

STATE OF WISCONSIN

PERSONNEL COMMISSION

MARGARET KING,
Complainant,

v.

**Secretary, DEPARTMENT OF HEALTH
AND FAMILY SERVICES,**
Respondent.

FINAL
DECISION
AND
ORDER

Case No. 00-0165-PC-ER

This matter is before the Commission on a claim of discrimination based on disability. A hearing was conducted on the following issues:

1. Whether respondent discriminated against complainant on the basis of disability in regard to the following actions:
 - a. Complainant was issued a letter of reprimand on October 24, 2000.
 - b. Complainant was issued a letter of reprimand in lieu of a 3-day suspension on March 5, 2001.
2. Whether respondent discriminated against complainant on the basis of disability when Mr. Langer allegedly limited complainant to working 20 hours a week since August 2000 without potential for overtime or compensatory time.

Complainant does not allege that there was any lack of accommodation by respondent. Respondent has stipulated that complainant is "disabled" within the meaning of the Fair Employment Act.

For reasons of confidentiality, this decision uses initials rather than full names when identifying adoptive children and families.

FINDINGS OF FACT

1. Respondent has stipulated that complainant suffers from a disability. The disability arises from three primary diagnostic impressions: 1) Major depressive

disorder, recurrent; 2) dysthymic disorder; and 3) dependent personality disorder. (Comp. Exh. 110, p. 8)

Overview of complainant's employment as an adoption social worker, changes in supervision and her supervisor's knowledge of her disability

2. The Adoption and Consultation Section of the Division of Children and Family Services, Department of Health and Family Services, has 5 regional offices. The main office for the Western region is in Eau Claire, while the main office for the Northern region is in Rhinelander. At all relevant times there have been approximately 8 special needs adoption workers employed in the Western region, including several part time employees.

3. When she was hired as a "home-based" adoption and consultation social worker in June of 1997, complainant worked out of her home. (Resp. Exh. 101) Her 50% position was classified at the Social Worker-Objective level. She was assigned responsibilities in the following counties: Polk, Barron, Washburn and Burnett. Depending on complainant's caseload, cases in these counties could also be assigned to other social workers in the region.

4. Complainant's responsibilities are summarized in her initial position description (Resp. Exh. 101) as follows:

Position Summary

This is a highly responsible and independent position in social work practice where experience and capability have shown the person can function in a highly independent manner with only minor review and consultation. This could be more adequately defined as the advanced practitioner level. The work may involve the application of special casework skills in providing consultation, obtaining information, counseling clients and family members, working with other agencies and providing technical assistance. The work is performed within broad limits of agency regulation and policy, but the employee exercises individual initiative and independent judgment in the performance of his duties.

Goal A - 50%

Provide preadoptive intake services and post-placement services to children with special needs whose guardianship has been transferred to the State.

Goal B - 15%

Provision of permanent planning consultation to county departments of human/social services in the region.

Goal C - 20%

Evaluation and education of adoptive applicants.

Goal D - 10%

Post-adoption services

Goal E - 5%

Other Assignments

5. Complainant worked at 50% time, or for 40 hours per two-week pay period. She had a nominal schedule of 6.5 hours on Mondays, 6.5 hours on Tuesdays, and 7 hours on Wednesdays. For more than a year, complainant had substantial flexibility in her schedule and effectively set her own hours. No later than early in 2000, complainant began aggressively pursuing one or more disputes with management regarding her work hours.

6. From the date she was hired until April 17, 2000, complainant's supervisor was Dale Langer who, at that time, was located in the Eau Claire office and had the title of Western regional supervisor

7 In December of 1998, complainant told her supervisor, Dale Langer, that he had promised to reclassify her position and that he was treating her like her husband treated her. In 1999, complainant's position was reclassified to the Social Worker-Senior classification.

8. Within the first year of her employment, complainant informed Mr. Langer that she suffered from depression. Mr. Langer and complainant had at least two conversations in 1999 about complainant's depression when complainant told him

she was going off some anti-depressant medications and then that she was going back on the medications.

9. In April of 2000, Mr Langer became the acting manager of the Adoption and Consultation Section and began working in the section's Madison office. As a consequence of Mr Langer's move, complainant was assigned to a new supervisor, Becky Larsen-Corey, for purposes of case management issues. Mr Langer continued to serve as complainant's supervisor on ot her issues.

10. In May of 2000, Mr Langer met with complainant regarding her performance evaluation. At that meeting, complainant indicated that her therapist wanted to talk with Mr. Langer in order to better understand what was going on at work and improve her work performance. Mr Langer spoke with complainant's therapist on June 30, 2000, and mentioned the following factors:

1) Margaret does not always hear what is being said. 2) Margaret will often draw conclusions then [sic] based on what she has heard which may not include all the information. 3) Margaret has difficulties in relationships with males. 4) Margaret tends to draw conclusions quickly. 5) Margaret tends to see things in black and white. 6) Margaret has been abrasive at times to other employees. 7) Margaret will tend to jump from topic to topic when discussing a particular case. (Therapist's notes, Comp. Exh. 110, Exh. 2, C000682).

Mr. Langer also recommended that complainant inform her new supervisor that she suffered from depression but left it up to complainant to make that decision.

11. Becky Larsen-Corey had been the supervisor for the Northern region, which had its main office in Rhinelander, since November of 1997. At all times relevant to this matter, Ms. Larsen-Corey's primary office has been in Rhinelander. In April of 2000, her responsibilities were expanded so that she also began serving as the interim supervisor for the Western region. Ms. Larsen-Corey served in that interim capacity from April until December of 2000. She served as complainant's supervisor, for case management issues only, from April until September 19, 2000. Mr Langer remained as complainant's supervisor for personnel-related and performance issues, including work hours, during this period.

12. Ms. Larsen-Corey and some of her other subordinates have also suffered from and been treated for depression, but Ms. Larsen-Corey does not consider herself to be disabled.

13. Beginning on September 20, 2000, Mr. Langer was again designated as complainant's supervisor for all purposes, even though he remained situated in the Madison office and complainant was working out of her home in northwestern Wisconsin.

14. On November 20, 2000, Gloria Christensen was promoted from a position as a special needs adoption worker in the Western region, where she had worked for approximately 15 years, to the supervisor of the program in the Western region. Ms. Christensen formally began to serve as complainant's supervisor on January 2, 2001, when complainant returned from a vacation and moved into the Eau Claire office from her home office.

15. Ms. Christensen was unaware that complainant suffered from depression until complainant's union representative mentioned it during a pre-disciplinary meeting.

Events during Dale Langer's initial period as complainant's sole supervisor (until April of 2000)

16. Mr. Langer completed complainant's performance evaluation (Resp. Exh. 104) for the period from December of 1997 until June of 1998 and rated complainant's overall performance as "satisfactory."

17. In a letter (Resp. Exh. 132) dated February 4, 1999, a social worker in Barron County identified several errors in an adoptability study prepared by complainant.

18. Mr. Langer completed complainant's performance evaluation (Resp. Exh. 105) for the period from June of 1998 until June of 1999 and rated complainant's overall performance as "satisfactory" rather than "unsatisfactory." The only comments on the evaluation that had any negative connotations are as follows:

Expectation A.4. (Meet requirements regarding case recording, statistical systems and financial services.)

Results: "Satisfactory - needs to pay more attention to accuracy for statistical & financial reporting."

Expectation A.5. (Maintain cooperative working relationships to enhance the sharing of resources and the placement of children.)

Results: "Satisfactory - needs to work on logical progression to [illegible]."

19. On February 2, 2000, complainant met with her therapist who made the following progress notes (Comp. Exh. 110, Exh. 2, C000694-95):

3. Current grievance process that she is going through with the State of Wisconsin regarding her job. She does work at home and she has been trying to go full time versus part time and she states that they won't give her full time status, however the state hires several people to do the same job on a part time basis when one or two people could do it as a full time job.

20. Resp. Exh. 133 is a series of correspondence in March of 2000 referencing a) extensive miscommunication by complainant relative to a child under her supervision and b) complainant's request that the child [CW] be moved as soon as possible from a foster family placement. The report from the Professional Association of Treatment Homes (PATH) responded to concerns raised by complainant about the services provided by PATH and the foster home. The PATH response included the following language:

3. Medical needs and services for [the child] have been noted in detail in each of the treatment plans, although Ms. King continues to state she has not received adequate medical information.

5. Regarding the comments from the Polk County Special Education staff, none of the comments have been made directly to PATH staff or the [foster] family. Throughout the nine page document, Ms. King has presented information that is inaccurate and slanderous.

PATH has created a specialized weekly recording document to more accurately chart [the child's] progress. Ms. King has made statements that she does not get accurate information and implies that the [foster] family is not charting behavior honestly. These statements refute all

treatment plan reviews and weekly progress recording, leaving the youth vulnerable to opinions unsupported by documentation.

Events during the period when complainant was supervised by both Becky Larsen-Corey and Dale Langer (from April until September 19, 2000)

21. Ms. Larsen-Corey was responsible for 6 offices, and 15 employees, 2 of whom were home-based. The other home-based social worker was Sherri Stolle in Washburn County.

22. Complainant wrote up to 8 or 10 emails to Ms. Larsen-Corey every day.

23. On May 4, 2000, complainant met with her therapist who made the following progress notes (Comp. Exh. 110, Exh. 2, C000687)

job issue resulted in "her loss" on the 2 grievances, offered a ½ time contract position to bring her up to FT but at less \$ & 0 benefits, husb. in favor, she is opposed.

24. On May 19, 2000, complainant met with her therapist who made the following progress notes (Comp. Exh. 110, Exh. 2, C000686)

Margaret indicated that she is experiencing some difficulties in her work situation. Currently she works as a senior social worker on a 50% basis with the state of Wisconsin. She reported that she recently had a performance review with her supervisor. The overall review was satisfactory but she was rated as being below standard in terms of her relationships with people. She indicated that she would like further feedback from her current supervisor

25. The first meeting between Ms. Larsen-Corey and complainant was on or about May 29, 2000, half-way between complainant's home and Mr. Larsen-Corey's office in Rhinelander

26. Mr. Langer completed a performance evaluation (PPD) for complainant for the one-year period ending June 1, 2000. (Resp. Exh. 106) Complainant's overall performance summary was "satisfactory" rather than "unsatisfactory." The following comments on the evaluation had negative connotations:

Expectation A.4. (Meet requirements regarding case recording, statistical systems and financial services.)

Results: "Meets requirement. Pay better attention to details."

Expectation A.5. (Maintain cooperative working relationships to enhance the sharing of resources and the placement of children.)

Results: "Need to work more on developing working relationships with staff and other professionals."

Mr Langer based his conclusion regarding Expectation A.5 on several comments he had received from counties and private adoption agencies who reported they did not feel comfortable talking with complainant, that complainant did things in ways that did not meet the counties' needs or, in some cases, the children's needs. Mr Langer discussed the results of the evaluation with complainant on May 12th

27 On June 22, 2000, complainant met with her therapist who made the following progress notes (Comp. Exh. 110, Exh. 2, C000683)

Margaret reported she won one of her grievances with the state and that they will pay her 80 hours for excessive comp time that she had accumulated. She feels she needs to work full-time in a position rather than a part time job that she has now.

