

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KAMI GRAHAM, Appellant,

vs.

UNIVERSITY OF WISCONSIN SYSTEM - MILWAUKEE, Respondent.

Case 87
No. 71952
PA(adv)-285

DECISION NO. 34048-B

Appearances:

Mr. Mike Stahl, Field Representative, Wisconsin State Employees Union, AFSCME Council 24, AFL-CIO, 8033 Excelsior Drive, Madison, Wisconsin 53717, appearing on behalf of the Complainant

Ms. Wilhelmina Mickelson, Labor Relations Specialist, Wisconsin Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the Respondent

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

Kami Graham, Appellant in this matter, was discharged from her employment on September 7, 2013. She filed a timely grievance and following denial of same appealed the discharge to the Wisconsin Employment Relations Commission. John R. Emery was assigned to hear the matter, however, prior to doing so, he left the Commission's employ. On October 10, 2013, the Commission substituted James R. Scott to serve as examiner with final authority pursuant to § 227.46(1), Stats. A hearing was held on this matter on October 16, 2013, and thereafter the parties submitted briefs in support of their respective positions.

Having heard this matter and reviewed the arguments of the representatives of both parties, I issue and file the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Appellant, Kami Graham, was employed as an Academic Department Associate in the Linguistics Department at the University of Wisconsin – Milwaukee.

2. Graham's primary responsibilities were to serve as a secretary and administrative assistant to the chair of the department. In 2012, she was paid at the rate of \$16.06 per hour.

3. Graham had a continuing tardiness problem and, in an effort to assist her, the department changed her start time. Graham's evaluations for the 2009 and 2010 school years reflect her continuing inability to arrive at work on time.

4. Graham was consistently late for work during her last year of employment, and the tardiness often involved significant periods of time.

5. Graham also had problems with the performance of her duties. She received several warnings and was provided with counseling sessions.

6. The department head, Hamid Ouali, and Kathy Heath, an assistant dean with human resources responsibilities worked with Graham during 2011 and 2012 in an attempt to improve her performance.

7. On August 30, 2012, Graham failed to report to work and at 8:50 a.m. department head Ouali sent Graham an email noting that Graham had been late the previous day (arriving at 9:30 a.m.) and that absent an adequate justification she would be disciplined.

8. Graham arrived several minutes later, read the email and immediately went to Ouali's office. She began yelling and screaming at Ouali that he did not understand "how her life was fucked up" and stated to him "you all don't understand shit." The tirade lasted for several minutes.

9. Ouali, a man of diminutive stature, felt threatened by Graham's conduct. He contacted Heath by email and upon Heath's arrive, Graham settled down.

10. Thereafter, Graham was placed on administrative leave and, following a pre-disciplinary session, her employment was terminated based upon her unsatisfactory work performance, attendance and the triggering incident which occurred on August 30, 2013.

Based on the foregoing Findings of Fact, the Examiner makes and issues the following:

CONCLUSIONS OF LAW

1. The Wisconsin Employment Relations Commission has jurisdiction over this matter pursuant to §§ 230.44(1)(c) and 230.45(1), Stats.

2. That there was just cause for the discharge of Kami Graham from her employment with the University of Wisconsin – Milwaukee.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following

ORDER

The decision to discharge Kami Graham is affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 17th day of December 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Examiner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

The appellant in this case worked as an office support person in the Department of Linguistics at the University of Wisconsin – Milwaukee. Although carrying the lofty title of Academic Department Associate, Graham worked as an office clerical in a small academic department.

The record reflects that Graham worked from 2005 until her termination in September 2012. In a word, her overall job performance was poor. She had chronic attendance problems and when present her work product was often defective. The department chair who served as Graham's supervisor changed every two years. Apparently, prior to 2012 the various Linguistics Department chairs preferred to tolerate Graham's poor performance rather than address her issues.

The performance evaluations for 2008 – 2009 and 2009 – 2010 both reflect the general dissatisfaction with both the attendance and work performance. Other than these generally negative evaluations, the record does not reflect any other efforts to encourage improvement or discourage shoddy performance. Graham may well have interpreted this inaction by the University of Wisconsin – Milwaukee as tacit acceptance of her misbehavior.

That all changed however with the appointment of Hamid Ouali as chair of that department. Beginning in October 2011, Ouali with assistance from human resources began to focus on rectifying Graham's shortcomings. Graham failed to insure that several teaching assistants received their pay on time creating hardships for the individuals. She continued a cavalier approach to regular attendance and punctuality. There were additional problems with timely completion of work tasks. All of the foregoing was documented and Graham received counseling along the way. Neither carrot nor stick seemed to work but the process ended abruptly in a stormy confrontation between Ouali and Graham.

On the morning of August 30, 2012, Ouali emailed the absent Graham noting that she had been an hour late the day before and that it was now 8:50 a.m. and Graham was again a no-call, no-show. Shortly after the email, Graham arrived, viewed the email and angrily stormed into Ouali's office. A profanity-laced tirade followed and was severe enough that Ouali felt threatened. Shortly thereafter Graham was suspended pending investigation and following appropriate procedure was terminated.

Graham admitted her inappropriate behavior and offered as mitigation problems dealing with an ill relative. Standing alone her explosion may well have warranted termination.¹ Coupled with a history of inadequate behavior there is no question that there was just cause for the termination. I am also satisfied that Graham understood that the rules had changed with the arrival of Ouali as chair of the department. What had been acceptable in the past could no longer continue. The fact that previous supervisors had accepted unsatisfactory behavior does not create a lifetime license to continue that pattern. Graham argues that a number of her documented performance failures did not result in formal discipline and therefore should be excused. Rather than being a negative, I believe it demonstrates that the University of Wisconsin – Milwaukee was indeed attempting to improve Graham's performance. Written warnings or suspension would not have saved the day. This may not have been a human resources textbook proceeding but clearly Graham understood what was necessary to save her job and choose not to adjust her ways. The discharge was fully warranted.

Dated at the City of Madison, Wisconsin, this 17th day of December 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Examiner

¹ Although perhaps tolerable on a foundry shop floor, Graham's outbursts were totally unacceptable in the staid halls of academia, to the point where Oulia felt personally in peril.