

STATE OF WISCONSIN
BEFORE THE STATE BOARD OF PERSONNEL

CLIFTON H. LEE,	:	
	:	
Appellant,	:	FINDINGS OF FACT
	:	
vs.	:	AND
	:	
EDWARD E. ESTKOWSKI, CHAIRMAN, DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS,	:	CONCLUSIONS OF LAW
	:	
Respondent.	:	

The appellant, Clifton H. Lee, having, pursuant to sec. 16.24 (1) (a), Wis. Stats., appealed from a written notice by respondent that his employment was terminated effective March 31, 1970, in accordance with his earlier declaration that he was quitting effective on that date, alleging that he did not quit but was discharged prior to the effective date of his intended quitting on June 1, 1970, and a hearing having been held on April 17, 1970, at Madison, Wisconsin; Percy L. Julian, attorney at law, appearing for the appellant; Arnold J. Spencer and Uclair W. Brandt, attorneys at law, appearing on behalf of the respondent; and after hearing the allegations and proofs of the parties, and being advised in the premises, the Wisconsin State Board of Personnel, before whom the same was tried, does make and enter the following as and for its

I. FINDINGS OF FACT

1. That the said Clifton H. Lee, hereinafter the appellant, was a permanent employe in the classified service of the State of Wisconsin and was employed by the Department of Industry, Labor and Human Relations.
2. That the three Commissioners are the statutory appointing officers and

he was terminating his employment on March 31, 1970, was his actual intention and appellant informed Commissioner Kautzer that his last day of work would be March 31, 1970.

6. That at the time of Commissioner Kautzer's visit on December 22, 23 or 24 of 1969, he requested the appellant to furnish him a list of sources which would be helpful in recruiting a replacement for appellant.
7. That on December 24, 1969, appellant forwarded a list of organizations which might be helpful in recruitment of a candidate for his replacement.
8. That, beginning in January of 1970 and thereafter, the respondent relying on appellant's termination of his employment on March 31, 1970, processed required personnel forms necessary to recruit a replacement for appellant.
9. That on March 16, 1970, the appellant related to Commissioner York that he intended to leave his employment on April 3, 1970, and maybe not until June 1, 1970.
10. That on March 23 Commissioner York orally informed appellant that the Commissioners expected him to leave his position on March 31, 1970.
11. That on March 26, 1970, the Commissioners wrote a letter to appellant advising him that he would be expected to vacate his position on March 31, 1970.
12. That on March 31, 1970, the appellant vacated his office with the respondent and has performed no services for the respondent since that date.

II. CONCLUSIONS OF LAW

1. That the appellant voluntarily terminated (i. e., quit) his employment on March 31, 1970.
2. That Chapter Pers. 21, Wisconsin Administrative Code, does not mandatorily require an employing unit of the State of Wisconsin to obtain a written resignation from a permanent employe who voluntarily leaves the service of the State of Wisconsin.
3. That under sec. 16.24, Wis. Stats., the Board of Personnel has no jurisdiction because the appellant voluntarily terminated his employment.

Dated at Madison, Wisconsin, this 30 day of July, 1970.

BY THE STATE BOARD OF PERSONNEL

John A. Searge
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Appellant, however, calls attention to Chapter Pers 21, Wisconsin Administrative Code as requiring a written resignation, or of at least the appointing officer endeavoring to obtain a written resignation.

Chapter Pers. 21 reads:

"21.01 Every effort shall be made by an appointing officer to obtain a written resignation from a permanent employe who voluntarily leaves the service. Such resignation shall contain the reasons therefore and be submitted in duplicate to the appointing officer not less than 15 calendar days prior to the effective date. The appointing officer will retain the original of such resignation and shall transmit the duplicate to the bureau. Except for extenuating circumstances, failure of an employe to submit such a resignation shall result in forfeiture of reinstatement eligibility."

It is easy for this Board to determine the intent of this rule, for it is a rule of the Board adopted by it in implementation of the civil service statutes.

The Board never intended this rule to be mandatory, but rather to be directory. The Board has no thought that it would have any bearing on the effectiveness of voluntary separation. It was adopted as a corollary to other rules of the Board pertaining to reinstatement. Generally speaking, an employe who voluntarily resigns is entitled to return to state service without reexamination within three years from separation at the same classification and at the same salary except where he has resigned to accept other non-governmental employment.

The Bureau of Personnel requested the rule for it had been plagued by reinstatement requests from persons who had voluntarily left state employment and there existed no documentation as to whether they had abandoned their jobs (which would preclude reinstatement) or had left for reasons which also would preclude reinstatement.

Accordingly, the Board concludes that an oral resignation can be

completely effective to terminate one's state employment. The Board prefers a written resignation for the record, but does not require it.