28. In June of 2000, complainant settled a grievance with respondent regarding the use of compensatory time (comp time). She understood that she was not to work more than 40 hours during a two-week pay period without the explicit approval of her supervisor. Prior to May of 2000, comp time had been permitted for adoption workers. Beginning in May, that policy changed and employees were not allowed to accrue comp time.

29. The second in-person meeting between complainant and Ms. Larsen-Corey was on July 10, 2000, at complainant's home.

30. In July of 2000, complainant asked to use work time to attend a retirement party for 2 employees in respondent's Northeast office, in Green Bay. Complainant made the request to Ms. Larsen-Corey. Mr Langer denied the request and in a memo (Comp. Exh. 63, Resp. Exh. 108) dated July 19, 2000, wrote:

The state does not pay for staff to attend social functions. If you want to attend the retirement party it is at your expense as [it] would be for me if I wanted to attend.

From my experience in Western Region, with both county and state staff, I feel you need to first focus in that area on building positive work-

ing relationships. I will be discussing this with Becky in more detail and I will rely on her to help you figure out what steps are most appropriate.

I don't understand where this recent attitude is coming from. I thought we were both very clear as to the basis for the comment on your PPD and what you needed to do. I will have Becky work with you on further clarification.

31. **[R family]**¹ During this July 10th meeting, complainant presented Ms. Larsen-Corey with a draft of a family home assessment for a potential adoptive family (the R family). Such assessments must be signed by both the adoption social worker and their supervisor. The 20 page study included various sections including detailed responses on the following topics:

What mental health functioning and substance use is apparent on a daily basis?

What are the disciplinary approaches used by the potential adoptive parent, including the typical context?

How does the potential adoptive family function, communicate and interact?

What is the quality of supportive relationships (formal and informal) outside the home?

How prepared is the family to become an adoptive family?

What is the nature and level of motivation and commitment demonstrated by potential adoptive family?

Is there concern for maltreatment or likelihood of maltreatment in the potential adoptive home?

Is there concern for disruption or likelihood for disruption in the potential adoptive home.

Complainant's summary statement (Comp. Exh. 34) included the following language:

The possible presence of [the mother's] sons [who do not live with the family] could be threatening to all or any in the family. The boys have attacked the parents physically and with a knife, including while a social worker was present. One of the boys physically hindered a deputy sheriff. [The father/stepfather] says [the mother] is not realistic as to the boys' behavior [The mother] herself mentions little about her sons. I

¹ Bold, bracketed descriptions at the beginning of paragraphs refer to findings that relate to the basis for one of the two disciplinary actions taken against complainant that are the subject of this case.

was not aware that one is still a minor I do not know even whom they are living with.

I am concerned that two of the three original references were returned stating they did not know the family well enough to reply. One was the social worker for [the mother] when [the mother] was a foster parent. This worker did state [the mother] was an excellent foster parent, but had serious family problems.

As a couple with parenting just [the couples' two children in the existing household], I would recommend them. In particular, cognitively disabled and/or physically handicapped children would do well here.

32. Ms. Larsen-Corey was on vacation for several weeks beginning in mid-July.

33. During a telephone conversation with Mr. Langer early in August of 2000, complainant stated that she had earned approximately 50 hours of comp time since the beginning of May. By letter dated August 15, 2000, (Comp. Exh. 15, Resp. Exh. 109) Mr. Langer wrote complainant:

Following our telephone conversations and e-mails over the past week I felt it was important for me to remind you of the comp time policy. As you remember this was shared with you and all adoption staff via e-mail around April 27, 00 and in the Western Region Staff Meeting on May 12, 00.

The policy is that the supervisor prior to working the hours must approve all comp time. When approved the time is to be entered on the time sheet for the bi-weekly reporting period in which the hours were worked. It is only after your supervisor has approved the comp time hours that you have authorization to work the hours.

Therefore, if you did not get the approval of your current supervisor, Becky Larsen-Corey or her designated coverage supervisor, prior to working the hours then the hours are not approved and [you are] not entitled to pay or time off for the hours worked. You are not authorized to work more than 20 hours in a given work week or 40 hours in a two-week pay period. It is your responsibility to contact your supervisor for approval of extra hours and to work with your supervisor to find ways to adjust your work schedule so that you do not need to work more than 20 hours in a workweek.

Mr. Langer also directed complainant to use up some of the accumulated leave by taking two weeks (40 hours) of vacation right away, in mid August (Comp. Exh. 69).

34. Ms. Larsen-Corey wrote an e-mail (Comp. Exh. 88), on August 14, 2000, that she intended to send to Mr Langer but erroneously mailed to complainant. The e-mail read, in part:

I'm seriously concerned about Margaret's mental health. She's starting to talk to me like she has to you, and I won't stand for it. I have talked to the foster mother of S. who has concerns about Margaret and will be talking with Leeann today. She makes me feel crazy, like our unattached kids do to their adoptive families!!!!!!!!!!

Mr Langer did not see the e-mail.

35. Complainant wrote a 2 page letter, dated August 15, 2000, (Resp. Exh. 110) to Mr Langer regarding her work hours and comp time, including the following language:

I intend to use my final comp time the week of September 17 through the 23, 2000. However, just telling you and Becky does not solve the two primary issues. **One, my hours are reported as correct on my timesheet as directed by the Employee Handbook, and by law, must be coded somehow on my pay stub.** Two, obviously telling you and Becky is not enough to get my hours verified. Three, since my comp hours are not on my pay stubs or time sheet, legally I could be fired for taking the time earned. And, legally, Dale, you had no right to ask me to take these two weeks off, as the time cannot be deducted from the comp time listed on my pay stub. We need to set up a system, apparently using e-mail, where I can have a written record of your decision. Currently it is just my word versus yours that you and Becky approved the comp time. However, I have detailed records of my hours broken into actual duties from February 2000 to testify that my hours were indeed necessary

Since there seems to continue to be a problem resolving my hours and the correct way timesheets and paychecks are to be completed, I will continue to inform my union steward of our correspondences. (Emphasis in original.)

36. **[R family]** In an e-mail (Comp. Exh. 33) to complainant dated August 17, 2000, Ms. Larsen-Corey noted the following regarding the R family study:

I am asking Therese [Durkin, an attorney in respondent's Office of Legal Counsel] and Dale [Langer] to give me a read on the safety issue in this family, specifically the two older boys. I am sending the study to them today, Aug. 17 and hopefully will hear back soon. As I mentioned *in my memo to you*, the references still appear to be a problem too.

Mrs. R called here wondering where they stood with their study. I am very concerned that you discussed [a specific child] with them when you and I both had *concerns we discussed twice* (about the safety issue and references) and I was awaiting your response to. I thought you and I were working together very well on this and was surprised you said when I am gone things get lost and that Dale and I messed things up. (Emphasis added.)

37 [R family] Ms. Durkin reviewed the draft of the 20-page study (Comp. Exh. 34), made handwritten notations on the face of it and forwarded it to Mr. Langer on August 21st for him to make his comments. Ms. Durkin recommended there be a discussion of the questions raised by Ms. Larsen-Corey.

38. [R family] Mr. Langer then made various comments on the face of the study and wrote the following on the transmittal memo (Comp. Exh. 34):

My comments are in red. This [report] is far from complete. Actually really only started. No way can we consider this family at this point!!

39. Complainant was on vacation for 2 weeks in mid-August.

40. Complainant had expressed to Mr. Langer that she was unable to figure out what her work schedule should be. Mr. Langer addressed the work schedule topic in a letter dated August 25, 2000 (Comp. Exh. 16, Resp. Exh. 111):

Based on several conversations and e-mails which have been sent back and forth between Becky Larsen-Corey, you and me regarding your schedule, you are being given a work directive that your schedule will be as follows:

Monday 8:30 a.m. - 12:00 noon; 12:30 p.m. - 15:30 p.m.
Tuesday 8:30 a.m. - 12:00 noon; 12:30 p.m. - 15:30 p.m.
Wednesday 8:00 a.m. - 12:00 noon; 12:30 p.m. - 15:30 p.m.

These are the hours which are pre-recorded on your timesheet. Any deviation from this schedule will need to be approved in writing by Becky Larsen-Corey or myself.

This schedule was the same as complainant's original schedule and reflected what complainant had said she had wanted to work at the time she was hired. Complainant had, generally, worked that schedule but she had had flexibility to revise it, and she would usually inform Mr. Langer of those changes.

41. **[R family]** It was very difficult for Ms. Larsen-Corey to arrange a time for a teleconference on the R family assessment because a) of complainant's half-time status, b) Mr. Langer and Ms. Durkin were very busy, and c) Ms. Larsen-Corey was often out of her office.

42. **[R family]** Complainant received the draft study of the R family with the handwritten comments on or about August 27th. Complainant responded by sending an email (Comp. Exh. 35) to Mr. Langer, Ms. Larsen-Corey and Therese Durkin dated August 27th. The email noted that some of the comments were "unreadable."

43. **[R family]** On August 28th, complainant shared at least portions of the draft report with the R family. It was this conduct by complainant relating to the R family study that served as the basis for reprimanding complainant. Complainant's supervisors did not become aware of this action by complainant until sometime after August 29th and before September 14th.

44. Ms. Larsen-Corey met with the Eau Claire staff on August 28 and 29. Complainant tried to speak with Ms. Larsen-Corey in the afternoon of August 28th, but Ms. Larson-Corey was busy making phone calls because another social worker was undergoing surgery.

45. **[R family]** Ms. Larsen-Corey responded to complainant's August 27th e-mail on August 29th and suggested a teleconference the following week with complainant, Ms. Larsen-Corey, Mr. Langer and Ms. Durkin to go over the draft study (Comp. Exh. 36)

46. An email exchange on September 5 and 6, 2000, (Comp. Exh. 71) reflects complainant's efforts to establish her own work schedule. Complainant wished to meet in Superior (which was outside of her work area) with a representative of a private adoption service.

Complainant to Mr. Langer, 11:00 a.m. on September 5:

Michelle from LSS Superior called. She said Dale told everyone to meet with their [state adoption] workers. Since she has some of my counties, that would be me. I have requested this meeting with her and Catholic Charities before, and Becky verbally stated I could arrange a meeting. Michelle and I are both confused as to why you would mention this at a state meeting for private agencies, and yet deny both Michelle and me to fulfill your request. Please respond SAP.

Mr. Langer to complainant at 11:04 a.m. on September 5:

The comment I made was general for all staff. If workload does not allow then other alternatives need to apply. Did she also tell you that I encouraged them to come to the regional meeting so they can meet with staff and the regional supervisor? If she has questions about this she can contact me or Becky.

Complainant to Mr. Langer at 11:16 a.m. on September 5:

Michelle has asked before, and at first you were more than willing for me to meet them. Remember, you listed as a directive on my PPD to meet other agency personnel. I am getting confused as to how I am to meet this directive, while you refuse to let me do the specific action you demand.

