything other than his work performance. The record shows that concerns relating to complainant's work performance were ongoing throughout his probationary period; were brought to Ms. O'Donnell's attention by a variety of individuals, including individuals from other institutions who had no reason to be aware of complainant's health condition; were the subject of frequent discussions between complainant and Ms. O'Donnell; and were well-documented in complainant's PPD reports. Complainant has failed to produce any evidence that his performance problems were dealt with any differently than those of any other OCI employee.

Complainant argues, in the nature of a pretext argument, that his absences had made him a liability for OCI, particularly because there was

another Supervising Officer 2 (Captain) on leave during the same time period. However, the record does not show that, once complainant returned from his second medical leave, respondent had any reason to believe that complainant's health condition would require any further medical leaves. In addition, the record does not show that the leave taken by the other Captain had any actual effect on OCI's staffing levels since this position had been "pool-coded" which allowed it to be filled during this other Captain's absence.

Complainant argues by implication that his failure to receive a copy of the PPD which he signed on April 21, 1993, or to have an opportunity to discuss it with Ms. O'Donnell, demonstrates a lack of good faith on the part of respondent. However, complainant's representations in this regard are not persuasive. Not only did complainant acknowledge that he signed the PPD, spent at least 10 minutes in Ms. O'Donnell's office discussing it, and failed to subsequently request a copy, but the record shows that it was Ms. O'Donnell's standard practice to give an employee a copy of the PPD at the time it was discussed.

Complainant also argues by implication that the testimony of the UWHC security director, two UWHC nurses, and an Officer assigned to the Unit to the effect that they were not aware of any problems with complainant's work performance shows that complainant's work performance was in fact satisfactory. However, this testimony does not compel that conclusion. The record evidence does not show that the problems with complainant's work performance cited in support of his termination were invented or imagined, and the fact that certain co-workers were not aware of them or did not observe them does not mean that the reported observations of other co-workers are faulty or manufactured.

Complainant also appeared to imply that he did not receive an accurate position description until July of 1993, i.e., a position description which described in detail his UWHC duties. However, the August 1992 position description, although it described the duties of OCI Captains located at OCI as well as at the UWHC, was an accurate and adequately detailed, description of complainant's duties and responsibilities. In addition, the PPD provided to him in April of 1993 included a very specific and detailed explanation of his job duties and performance expectations. It is disingenuous of complainant to assert that he did not have sufficient notice of his job duties and expectations,

particularly in view his many years of service as a correctional officer, and this argument is not persuasive.

Complainant also argues that OCI's failure to give him a PPD evaluation prior to April of 1993 violated respondent's standard probationary evaluation practice and failed to give complainant adequate opportunity to improve his performance. However, the Commission does not intend to hold against respondent its decision to spare complainant concerns about his probationary employment at a time when he was facing a life-threatening health condition and medical procedure. In addition, complainant's April of 1993 PPD provided many specifics relating to respondent's concerns about complainant's work performance, and complainant was not terminated until he had been back on the job for more than two months after his second medical leave. These facts support a conclusion that complainant was given sufficient notice of and opportunity to cure his performance problems.

Finally, complainant has failed to show or even to affirmatively allege that there was a causal relationship between his health condition and the performance problems upon which his termination was based.

Complainant has failed to show that he was discriminated against on the basis of handicap.

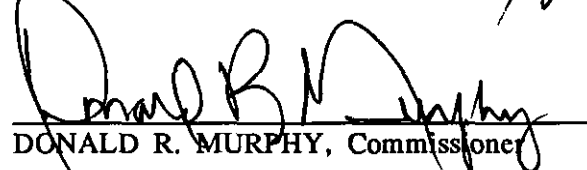
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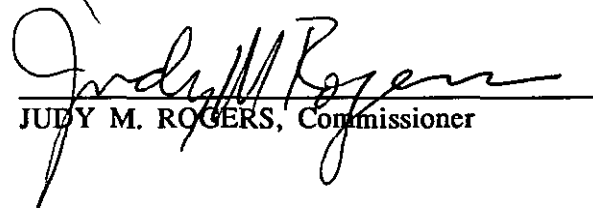
This complaint is dismissed.

Dated: August 4, 1995 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

LRM:lrn


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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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

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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