Mr. Langer to complainant at 8:13 a.m. on September 6:

This issue is whether you have time in your work schedule for this. From the e-mails you have sent me and information I have received from your supervisor I have to concur that you do not have the time available in your work week for this. All adoption staff are only doing consultation with counties and private agencies as time permits. Your supervisor is making other arrangements to address the LSS issues, county issues and other agency needs.

When you can demonstrate to your supervisor that you can carry out your case responsibilities within the 20 hours per week (40 hours per pay period) then we can begin to discuss how much time you may have available for consultation.

47 [R family] Complainant responded to Ms. Larsen-Corey's August 27th message by email (Comp. Exh. 36) dated September 13th because no conference had taken place in the interim.

48. [R family] Ms. Larsen-Corey responded by email (Resp. Exh. 112) dated September 14, 2000, that stated, in part:

[R family]: I'm not sure where we are on that as [Ms. Durkin, Mr Langer] and I are still reeling from the fact that you revealed confidential in-house information with the family, that the four of us were to discuss per my verbal and written directives to you. I don't have anything more to say about it at this point and I'm very disappointed.

49. Mr Langer sent complainant another letter (Comp. Ex. 19, Resp. Exh. 113) on September 19th to "clarify some issues which still remain regarding your required work hours."

These hours will be adhered to unless: the workday falls on a legal holiday, you have received approval prior to these days for a deviation or an emergency arises which you need to cover

If your normal workday falls on a holiday, you will need to work with me prior to the holiday to deviate your schedule for that week.

If an emergency comes up and it requires that you work more hours than your schedule allows, you will need to contact me using the following procedure:

- A call will be placed to me at (608)266-3595.
- If I am unavailable, press 0 and the operator will answer. The operator will forward you to someone who will be able to approve the request or will ask for a phone number at which you can be called back within 15 minutes to approve the additional time.

An example of an emergency situation would be if a child was being removed from a placement and no alternative placement has been found. You are not to walk away from the child and assume someone else will finish the placement.

I am aware that you have been instructing families, colleagues and clients that you are not allowed to work any additional hours beyond your normal work schedule. While this is true, keep in mind that if an emergency situation comes up, it is your responsibility to contact me through the procedure outlined in the previous page to get additional hours approved.

50. Mr Langer referenced working on holidays because complainant had actually visited one family on a holiday when her standard work schedule included the day of the holiday.

51 Complainant responded by email (Comp. Exh. 105) that raised 4 additional questions about her schedule.

52. *[Cathy Kulberg incident]*² Complainant contacted Ms. Larsen-Corey and complained that another adoption social worker, Cathy Kulburg, who worked as a project employee in the region, had tried to take a case away from complainant behind complainant's back. Complainant also reported that Barron County was irate with Ms. Kulburg and wanted no further contact with her. As a consequence of this report, Ms. Corey-Larsen spoke with Ms. Kulburg as well as the Barron County social worker assigned to the case. The county social worker informed Ms. Larsen-Corey that she was not upset, had no problem with Ms. Kulburg's actions and was satisfied with the progress on the case. Complainant continued to assert that Ms. Kulburg was trying to take cases from complainant and acted improperly and so advised the adoptive family. Ms. Kulburg was extremely upset by complainant's response and contacted Mr. Langer. Ms. Kulburg threatened to quit and was crying during her conversation with Mr. Langer. Mr. Langer understood that complainant refused Ms. Kulburg's apology and that Ms. Kulburg had not acted improperly.

53. **[SF incident]** In June of 2000, reports of an unidentified male in the home of a female child (SF) who was the ward of the state caused a judge to order a tribe to obtain a background check on the male within 30 days. Within that 30 day period, the family moved without notifying the state and the tribe did not obtain the background check. Complainant obtained approval from an attorney within DHFS to remove the child from her family, if the child could be located.

54. **[SF incident]** On September 6, 2000, complainant picked up SF at her high school and took her directly to the Barron County Social Services Department in order to make an emergency placement into a different living arrangement. Complainant was the legal guardian for SF. (Comp. Exh. 96) The county social worker was

² The italicized brackets at the beginning of a finding indicate the finding relates to conduct by complainant that was *not* the basis for one of the two written reprimands that are the subjects of this case.

unavailable to process the request when complainant arrived and did not become available until 1:45 p.m. Complainant's work schedule called for her to work only until 3:30 p.m., and complainant had to leave the Barron County Social Services department by 2:20 in order to make it home by 3:30. (Comp. Exh. 42) Complainant completed some paperwork with county staff, but the formal custody of SF did not transfer to the county. At 2:20 p.m., complainant left the child with the county social worker and returned home. The child did not have her medications or any additional clothing with her at the time. The emergency placement had not been completed. Complainant, as guardian, should have stayed with the child and provided reassurance while transporting SF to her new living arrangement. After the incident, the Barron county social worker contacted Mr Langer.

55. In an email (Comp. Exh. 45) dated September 13, 2000, Ms. Larsen-Corey wrote Mr Langer the following message:

Dale, I'm forwarding several little messages Margaret has sent me. I cannot deal with this any longer She is twisting whatever anybody says. She is a danger to children and families. Margaret, in abandoning [SF], was no better than an abusive birthparent. I'm sorry that this is beyond me. She would be off my staff if she were in my Region no matter what the consequences for me. I've spent 27 years working with a lot of different types of people but this out and out cruelty I can't tolerate. Perhaps if she alienates another supervisor we'll have the proof that administration thinks we still need.

56. Ms. Larsen-Corey sent complainant a lengthy email (Comp. Exh. 74) on September 14th responding to complainant's messages and relating to several cases, including the SF matter. The email also included the following:

I'm not sure where we are on [the R family] as Therese [Durkin], Dale [Langer] and I are still reeling from the fact that you revealed confidential in-house information with the family, that the four of us were to discuss per my verbal and written directives to you. I don't have anything more to say about it at this point and I'm very disappointed.

As for our getting together, I am not at all comfortable doing that without another person present. I am quite concerned about how things that I say to you are interpreted, as I haven't ever had this problem with another peer or employee before. I will talk with Dale about how we

might be able to get you the supervision you need as I just don't seem to be able to do the job.

Events during Dale Langer's second period as supervisor (September 20 to the end of 2000)

57 Complainant had weekly conferences with Mr. Langer commencing in September. The conferences were held on Tuesdays, often at 8:30.

58. By letter (Resp. Exh. 138) dated September 27, 2000, Mr. Langer responded to complainant's questions about how her work schedule would allow her to attend a 3-day statewide conference in Merrimac on October 11th through 13th, and 3 days of training in Madison on November 27th through 29th. In his response, Mr. Langer explained that complainant would need to adjust the rest of her work schedule during the 2-week pay period encompassing October 11th through the 13th, in order to leave her with the 26 hours needed (16 hours of training time and 10 hours of driving) for the meeting. He also explained that complainant would need to adjust the rest of her work schedule during the 2-week pay period encompassing November 27th through 29th, in order to leave her with the 34 hours needed (24 hours of instruction and 12 hours of driving) for the training. Complainant never developed a specific work schedule for these pay periods to accommodate these two meetings, and Mr. Langer was forced to impose a schedule.

59. By email (Comp. Exh. 89) dated September 27, 2000, complainant's union representative wrote Mr. Langer, Ms. Larsen-Corey and another management representative, Julie Babler, in respondent's personnel office:

I would like to schedule a meeting in the near future to meet with you regarding the unfair treatment of your employee Margaret King. As you are aware, Ms. King has a disability. You have a legal responsibility to accommodate her special needs according to the Americans With Disabilities Act.

60. Ms. Babler responded by letter (Comp. Exh. 28) dated September 28th, that read, in part:

As far as I am aware, there is no claimed disability nor any accommodation requested by Ms. King. If she does have a disability, I suggest she be in contact with the [Affirmative Action] Office to request the accommodation which she needs.

61. [MC case] Also on September 27th, complainant wrote an email (Resp. Exh. 139) entitled "Case Supervision" to various individuals, including Mr. Langer and Ms. Larsen-Corey. The email said, in part:

Jim Hexum of Polk County Department of Social Services informed me that Rebecca Larsen-Corey is now in charge of [MC]'s case, and that I am not to have any contact with Jim regarding the case. I was never informed by my supervisor, Dale Langer, or Rebecca Larsen-Corey of this fact.

Ms. Larsen-Corey is NOT MY SUPERVISOR. Dale Langer is. Therefore he is in charge of my caseload, not Ms. Larsen-Corey. She has no right to interfere with my cases.

2. I would ask that my supervisor, Dale Langer, schedule a date to meet to review my caseload, as I am uncertain as to what cases are still mine and which have been purloined by supervisors of other districts.

62. In a later email (Resp. Exh. 114) dated September 27th, Ms. Larsen-Corey responded, in part, as follows:

While Margaret was on leave in August there was a crises with [MC] that the Polk County agency needed some legal papers signed by [MC]'s guardian so he could be admitted for treatment. He called me because Margaret's voice mail had on it that if there were any emergency to call me. He did, and he FAXed the forms to me to sign. I told him she would be gone two weeks, if anymore needed signing to FAX them on to me because I was covering for her. I sent the originals on to Margaret to put in [MC]'s file. This has happened a couple more times since then on [MC], but always on days when Margaret wasn't available, so I have just assumed I needed to sign since it probably needed to be done right away. Always I have forwarded copies of the documents to her to put in his record. I don't know how he could have interpreted that as my telling him she was off the case, but then strange things happen everytime I touch he [sic] stuff.

63. Respondent held regional meetings for its adoption staff approximately 9 times per year, in Eau Claire. Complainant attended part of the staff meeting held on

Monday, August 28. She asked Ms. Larsen-Corey if she could attend the remainder of the August 28th meeting, but Ms. Larsen-Corey declined the request. In late September, respondent directed complainant not to attend these meetings. As a consequence, complainant did not attend the afternoon of the meeting held on Thursday, September 28th. She also missed the staff meetings in October and December. Mr. Langer made an effort to provide complainant with a copy of all of the materials distributed at these meetings.

64. Pre-disciplinary notice #1. By letter dated September 29, 2000, respondent gave complainant notice of a pre-disciplinary meeting at 8:00 a.m. on October 12, 2000, relating to 6 matters, including comments about adoption worker Cathy Kulburg, the R family matter, claiming accrual of 50 hours of comp time, the SF incident, the SB case, and making "disparaging remarks" regarding Ms. Larsen-Corey to other employees. (Comp. Exh. 23)

65. [*Kris Thomson letter*] On October 3rd, Kris Thomson of the Burnett County Department of Health and Human Services faxed a memo to Mr. Langer that read: "Margaret advised me that I would have to choose who I wanted to work with and gave me this sheet to make comparisons." Attached to the memo was a one-page document entitled "Comparisons" that listed "Margaret King" in the left-hand column, and "Other state worker" in the column on the right. Each column had 8 numbered entries that compared attributes of the two social workers. Entry 6 is typical of all the entries and it described complainant as follows:

I have been in this area for four years. I have worked with all the judges, DA's many lawyers as GALs, and your social workers. I know the local private agencies and local resources.

The corresponding entry for the "other state worker" read:

The other state worker would have to contact me for the information, and would not be familiar with the local systems.

66. The first face-to-face meeting between complainant and Mr. Langer after Mr. Langer again became complainant's supervisor was on Friday, October 6, 2000,

in Eau Claire at a meeting on WiSACWIS, the Wisconsin Statewide Automated Child Welfare Information System. According to Comp. Exh. 87, page 23:

WiSACWIS is an automated information system supporting the management [of] all child welfare services, including special needs adoption services. WiSACWIS is designed to maintain records and documentation, to prompt timely performance of case responsibilities, and to produce required and necessary documents and forms using contemporary technology. WiSACWIS uses standard formats and templates that meet national, state, and local professional standards.

67 Staff from private adoption agencies, counties and the state's adoption program attended the October 6th program. At the commencement of the meeting, when all the participants were going around the room introducing themselves, complainant asked if she would be allowed to stay for the entire meeting. Mr Langer responded by saying he would see. Complainant had to leave the room at 1:00 p.m., and when she did, Mr Langer met with her in the hallway and told her that she could not stay for the rest of the meeting.

68. Pre-disciplinary notice #2. By letter dated October 6, 2000, respondent gave complainant notice of a pre-disciplinary meeting at 9:00 a.m. on October 12, 2000, relating to not providing a copy of the R study to Mr. Langer (Resp. Exh. 116)

69. A statewide adoption meeting had been scheduled to be held at the Devil's Head Resort in Merrimac on October 11(Wednesday), 12 and 13, 2000. Complainant made at least several requests to attend the entire meeting. The meeting began on Wednesday evening with a motivational speaker. Regular sessions were held on the 12th and 13th. Mr Langer directed complainant via email (Comp. Exh. 91, C000821) to remain at her workstation on October 11th and to return to her workstation after the pre-disciplinary meetings were completed on October 12th

70. Complainant's pre-disciplinary hearing was held in Merrimac on October 12th during the statewide meeting because the schedules of the management representatives was such that it was the only time they could meet in a month. Complainant had asked to attend the conference but Mr Langer directed complainant to return home

without attending the conference because respondent was concerned complainant might cause some disruption of the other attendees by discussing the pre-disciplinary hearings.

71. Ms. Larsen-Corey had never before supervised someone who had been disciplined.

72. The pre-disciplinary hearing lasted 2 hours. While complainant was present during the pre-disciplinary hearing, her union representative, Terry Sperling, did all her talking for her

73. By letter dated October 24, 2000, respondent issued complainant a written reprimand. The letter stated, in part:

This letter will serve as a written reprimand for violations of work rules #1, #2, #5, #6, and #7, which read.

Work Rule #1: Disobedience, insubordination, inattentiveness, negligence or refusal to carry out written or verbal assignments, directions or instructions.

Work Rule #2: Abusing or deliberately causing mental anguish to others.

Work Rule #5: Disorderly or illegal conduct including, but not limited to other behavior unbecoming a state employee.

Work Rule #6: Violation, of safety procedures, directions or requirements.

Work Rule #7: improperly disclosing confidential information.

The work rule violations deal with the following incidents:

- On August 28, 2000, you shared a home study report with the [R] family. The Department's Legal Counsel and Dale Langer had reviewed this report. The comments provided were written directly on the report and were not favorable to the [R] family. You were given the report back and told to schedule a teleconference to discuss this with your interim supervisor, Becky Larsen-Corey. You had previously discussed this situation with Becky and had shared some of the same safety concerns that were reported in the home study. Instead of scheduling the teleconference to discuss the concerns raised, you shared the comments with the R family.

- On September 6, 2000, you removed [SF] from class and took her to Barron County for temporary emergency placement. [SF] is mentally handicapped. Upon arriving at Barron County, you announced that you were running out of work time and left, leaving a mentally handicapped child, which you had removed for emergency placement, with no state supervision. No call was placed by you to obtain permission to work beyond your normal work schedule. Because of your performance on this case, the tribe involved no longer wants to work with you and Barron County is concerned about your future role with the county.

All other incidents which were discussed during this meeting are being dropped.

74. **[SF incident]** At some time after the pre-disciplinary hearing on October 12th, complainant supplied management with a copy of the September, 2000, bill to the State for complainant's calling card. (Comp. Exh. 86) This phone record does not specifically indicate whether complainant left voice mail messages on September 6, 2000, relating to SF. They show that at 12:23 p.m., complainant placed a call from Barron to Eau Claire for 30 seconds. According to complainant, she made this call to obtain Mr. Langer's phone number. The phone record then shows complainant then placed a call from Barron to Mr. Langer's number in Madison at 2:09 p.m., for 1 minute and 6 seconds. The records also show that complainant made a 33 second directory assistance call from Barron to the 715 area code at 2:11 p.m., and then a 1 minute and 18 second call from Barron at 2:12 p.m. to a Rhinelander number (715-365-2800). However, the Rhinelander phone number was not that of Ms. Larsen-Corey.

75. **[preschool incident]** On October 17, 2000, complainant visited a preschool in Grantsburg attended by one of the children (JS) under her supervision. Later that day, Mr. Langer received a phone call (Resp. Exh. 142) from JS's adoptive parent who was very concerned about the visit. At Mr. Langer's request, the adoptive parent put her concerns into writing. (Resp. Exh. 141, p. 5). Two teachers at the preschool also wrote letters to Mr. Langer explaining their concerns about complainant's conduct that day. (Resp. Exh. 141, pp. 1-4) They explained that complainant came to

the preschool unannounced and asked to see the child. According to the letter of one of the teachers:

Because I did not know who [complainant] was, I asked to see some identification. She fumbled through her purse searching for something to show me. She pulled out a plastic nametag like one you'd get at a meeting that had her name on it. I said that I needed further proof. She dug in her purse some more and finally found a business card, which she gave me. She never showed me any papers proving that she was [JS's] guardian or a picture ID proving who she was. I also did not notice her wearing an official nametag showing who she was and what her job was.

She asked which one was [JS]. She said that she had only met him once. I walked with her down the hall. [JS] had just entered the paint room. I pointed him out to her and left the room as Mr. Cindy Johnson was helping the children paint and I knew that he would be safe. [Complainant] stayed in the room for only a minute or so.

[JS] finished painting quickly. He left the room to put away his paint shirt and wash his hands. He went to play with the dinosaur Duplos.

[Complainant] left the school shortly after that. She did not have the common courtesy to say good-bye or thank you to me or to Mrs. Cindy Johnson.

I was upset by this ordeal as she caught me by surprise. I did not realize that she or anyone else had the authority to enter a private school to observe a child without the parents knowing about it.

[J] was upset by this unexpected visit. After she left, he kept peeking out the windows to see if anyone was there. He was caught hiding behind the door in the bathroom. He went down the hall to make sure his coat was still there. He was unusually restless. When questioned about these behaviors; he said that he was worried that he was going to be taken away.

76. Mr. Langer met with complainant in Eau Claire on October 23, 2000, regarding her PPD, and also went over the contents of a memo (Comp. Exh. 20, Resp. Exh. 131) of the same date from Mr. Langer to complainant. The memo read:

The following instructions are intended to help you identify your work priorities. I want you to be perfectly clear as to what I expect from you until a permanent supervisor is hired in the Eau Claire Region.

You are hereby instructed:

1. Not to hand out the worker comparison questionnaire to any county social/human service agency or worker or private agency.
2. Not to discuss problems you are having with the regional office or your supervisor with families or people you encounter, while conducting business, that are not part of the Department of Health and Family Services.
3. Not to say disparaging comments about your supervisor or fellow workers to other employees of the Department of Health and Family Services or people you work with on a professional basis.
4. Not to arrange the placement of children with other adoption workers or other regions without approval from your supervisor.
5. Not to share comments or notes your supervisor makes or input from others if requested by your supervisor with anyone outside the Department of Health and Family Services. You must direct any questions or clarification you may need to your supervisor or the person that made the comment.
6. Not to write adoptability letters to the court without first getting the approval of your supervisor.
7. Not to write any letter to the court without getting the approval of your supervisor
8. Not to move a child from their current placement without getting approval from your supervisor.
9. Not to visit children in school without first getting the approval of the family. If it is an emergency then you must get the approval of your supervisor first. In all cases you must carry documentation to present to the school as to your legal relationship to the child and then only proceed when you have the approval of the school. If not approved then other arrangements need to be made. You have no authority to order school personnel to carry out your directives.
10. Any problems you are having with your colleagues/private partners must be referred to your supervisor for appropriate action. At no time are you allowed to directly confront colleagues/private partners without the written approval of you[r] supervisor
11. To accept supervisory direction from you[r] current supervisor plus any other regional supervisor, staff person instructed to inform you of a directive or member of the administrative staff of the Division of Children and Family Services.
12. To include only accurate and complete information in child files, family files, written correspondence and verbal communications.

77 Complainant was notified by letter (Comp. Exh. 61, R000505) dated October 30, 2000, that her work location was to be changed from her home to the Eau Claire office on January 2, 2001, due to program changes and new technology. Complainant understood that Gloria Christensen was to be her new supervisor upon the move.

78. [cell phone number] Respondent issued complainant a cell phone in 1998. While complainant had used the phone to make calls, she never obtained the phone number assigned to the phone in order to receive a call. Complainant had asked Mr. Langer what the phone number was and Mr. Langer provided certain information to complainant so she could determine the number. However, in November of 2000, complainant still did not know the cell phone number, Mr. Langer did not know complainant's cell phone number and complainant knew that Mr. Langer did not know the number. (Comp. Exh. 105, p. 1) Complainant and Mr. Langer had their weekly phone conference scheduled for 8:30 a.m., on Tuesday, November 14th

79. [cell phone number] Complainant sent Mr. Langer an email message (Comp. Exh. 105, p. 2) at 3:17 p.m., on Monday, November 13th that stated:

I have to travel to meet a family tomorrow at 9:00 am, so you will have to call me on my car phone at 8:30 am. I met with [the Eau Claire office manager] twice in EC asking for my number. She said you as my supervisor already have it, and she pulled out the list of numbers for our department. I am to actually get the number from you. So I will have it plugged in at 8:30, awaiting your weekly call. Thank you!

Complainant had not previously informed Mr. Langer that she had tried, unsuccessfully, to obtain the phone number from the Eau Claire office manager. Mr. Langer did not have sufficient time after complainant's late afternoon email message on November 13th to find out complainant's cell phone number.

80. [cell phone number] Because Mr. Langer did not have complainant's cell phone number, he could not initiate the call and the weekly conference did not occur.

81. Complainant was on vacation from November 16 until November 27 (Resp. Exh. 149)

82. WiSACWIS training was scheduled to be held in Madison on Tuesday, November 28th, November 29th and November 30th. Mr. Langer directed complainant to meet with him on November 28th to go over her performance evaluation (PPD) rather than to attend the training. (Resp. Exh. 107) After the PPD session, which lasted from approximately 8:30 to 11. 45 a.m., complainant returned to her worksite.

83. Complainant's overall performance for the period from October 23, 2000, to November 28, 2000, was noted as "satisfactory" rather than "unsatisfactory." However, the evaluation included two comments with negative connotations. Complainant refused to sign the evaluation.

84. **[case plan review]** Complainant completed a "Case Plan Review/Administrative Review" for an adoptive family on November 28, 2000, and submitted it to the court. Social workers are required to meet with a family every six months. Complainant's past practice had been to meet with this family at 7:00 p.m. In the review, complainant stated that she was unable to carry out her work responsibilities of meeting with the family because of Mr. Langer's August 25th work directive setting her work hours.

85. **[District Attorney letter]** Complainant testified that Mr. Langer directed her to write a letter to the Barron County District Attorney, saying she wanted to return custody of a child to Barron County because the child had been determined to be not adoptable and because a period of 30 to 60 days had elapsed. According to complainant, this period is specified in the "Standards for Services" (Com. Exh. 87) that were issued by respondent in May of 2000 for application throughout the adoption program.

86. **[District Attorney letter]** After complainant had sent her letter, District Attorney Babler wrote a letter (Resp. Exh. 150, p. 2) to the scheduling clerk for the court and sent a copy to the complainant. The letter, dated November 20, 2000, stated, in part:

However, I believe the petition [to transfer legal custody] is premature as the two years does not expire until March 30, 2001. I believe Ms. King

should renew her petition after March 30, 2001, at which time the court can simply sign and enter the order.

87 **[District Attorney letter]** Complainant, in turn, sent a fax (Resp. Exh. 150) to Dale Langer and attached a copy of Mr. Babler's letter. The fax read:

TO: DALE LANGER
RE: LEGALITIES OF MAY 2000- IT'S NOT LEGAL

From: Margaret King
Date December 1, 2000

ENCLOSED IS A LETTER FROM JIM BABLER. YOU told me to follow the timelines in the May 2000 packet. You told me to petition the court for her return to county. Jim Babler says this is illegal. Please check with [Attorney Therese Durkin] and get back to me. [Emphasis in original]

88. On December 2nd Mr Langer instructed complainant not to attend any staff meetings until after January 2, 2001.

89. Complainant worked in her home on December 4 and 6. She was on vacation for the rest of the month of December.

90. Pre-disciplinary notice #3. By letter dated December 7, 2000, respondent gave complainant notice of a pre-disciplinary meeting at 10:00 a.m. on December 15, 2000, relating to 4 matters, including the pre-school incident, discussions about work problems, S family adoption paperwork, and the cell phone number for Nov. 14th conference with Mr. Langer (Comp. Exh. 24)

91. **[follow-up letter from adoptive mother of preschooler]** After receiving the December 7th pre-disciplinary notice, complainant contacted SS, the adoptive mother of the child visited during the preschool incident on October 17th. Complainant informed SS that the incident was a reason being relied upon for removing complainant from serving as the case worker for JS and that the letter could be used as one basis for firing complainant as an adoptive social worker. At complainant's request, SS prepared another letter (Comp. Exh. 61, Resp. Exh. 152), dated December 8th, addressed "To Whom It May Concern".

On October 17, 2000 I wrote a letter to Dale Langer expressing my concerns over Margaret King's visit to our son's preschool. I have just learned through her that this letter is being used as a partial reason to have her removed from our case and possibly even fired from her job.

[The child] is no longer frightened; the teachers at the school are no longer frightened, and I am no longer worried.

Third, I don't think it is right to remove or fire someone based on what at worst was nothing more than an error in identification and at best may have been nothing more than a misunderstanding on everyone's part. The school authorities and I were in fact upset by what happened to [the child] on the day in question, but it would be a shame to lose a very caring; loving, and obviously concerned social worker over such a small thing.

92. **[application by W family]** On or before December 29, 2000, Mr. Langer received a phone call from a family whose application to be adoptive parents had been denied. Mr. Langer summarized at least some of the points in the report, prepared by complainant, that had served as the basis for the decision, including the failure of the family to attend training opportunities and problems that complainant had had in meeting with the family. The family raised concerns about the accuracy of some of the information in the report. Mr. Langer asked them to put their concerns in writing. Because families rarely initiate such contacts, Mr. Langer felt their concerns were more likely to be credible. The family submitted a letter (Resp. Exh. 154) that reads, in part:

In response to our phone conversation, both my husband and I were surprised at the concerns you had regarding the denial of our application. Neither of us remember telling [complainant] that we would not be willing to go to any training, support groups, or use other services.

As for [complainant] waiting a half hour for our appointment, as I remember it; we had made a appointment for the previous week, approx 5:30. I took off work that afternoon. That evening she never showed for the appointment. I finally called her about 8:00 p.m. and asked her about the appointment. I learned she hurt her back and was down flat. This I understood but, I though someone could have been a little more considerate to call me. We made another appointment, I remember tell-

ing her I work until 5:00 and my husband was working out of town so, 5:30 would be the earliest we could make it. You can [imagine] how surprised I was to come home and find [complainant] talking with my husband. I kept thinking she must be checking how we respond to the unexpected. We also ended up doing both interviews in one night when we planned on only doing one.

I don't know how this application process turned to [sic] such a misunderstanding.

Events during Gloria Christensen's period as complainant's supervisor (commencing January 2, 2001)

93. Ms. Christensen understood that complainant had previously had a problem abusing the flexibility of her work schedule. (Comp. Exh. 56 #2)

94. Monday, January 1, 2001, was a state holiday.

95. On Tuesday, January 2nd, complainant left her home at approximately 6:30 a.m. to drive to the Eau Claire regional office. She took with her various files, forms and reference materials that she had used in her home office and arrived in Eau Claire at 8:15 a.m. She claimed her travel time to and from Eau Claire that day as work time, even though she had not received permission to do so.

96. After complainant arrived in Eau Claire on January 2nd, Ms. Christensen spoke with complainant.

97. [written schedule] During their January 2nd conversation, Ms. Christensen asked complainant to complete a written work schedule for the following week (January 8 through 12) and submit it by no later than Friday, January 5th. Ms. Christensen approved complainant's request to simply submit a photocopy of her calendar

98. Ms. Christensen also informed complainant that she was not entitled to compensation for her travel time that day and that Ms. Christensen and the office manager would arrange to haul complainant's office equipment from complainant's home to Eau Claire.

99. During another conversation on January 2nd, complainant informed Ms. Christensen that on Wednesday, January 3rd, complainant would not be in the Eau Claire office because she would be visiting the homes of 5 families.

100. [timesheet inaccuracies] Complainant did not come into the Eau Claire office on January 3rd, nor did she conduct the home visits she had referenced during her conversation with Ms. Christensen on January 2nd. Complainant did send a number of email messages from her home computer during the day. Ms. Christensen received many of these email messages. Because the messages were inconsistent with complainant's statement that she would be conducting home visits, Ms. Christensen telephoned complainant at home at 2:00 p.m. on January 3rd. Complainant answered the phone call by saying she had already worked 20 hours for that week, so she could not talk to Ms. Christensen. Ms. Christensen asked complainant how she could have already worked 20 hours for the week. Complainant merely responded by saying she had already worked 20 hours and could not talk to Ms. Christensen. At that point, complainant hung up the phone.

101. Complainant did not work on Thursday, January 4th, because she customarily did not work on Thursdays or Fridays. However, Ms. Christensen called complainant on Thursday and told complainant that she was short some work hours for the week. (Comp. Exh. 56, page 3) Ms. Christensen also sent complainant a letter (Comp. Exh. 54) summarizing the telephone conversation. The letter reflected the directive that complainant provide her weekly work schedule to Ms. Christensen "by each Friday." It also outlined the arrangements for Ms. Christensen and the Eau Claire office manager, Sheree Ruff, to move the office equipment that had been in complainant's home office.

102. As a result of this January 4th conversation, the complainant was in the Eau Claire office for part of Friday, January 5th

103. Ms. Christensen met in her office with complainant in the morning of January 5th (Comp. Exh. 45, p. 3). Later that day, complainant wrote (Comp. Exh. 45, p. 3) asking for "a more detailed letter" regarding 11 separate concerns, including

her work hours: "Please outline what requirements I need to fulfill to return to a flexible schedule that every other state adoption worker is allowed." Ms. Christensen responded by letter dated January 11, 2001. (Comp. Exh. 56)

104. [timesheet inaccuracies] Complainant prepared at least 2 versions of her time sheet for the pay period from December 31, 2000, through January 13, 2001. (Comp. Exh. 98, Comp. Exh. 111) The version that she actually submitted to respondent for payment (Comp. Exh. 111) claimed she worked from 6:30 a.m. until noon and 12:30 p.m. until 5:00 p.m. on Tuesday, January 2nd. Complainant also claimed that she worked from 5:40 a.m. until 7:40 a.m. and 9:20 a.m. until 9:50 a.m. on Wednesday, January 3rd. Finally, complainant claimed she worked from 6:15 a.m. until 11:12 a.m. on Friday, January 5th.

105. [written schedule] Complainant did not complete a written schedule for the January 8th work week by January 5th, despite the directive by Ms. Christensen. On Sunday, January 7th, complainant telephoned the number of a secretary in the Eau Claire office and left a voice mail message saying that she would be in on Monday. Her message did not include her schedule for the week.

106. Pre-disciplinary notice #4. By letter dated January 5, 2000, respondent gave complainant notice of a pre-disciplinary meeting at 10:00 a.m. on January 12, 2001, relating to 2 matters, including the letter from District Attorney Babler, and comments in Case Plan Review/Administrative Review. (Comp. Exh. 25)

107. Pre-disciplinary notice #5. By letter dated January 12, 2001, respondent gave complainant notice of a pre-disciplinary meeting at 10:00 a.m. on January 26, 2001, relating to 3 matters, including complainant's time sheet submitted on January 5th, complainant's work schedule, and the W family. (Comp. Exh. 26)

108. Respondent convened the second pre-disciplinary hearing for complainant on January 12, 2001, in Eau Claire.

109. This was the first pre-disciplinary hearing Ms. Christensen had experienced.

110. [follow-up letter from adoptive mother of preschooler] During the course of the pre-disciplinary meeting, complainant presented Mr Langer with a copy of the December 8th letter (Finding 91) from SS, the mother of the preschooler

111. [Ryder-Welter email] In an email (Resp. Exh. 161) dated January 31, 2001, another adoptive social worker in the Eau Claire office, Kathy Ryder-Welter, described two interactions she had with complainant during the previous two days. Ms. Ryder-Welter wrote, in part:

1) Mon (1-29-01) I was on the phone & Ms. K. dropped a pile of folders on my desk. When I was done on the phone, our conversation went like this:

Me: What are these?

Ms. K: Your new cases.

Me: What?

Ms. K: Well they aren't on my caseload, so they must be yours now.

Me: What? Did you confirm this with Gloria?

Ms. K: They are guardianship cases and they aren't on my caseload any more.

Me: You mean they aren't listed on WiSACWIS?

Ms. K: Yah.

Me: The guardianship cases aren't on there yet because we don't pay for them. The first cases converted onto WiSACWIS were from the payrolls. They are still yours. Gloria is the only one assigning cases, so don't give me your case s, I don't need more!

Ms. K: Oh. ha ha, darn, that didn't work!

2) Tues pm (1-30-01) I got a call from [SS], adoptive mom who was still at the Burnett Co courthouse after a finalization hearing. She had phoned Dale who gave her my number after listening to her complaints. Margaret hadn't provided the court with a birth certificate.

[SS] was beside herself because of an upcoming party the church was putting on for their son [SS] was quite POed at Ms. K. and did considerable venting about Ms. K's constant excuses.

When Ms. K. came in Weds morning she was complaining loudly about how the judge wouldn't accept the "registration" and how she had already work[ed] an hour overtime with the court delay and then she had to listen to [SS] ream her. She got other people riled up, complaining to Erin S about how the file didn't come with a birth certificate. I told her I had arranged to have Correen pick up the birth certificate, that Correen would have to pay for it, take time to Fed Ex it, etc. Ms. K didn't

even acknowledge that something was done for her she just kept saying, "But that judge should accept that document." No apology, no thank you, no understanding that others had cleaned up her mess and why

112. Pre-disciplinary notice #6. By letter dated January 31, 2001, respondent gave complainant notice of a pre-disciplinary meeting at 10:00 a.m. on February 9, relating to the follow-up letter from the adoptive mother of the preschooler (Comp. Exh. 27) Respondent conducted this pre-disciplinary meeting as scheduled on February 9th

113. By letter dated March 5, 2001, respondent issued complainant a second written reprimand in lieu of a 3-day suspension. The letter (Comp. Exh. 22, Resp. Exh. 128) stated, in part:

This is your official notification of a written reprimand for violation of work rules #1, #2, #5 and #7, which read:

Work Rule #1. Disobedience, insubordination, inattentiveness, negligence or refusal to carry out written or verbal assignments, directions or instructions.

Work Rule #2: . . . Deliberately causing mental anguish . . . to others.

Work Rule #5: Disorderly or illegal conduct including, but not limited to . . . other behavior unbecoming a state employee.

Work Rule #7: Failure to provide accurate and complete information when required by management or improperly disclosing confidential information.

Although, according to the progressive disciplinary schedule, your conduct would merit a 3-day suspension, this second letter of reprimand is being issued instead of a 3-day suspension in order to maintain the FLSA exempt status of your position.

This action is being taken for the following incidents³ which were outlined in letters of January 2 and 5, 2001.

³ This portion of the letter of reprimand also referenced an incident on October 24, 2000, involving the paperwork for an adoption. However, subsequent language in the letter of reprimand ("you will not be disciplined for this incident") showed that this incident was not the basis for discipline because of information provided at the pre-disciplinary hearing.

- On October 17, 2000, you visited a private school to see a child in the State's guardianship. When asked by the teacher, you failed to properly identify yourself. You instead offered a plastic nametag. When pressed, you were finally able to present a business card. This visit caused concerns with the school and the adoptive parents and also caused the child to become fearful that he was going to be taken away.
- There have been several instances reported by adoptive parents and state employees of your continued discussion of problems in your current work situation. In a memo dated October 23, 2000, from your supervisor, Dale Langer, you were directed to not discuss your problems at work with other staff or families with whom you have a professional relationship.
- On November 14, 2000, Dale Langer had scheduled a phone conference with you. You sent an e-mail to Dale late in the afternoon of November 13, 2000, that you would need to do the phone meeting via your cell phone as you would be driving to an appointment at that time. However, you did not leave your cell phone number indicating that Dale should know what the number was. Dale had requested that you provide your cell number to him on several occasions prior to this. However, this was not done. Because Dale was not in possession of that number, the phone conference did not take place.
- You completed a Case Plan Review/Administrative Review on November 28, 2000. In this plan, you indicate that you are unable to perform your responsibilities due to Dale Langer's work directive. This is not the case. In his letter of August 25, 2000, to you, Mr. Langer indicated that any deviation would need to be pre-approved. It did not preclude you from getting approval to work deviated hours as needed.
- On December 1, 2000, you FAXed a cover letter along with a copy of a letter from District Attorney James Babler regarding the J case to Dale Langer. In this FAXed cover letter, you claimed Mr Langer had told you to do something illegal with the court. This was not the case.
- On January 12, 2001, you presented to Dale Langer, section chief, a letter from [SS] indicating her concern about the possibility of you being removed from their case and possibly fired over an incident which occurred on October 17, 2001, with their child. This solicitation of this letter by you from Ms. Snow is in direct violation of written instructions which Mr Langer issued on October 23, 2000.

CONCLUSIONS OF LAW

1. This case is properly before the Commission pursuant to §230.45(1)(b), Stats.
2. The complainant has the burden of proof and must establish that respondent discriminated against her on the basis of disability when it issued the letters of reprimand dated October 24, 2000, and March 5, 2001, and when Mr. Langer established complainant's work hours after August of 2000.
3. Complainant has failed to satisfy her burden.
4. Respondent did not discriminate against the complainant based on her disability.

OPINION

In order to establish that complainant was discriminated against on the basis of disability, the evidence must show that: 1) the complainant is a disabled individual within the meaning of the Fair Employment Act (FEA), §111.32(8), Stats., 2) the employer reprimanded the complainant and limited her work hours because of her disability; and 3) the employer's action was not legitimate under the FEA. *See Samens v. LIRC*, 117 Wis. 2d 646, 657-58 (1984), citing *Boynton Cab Co. v. ILHR Dept.*, 96 Wis. 2d 396, 406, 291 N. W. 2d 850 (1980).

Under the Wisconsin Fair Employment Act (FEA), the initial burden of proof is on the complainant to show a prima facie case of discrimination. If complainant meets this burden, the employer then has the burden of articulating a non-discriminatory reason for the actions taken which the complainant may, in turn, attempt to show was a pretext for discrimination. *McDonnell Douglas v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 5 FEP Cases 965 (1973), *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 101 S. Ct. 1089, 25 FEP Cases 113 (1981).

Respondent has stipulated that complainant suffers from a disability for purposes of the FEA.⁴ Pursuant to §111.32(8), Stats.

- (8) "Individual with a disability" means 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.

There are two ways that discrimination on the basis of disability can occur. The first is if respondent's actions have been motivated by complainant's disability; the second is if respondent took action against complainant for performance reasons that were causally related to her disability. *Jacobus v. UW-Madison*, 88-0159-PC-ER, 3/19/92, aff'd Dane Co. Circ. Ct., *Jacobus v. Wis. Pers. Comm.*, 92CV1677, 1/11/93; *Thomas v. DOC*, 91-0161-PC-ER, 4/20/93. Here, complainant does not allege any causal relationship under the second theory,⁵ so only the first theory is at issue.

⁴ While respondent stipulates that complainant was disabled, respondent takes the position that at all relevant times, the persons making the personnel decisions in question were unaware that complainant's depression reached the level of constituting a disability. Complainant contends that "respondent knew not only about Ms. King's mental illness but also that she had a record of mental illness, including therapy sessions, medication, hospitalizations and the accompanying symptoms." Post-hearing brief, p. 8. In support of this contention, complainant argues that complainant "discussed her treatment with both her supervisors, she disclosed her depressive disorder and symptoms to the employer and the employer spoke directly with Ms. King's treating doctor regarding her depressive disorder and how it affected her work performance." Post-hearing brief, p. 8. While it is clear that complainant informed Mr. Langer that she suffered from depression and was, at least at various points, on medication, the record does not support a conclusion that, at relevant times, respondent was aware of the clinical information relating to complainant's depression or that it was so severe as to constitute a "disability" within the meaning of the FEA. For example, the record established that Mr. Langer informed complainant's therapist of problems complainant was having at work, not that the therapist told Mr. Langer of the specifics of complainant's conditions. Nevertheless, because of difficulties in determining what the various perceptions of management might have been, the Commission will proceed to examine the motivation behind the personnel actions that were taken.

⁵ On page 3 of her reply brief, complainant writes:

Complainant has never argued that her disability was the cause of her alleged conduct that was the subject of the disciplinary proceedings. Rather, complainant claims that the alleged conduct was not grounds for discipline. In other

Where the case has been tried fully and unless there is a missing element of a prima facie case which is also an essential element for establishing liability, it is unnecessary to analyze whether a prima facie case has been established and the Commission should go ahead and address the question of pretext. *Pontes v. DOT*, 99-0086-PC-ER, 10/18/01, citing *United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711, 103 S. Ct. 1478, 75 L. Ed. 403 (1983).

The Commission notes that this matter is not before the Commission on the question of whether there was just cause for the two disciplinary actions taken against complainant. However, while the question of just cause is not, *per se*, an issue, the Commission does have to address the question of whether respondent's rationale for disciplining the complainant was a pretext for a discriminatory motive. In *Mitchell v. DOC*, 95-0048-PC-ER, 8/6/96, the Commission held:

In a discrimination case involving a discharge, the employer/respondent is not required to show just cause for the discharge, as would be the case in an appeal of a discharge under §230.44(1)(c), Stats., or in a contractual grievance proceeding. Rather, complainant has the burden of proof and must establish a discriminatory motive for the discharge. In a case such as this, where the complainant denies much of the underlying misconduct, if she could establish that respondent had a weak case for discharge, it would be probative of pretext.

The employer's mistaken belief, or its inability to prevail at a just cause hearing or arbitration, "is not necessarily inconsistent with a good faith belief, independent of complainant's [protected status], that discipline was warranted." *Russell v. DOC*, 97-0175-PC-ER, 4/24/97

I. Issue 2: Limitation on work hours since August of 2000

words, complainant is claiming that respondent's decision to discipline her was motivated by her disability, rather than legitimate non-discriminatory reasons. Even if the complainant had asserted a causal relationship under the second theory, there is no evidence in the record to support the conclusion that complainant's conduct that served as the basis for the two letters of reprimand was caused by her disability.

The second issue that is before the Commission serves as a vehicle for understanding the motivations underlying this case.

In his letter dated August 25, 2000, Mr. Langer established a very specific work schedule for complainant's 50% position. The letter, set forth in Finding 40, was characterized by Mr. Langer as a work directive and it represented a significant departure from the level of flexibility exercised by complainant during her first year of employment, i.e. in 1997 and 1998. Mr. Langer also specified that deviations from the schedule had "to be approved in writing." While the August 25th letter reflected a change from the level of flexibility enjoyed by complainant when she was first hired, the change was based on intervening events that were unrelated to complainant's disability.

The Findings show that complainant wanted to work for more than 20 hours per week. She mentioned her dissatisfaction with her work to her therapist early in February of 2000 (Finding 19) and in May of 2000 (Finding 23). Complainant pursued grievances related to her work hours and in June of 2000, she settled a grievance regarding the use of comp time. (Finding 28)

Respondent's comp time policy for adoption social workers changed in May of 2000. Before that time, all of the employees working as adoption social workers were able to accumulate comp time and had substantial discretion in how they used that time. After May, none of the adoption social workers were allowed to accumulate comp time from one pay period in order to apply it to a subsequent pay period. (Finding 28) Complainant has failed to produce any evidence that suggested she was treated any differently in this regard.

Complainant bristled at the new policy and she continued to try to manipulate events in order to support her view that she should have control over how long and when she worked. In July of 2000, she asked to use work time in order to travel from her home office in Burnett County all the way across the State in order to attend a retirement party in Green Bay (Finding 30) She continued to accumulate comp time, without the approval of management, and early in August, she told Mr. Langer that she

accumulated 50 hours of comp time since May, which was when the policy barring such accumulation went into effect. (Finding 33) Complainant simply failed to take the responsibility to establish a work schedule that fit within the constraints of her 50% position. She told Mr Langer she was unable to figure out what her schedule should be. (Finding 40)

Finally, in his August 25th letter, Mr. Langer fixed a schedule for the complainant that reflected her 50% status. The schedule he imposed was the same one that complainant had agreed to when she came on board in 1997. That schedule still had some built-in flexibility as long as complainant followed the procedure established by Mr. Langer for notifying a supervisor in advance. Instead of working with the new policy, complainant agitated against it, and tried to use it as a sword in support of her long-held view that she was the only one who should control her schedule. The SF incident was a result of this tactic by complainant.

There is no evidence to support complainant's contention that Mr Langer's August 25th schedule for complainant was due, even in part, to complainant's status as disabled. Mr Langer had long been aware of complainant's disability, had worked with complainant's therapist, and had been supportive of the complainant.

II. Issue 1a.. The letter of reprimand issued on October 24, 2000

The first of the two letters of reprimand that are the subject of this complaint was issued by respondent on October 24, 2000. (Finding 73) It arose from a pre-disciplinary hearing held on October 12, 2000, convened in Merrimac. The pre-disciplinary hearing, in turn, arose from two pre-disciplinary notices, issued on September 29 and October 6, 2000. (Findings 64, 68) The two pre-disciplinary notices referenced a total of 7 incidents. The October 24th letter of reprimand cited work rule violations by complainant arising from the R family study and the SF incident.

A. R family study

The gravamen of the respondent's concern relating to complainant's handling of the R family study is that she shared Mr. Langer's written comments with the family, even though the study was still in a draft stage. The complainant took the position that she had the R family review portions of the assessment in order to have them assist her in deciphering certain comments written by Mr. Langer. Nevertheless, complainant admitted that some of Mr. Langer's comments were not favorable to the R family. *Complainant took the marked-up copy of the draft to the R family just one day after having received it from Mr. Langer.*

It is difficult to understand how complainant could have considered it to be appropriate to have any of the draft assessment reviewed by the family. Ms. Larsen-Corey testified that she had seen comparable comments on documents involving cases handled by other social workers and that those social workers would not share the comments with the families involved. She also stated that for employees within the department, it was understood that complainant's conduct of sharing those portions of the study violated the department's confidentiality policy, even though that policy is not written. At hearing before the Commission, complainant testified that she covered up all but the illegible comments when she showed the study to the R family. However, there is no indication that complainant raised this contention at a time when it could have been considered by respondent as part of its decision on whether or not to impose discipline.

The Commission notes that the description of the incident in the letter of reprimand is inaccurate in that it says the complainant was responsible for scheduling a conference with her supervisors to discuss the draft study while it was really Ms. Larsen-Corey who was to do that. The Commission interprets this inaccuracy as an oversight and finds it to be insignificant in terms of the decision to impose discipline.

The Commission also notes that complainant's draft of R family study (Finding 31) left many questions unanswered: 1) *It failed to include a clear conclusion;* 2) *it failed to address the fact that two of the three references that complainant sent out were*

returned to her indicating the recipients did not know enough about the family to complete the analysis, and 3) it made troubling (yet unclear and unresolved) references to two adult step children who had numerous and violent interactions with police and the prospective adoptive father

The record reflects that respondent reasonably understood complainant had shared her supervisor's handwritten comments that were not favorable to the family, with the family. Such conduct was contrary to the norms within the agency and reasonably justified the imposition of some discipline.

B. SF incident

Respondent's focus in terms of the SF incident was on complainant's action of not remaining with SF until her new placement could be completed. At the pre-disciplinary hearing, complainant indicated that she telephoned both Ms. Larsen-Corey and Mr. Langer before leaving SF on September 6th, and that because neither supervisor was there, she left voice-mail messages. Yet both Mr. Larsen-Corey and Mr. Langer reported they were available at the time in question and did not receive any call or message from complainant requesting emergency time to deal with the SF situation. The phone records (Finding 74) that complainant ultimately did produce⁶ show that she made several phone calls but that she did not even try to reach either Mr. Langer or Ms. Larsen-Corey until 2:09 p.m., just minutes before she was planning to leave. (Comp. Exh. 86) The phone records show that at 12:23 p.m., complainant called a number in Eau Claire for 30 seconds, and then called Mr. Langer's number in Madison at 2:09 p.m., for 1 minute and 6 seconds. The records also show that complainant made a 33 second directory assistance call to the 715 area code at 2:11 p.m., and then a 1 minute 18 second call at 2:12 p.m. to a Rhinelander number. Ms. Larsen-Corey testified that the phone number complainant called in Rhinelander was not hers.

⁶ According to complainant's union representative, Terry Sperling, the phone records were not produced until sometime after the pre-disciplinary hearing. The Commission rejects complainant's testimony that the phone records in question were presented to respondent during the pre-disciplinary hearing because this statement is inconsistent with Mr. Sperling's testimony.

Complainant did not properly seek approval from Ms. Larsen-Corey in order to work beyond her approved schedule for September 6th. Just 8 minutes before she left SF at the courthouse in Barron, complainant called a phone number in Rhinelander that wasn't Ms. Larsen-Corey's number. Ms. Larsen-Corey was available at the time. Whether or not complainant actually left a message for Mr. Langer, the Commission concludes that Mr. Langer believed that complainant did not leave a voice mail message for him. While the complainant ultimately obtained her calling card statement and presented it to management, the record is not clear when this was done, other than at some time after the October 12th pre-disciplinary hearing. Under these circumstances, the Commission concludes that management understood that complainant had left SF before completing the emergency placement and without making a reasonable effort to contact either Mr. Langer or Ms. Larsen-Corey. The Commission also accepts as reasonable and accurate the testimony by Mr. Langer and Ms. Larsen-Corey that the circumstances involving SF were an emergency and respondent would not have considered it to be a violation of the work directive for complainant to have stayed with SF so that complainant worked past 3:30 on September 6th.

The Commission also notes that complainant's conduct on September 6th regarding the SF incident is an instance where she used the available circumstances to show her displeasure with the limitations that respondent had imposed on her working hours. There is every reason to believe that complainant knew she was going to run into the restrictions of her schedule well before 2:20 p.m. However, she waited until the last minute to try to contact her supervisors.

Respondent was dissatisfied with complainant's attitude. Ms. Larsen-Corey's August 14th email (Finding 34), intended for Mr. Langer but actually sent to complainant, expressed a concern about complainant's mental health. Ms. Larsen-Corey didn't know to what to attribute complainant's attitude/performance issues. Ms. Larsen-Corey was certainly frustrated by the attitude expressed by complainant during contacts with complainant. This is reflected in the misdirected email of August 14th. Ms.

Larsen-Corey's reaction, as reflected in that email, was due to complainant's conduct, rather than to any status as disabled.

III. Issue 1b.. The letter of reprimand issued on March 5, 2001

The second letter of reprimand (Finding 113) that is the subject of this complaint was issued by respondent on March 5, 2001. This letter of reprimand cited work rule violations by complainant arising from the preschool incident, reports that complainant was discussing work problems with adoptive parents and state employees, a case plan review, the letter from District Attorney Babler, complainant's written schedule, inaccuracies in complainant's timesheet, the application by the W family, and the follow-up letter from the adoptive mother of the preschooler.

A. Preschool incident

The respondent had received letters (Resp Exh. 141) from the adoptive mother of JS and two teachers at the Grantsburg preschool about concerns they had regarding complainant's visit to the preschool on October 17th (Finding 75). Those concerns included the lack of any prior notice of the complainant's visit, the difficulties that complainant had in providing adequate identification, and the effects of the visit on the child. Complainant's testimony about this incident did not differ in material respect from the information found in the letters from the adoptive mother and the two teachers. During the pre-disciplinary hearing on January 12, 2001, complainant supplied a second letter from JS's adoptive parent. The subsequent letter served as a separate basis for issuing the second reprimand to complainant.

The adoptive parent, dissatisfied with complainant's conduct at the preschool, contacted Mr. Langer. Mr. Langer did not initiate the contact and he responded in a way that was totally consistent with his role as a supervisor. He asked the adoptive parent to put her concerns in writing. Respondent was rightfully concerned about the complaints relating to complainant's visit to the preschool. The second letter of reprimand accurately described complainant's conduct and was an appropriate basis for

imposing discipline. There is no basis for concluding that respondent was motivated by complainant's status as a disabled employee when it decided to include the preschool incident as one basis for the second reprimand.

B. Continued discussion of problems in current work situation

The second bullet point in the March 5th letter of reprimand referenced "several instances reported by adoptive parents and state employees of your continued discussion of problems in your current work situation." Respondent did not provide any clarification of this language at hearing. It did not specify what these discussions were supposed to be, when they occurred and with whom, or who reported them. Complainant's union representative, Mr. Sperling, understood that this allegation had been dismissed and that it was not the basis for the imposition of discipline. A memo (Comp. Exh. 20, Resp. Exh. 131) from Mr. Langer on October 23rd explicitly instructed complainant not to discuss work problems with persons who were not part of DHFS. The case plan review incident (Finding 83) would fit within the language used in the reprimand, as would the follow-up letter from the adoptive mother of the preschooler

The Commission notes that there were a large number of incidents/actions that were subject of the various pre-disciplinary notices leading up to the predisciplinary hearing on January 12, 2001. A number of those concerns were dropped after the predisciplinary hearing and Mr. Sperling thought that the "continued discussion of problems in current work situation" was one of those. The Commission interprets the fact that this particular allegation was not explicated during the hearing as an oversight, rather than an indication of discrimination based on disability. Had this been the sole concern identified in the second letter of reprimand,⁷ the Commission would have reached a different conclusion.

⁷ The March 5th letter of reprimand was based on 6 matters, and the underlying 4 notices of predisciplinary hearings were based on 10 matters.

In a similar vein, the S family incident described in the December 7th pre-disciplinary notice (Comp. Exh. 24) was *not* the basis for discipline.⁸ (Comp. Exh. 22)

C. Case plan review

Complainant did not dispute that her November 28th case plan review (Finding 84) included a statement to the court to the effect that she was unable to meet with the family in question because of the work schedule established by Mr Langer. Mr Langer's August 25th work directive (Comp. Exh. 16, Resp. Exh. 111) established work hours ending at 3:30 p.m. on Monday, Tuesday and Wednesday of every week. Assuming that the family's schedule was such they could not meet before 3:30 on any of these days, complainant still had the option of obtaining an exception to the standard schedule: "Any deviation from this schedule will need to be approved *in writing* by Becky Larsen-Corey or myself." Complainant testified that Mr Langer's directions for obtaining an exception were "so confusing that [they were] impossible to follow." However, complainant's description of the procedure established by Mr Langer established that it was not confusing. He simply advised complainant to make a tentative appointment with the family, contact him for approval, and, if approved, then to confirm the appointment with the family.

The complainant's action of advising the court of her work hours dispute with Mr. Langer was contrary to the very specific language of Mr Langer's October 23rd letter (Comp. Exh. 20, Resp. Exh. 119), in which he instructed complainant "[n]ot to discuss problems you are having with the regional office or your supervisor with families or people you encounter, while conducting business, that are not part of the Department of Health and Family Services."

D. Letter from District Attorney Babler

Complainant's cover fax to Mr Langer (Finding 85) was unnecessarily inflammatory. It went well beyond the language used by District Attorney Babler in his

⁸ "Due to this confusion, you will not be disciplined for this incident." (Comp. Exh. 22)

underlying letter to the court. While it was not inappropriate for complainant to pass along Mr Babler's letter to Mr. Langer, it was certainly unnecessary and inappropriate to proclaim that the May, 2000 Standards for Services were illegal and to suggest that Mr Langer's advice to seek to return custody of the child to Barron County was also illegal. There is no evidence to suggest that respondent's decision to rely on complainant's antagonistic cover fax for disciplining complainant was based on complainant's disability.

E. Complainant's written schedule

On January 2nd, Ms. Christensen had clearly told complainant (Finding 97) that she needed to provide a written schedule for the following workweek no later than Friday, January 5th. Complainant was obviously aware of this expectation, but she neglected to comply. She ended up leaving a phone message on Sunday, January 7th, that she would be in the next day, but didn't even attempt to provide her schedule for the week. Complainant was clearly on notice that her work schedule was important to management. There is no basis to believe that the respondent's decision to discipline complainant for failing to provide the schedule as directed was based on complainant's disability.

F. Inaccuracies in complainant's timesheet

There are two timesheets of record for the two-week period in question, commencing Sunday, December 31, 2000, until Saturday, January 13, 2001. One version (Comp. Exh. 98) includes complainant's signature on January 5th, but it was not signed by a supervisor. This version has so many deletions that it is nearly impossible to understand. The second version (Comp. Exh. 111), includes Ms. Christensen's signature, as supervisor, dated January 10, 2001. Because it is signed, the Commission finds that the second version is the timesheet actually submitted by complainant for approval. The second version shows that complainant claimed a total of 22 hours and 21 minutes of work time during the first workweek, and 20 hours during the second week

of the pay period. However, the notation next to Ms. Christensen's signature indicates she only approved 20 hours of work per week. Complainant claimed to have worked a total of 10 hours on Tuesday, January 2nd, beginning at 6:30 a.m., and she made a notation that she was "moving" on that day. She also claimed she was "moving" on January 5th when she started work at 6:15 a.m. She claimed she worked from 5:40 a.m. until 7:40 a.m. and from 9:20 a.m. until 9:50 a.m. on January 3rd. Ms. Christensen had informed the complainant on January 2nd that she was *not* entitled to claim her time to drive to work with some files as compensated "moving" time. Complainant had told Ms. Christensen that she would be making home visits on the 3rd. Instead of doing so, complainant stayed at home and, according to her timesheet, began working at 5:40 in the morning. Ms. Christensen testified that if complainant was not going to be making home visits on the 3rd, she should have reported to work in Eau Claire. When Ms. Christensen called in the afternoon of the 3rd to see why complainant was not conducting the family visits, complainant refused to talk with her supervisor, said she had already worked 20 hours that week and hung up the phone. After Ms. Christensen said that she had not worked a full 20 hours for the week, complainant opted to claim approximately 5 hours of work time on Friday, January 5th, beginning at 6:15 a.m. Complainant also denominated at least some of that time as "moving" time, despite the previous directive of Ms. Christensen.

Respondent acknowledges that the letter of discipline is inaccurate in that it refers to January 3rd when it should have referred to January 2nd, and referred to January 4th when it should have referred to January 3rd. These are unimportant errors in the context of complainant's discrimination claim.

There is nothing in the record to suggest that respondent's dissatisfaction with complainant's initial timesheet for 2001 was due to her disability, rather than because of complainant's antagonistic response to respondent's efforts to have complainant work out of the Eau Claire office pursuant to a work schedule satisfactory to respondent.

G. Application by W family

The Commission notes that this matter (Finding 92) also arose from an unsolicited phone call of concern made to Mr. Langer. Mr. Langer did not solicit the phone call, although he did ask that the family place its concerns into writing. Mr. Langer reasonably relied on the fact that he rarely received outside complaints about social worker's performance as the reason he concluded the concerns were likely to be credible.

The Commission notes that letter of discipline is inaccurate to the extent that it indicated complainant had "recently" failed to meet with the W family. Complainant stated that the initial appointment with the family was in February or March of 2000, which would not have been "recent" relative to the letter of discipline dated March 5, 2001. However, Mr. Langer testified that he did not know about the date of that meeting until the time of the hearing before the Personnel Commission. Complainant admitted arriving early for one appointment with the W family, although during the pre-disciplinary hearing she denied ever missing a meeting with the family. Respondent chose to rely on the information in the letter from the family rather than the complainant's statement and there is nothing to suggest that respondent's action in this regard was based on complainant's disability.

H. Follow-up letter from adoptive mother of preschooler

During the pre-disciplinary conference held on January 12, 2001, complainant presented a letter from SS, the adoptive mother of the preschooler who complainant had visited on October 17, 2000. Complainant had learned by letter dated December 7th that she might be disciplined for her conduct on October 17th and that SS had raised concerns about complainant's conduct in a letter dated October 17th. Complainant promptly contacted SS and told her that complainant was being removed from the case and might even be fired because of, in part, SS's October 17th letter. (Comp. Exh. 61, Resp. Exh. 152) As a consequence, SS prepared a second letter (Finding 91) which complainant presented during her January 12th pre-disciplinary hearing.

Respondent considered complainant's action of obtaining the second letter from SS, after telling her that she was being removed from the case and possibly fired, to be contrary to Mr Langer's October 23rd work instructions (Finding 76, Comp. Exh. 20) Mr Langer testified that he had not told complainant that she was going to be removed from the case in question and that as far as he knew, removal was never considered.

The Commission notes that there were additional incidents that clearly showed an antagonism on the part of complainant toward her supervisors and her co-workers. It is this antagonism that seems to be the *genesis of much of the conduct that resulted in the discipline of the complainant*. The antagonism is distinct from complainant's disability. *The additional incidents included the following:*

a. [MC case] This matter arises from a September 27, 2000, email from complainant (Resp. Exh. 139). The exchange reflects a dispute as to handling of the MC case (Finding 61) while complainant was on vacation and complainant's allegation that Ms. Larsen-Corey "purloined" the case.

b. [Kris Thomson letter] The October 3, 2000, fax from Kris Thompson of Burnett County (Finding 65) is another example of negative correspondence relating to complainant's work that was received by Mr Langer from an outside source. Ms. Thomson had telephoned Mr Langer and indicated that Burnett county was very upset after having received the "Comparison" document prepared by the complainant. The fax did not result in the imposition of any discipline against complainant.

c. [Ryder-Welter email] Ms. Ryder-Welter, a co-worker of complainant in the Eau Claire office, sent this January 31st email (Finding 111) to Ms. Christensen describing separate incidents involving complainant. The incidents reflected poorly on complainant's work performance and her interaction with other staff. The email is another example of the negative input received by respondent about the complainant.

In summary, legitimate non-discriminatory performance issues, rather than complainant's status as a disabled employee, motivated respondent's action of disciplining the complainant.

IV Other arguments

Complainant argues (brief, page 15) that the failure of respondent to follow its written procedures and the failure to provide complainant with due process (brief, page 16) support a finding of discrimination. However, respondent's employment relations specialist who was involved in the process, Peter Grunwald, testified that such procedures as combining the investigative interview of the employee and the pre-disciplinary hearing is a frequent practice with respondent. He also noted that it is typical to have more allegations in the pre-disciplinary letters than in the corresponding letters imposing discipline. There was no evidence connecting the disciplinary procedures followed here and complainant's disability.

Complainant contends that respondent's intent to discriminate against her is evidenced by the reduction in her caseload. Many of the concerns raised by complainant on this general topic arose from instances when complainant was unavailable and someone else in the office was called on to pinch-hit for the complainant, who then misinterpreted the situation as an effort by the "pinch-hitter" to take over the case.

It is undisputed that management limited the number of new cases assigned to the complainant. The record establishes that this was done out of a concern that complainant was not adequately performing her job responsibilities, rather than due to complainant's disability. Management controlled complainant's new cases, limited her travel time, and limited the time she spent on what respondent considered to be the less important aspects of her job.

Complainant also contends that respondent's view of the case is undercut by earlier positive performance evaluations for complainant's. However, complainant's performance evaluations are fairly consistent. Mr. Langer pointed out a few areas where complainant could improve her performance but he always gave her an overall rating of "satisfactory." This is not a situation where there were exceptionally good performance evaluations before respondent became aware of a protected status and markedly inferior evaluations thereafter.

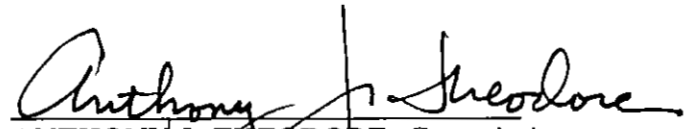
Complainant tried to make argument that monthly performance evaluations (such as Resp. Exh. 107) were actually a concentrated PPD and a disciplinary action that required certain steps under the bargaining agreement. This argument goes beyond the scope of the hearing and it is more in the nature of an attempt to enforce the bargaining agreement. Furthermore, the respondent offered testimony from its witnesses that undercut the complainant's argument in this regard.

Complainant engaged in a long list of problematic and combative conduct. There was no evidence presented by complainant relating to other employees who engaged in similar conduct and yet were not disciplined.


ORDER

This complaint is dismissed.

Dated. April 18, 2002 STATE PERSONNEL COMMISSION


ANTHONY J. THEODORE, Commissioner

KMS:000165Cdec1.2


KELLI S. THOMPSON, Commissioner

Parties:

Margaret King
c/o Atty Peter M. Reinhardt
PO Box 280
Menomonie, WI 54751

Joe Leann
Secretary, DHFS
P.O. Box 7850
Madison, WI 53707-7850

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