In Shallock vs. Industrial Commission of Wisconsin, et al, Dane County Circuit Court, Jan. 28, 1968, Judge Wilke said:

"It has long been established that the voluntary resignation of an employee, evidenced by a clear expression of employee's intention to quit the employment, promptly and unconditionally accepted by the employer before the resignation is withdrawn by the employee, terminates the contract of employment."

There is language in that case to the effect that regardless of what the employer did or did not do about the matter, that the resignation of an employe puts an end to the employment on the stipulated day; thereafter the employe could only be reinstated by mutual agreement.

The Board must ascertain from the record if there is adequate supporting credible evidence that the Appellant did orally resign as of March 31, 1970 as the Respondent contends.

One thing is crystal clear. Appellant unequivocally stated on many occasions to many people that he was going to leave state employment. This he does not and has never denied.

The Commission had trouble in pinning Appellant down to a date when he was going to leave. This Board now has the task of ascertaining whether or not Appellant clearly expressed to the Commissioners that the date of leaving would be March 31, 1970.

Appellant's position as Administrator of the Civil Rights Division is a most sensitive one and very important.

The last session of the legislature imposed unusual budgetary restrictions on the Division. There is reason to believe that the legislature took this action because of disapproval of the manner in which the Department under

Chairman Joseph C. Fagan was conducting its activities in the field of civil rights.

Chairman Fagan apparently found the situation untenable and resigned from the Commission as of February 1, 1970, and took the position in Washington as Director of the Federal Equal Opportunities Commission. Mr. Fagan announced his plan to leave several months before he resigned.

Appellant at about the same time began to talk about leaving and from time to time mentioned many dates to many people. The Board is inclined, from the record, to believe that Appellant honestly cannot recall what date he gave to whom and when or where.

While there were undoubtedly many reports from the cumulation of which a reasonable conclusion could be drawn, certain specific meetings are emphasized.

At a meeting on October 3, 1969 with the Commissioners and the Director of the Employment Service, Appellant made an impassioned presentation that he could not do the job he had to do because of the budgetary restrictions and would resign no later than June 1, 1970. Record, page 10.

At a casual meeting in a restaurant with the Commissioners on December 22, 1969, there was discussion about the resignation. Commissioner Joseph Kautzer testified that Appellant clearly indicated that he would be leaving no later than March 31, 1970. Record, page 12. Commissioner Estkowski testified that "he did say very clearly that he had two job offers and probably would be leaving in the early part or mid-part of March, 1970". Record, page 84. On cross-examination, Estkowski said, "But the 22nd it was clear in my mind he was talking about March 31." Record, page 99. Ex Chairman Fagan testified that "to the best of my recollection that there was not any discussion dates".

Record, page 108. Appellant denied giving any date. "I'm not stupid. I wouldn't give a March 31 date or any dates before I had a job." Record, page 123.

On either December 22, 23 or 24, 1970, Kauzer sought out Appellant in his office. In answer to questions the Record, page 14 indicates:

Question: "What did you say to Mr. Lee at this meeting, as near as you can recall?"

Answer: "Can we assume that March 31 will be your last day?"

Question: "What was Mr. Lee's reply?"

Answer: "Yes".

At this meeting Kautzer asked Appellant for potential sources of people to replace him. Record, page 15. Appellant complied with this request in writing. Respondent's exhibit 1-A and 1-B.

Kautzer testified he advised the other Commissioners of his conversation and forwarded Exhibit 1-A and 1-B to Paul Marlett, Department Personnel Officer. On January 22, 1970, Kautzer directed a memorandum to Stephen J. Reilley, Secretary of the Department requesting him to start recruitment. Respondent's Exhibit 2.

Appellant denies that he made any commitment to Kautzer in the conversation referenced above. Record, page 126.

On February 1, 1970, the composition of the Commission changed. Chairman Fagan had resigned; Stanley York had been appointed to the Commission; E. E. Estkowski had moved up to Chairman.

On March 16, at Appellant's request, he had a meeting with Commissioner York in Milwaukee. In the course of the conversation, York mentioned March 31, as Appellant's termination date. York testified that Appellant said "that was news to him". Record, page 48. This shocked York to the extent that he made a note of it at the time.

Consistent with Appellant's approach, earlier in the conversation before March 31 was mentioned as the definite day, Appellant threw in the date of April 3 as the date he would leave. Record, page 47.

York reported back to his fellow commissioners. On March 23, 1970, York saw Appellant again and told him that the Commission had determined that March 31 would be the termination date. York said Appellant responded: "I expected it."

On March 26, 1970, the Commission wrote a letter to Appellant that he would be expected to vacate his position on March 31. Board's Exhibit 1.

It is most unfortunate that the Appellant expressed an intention to resign before he was actually ready to resign. It is more unfortunate that he mentioned dates - even though many of them were only probabilities and none of them intended by the Appellant to be firm. Apparently he did not realize that he was dealing with people who despite their disappointment with their treatment were going to stay on board and do their jobs. Appellant should have ceased playing a game that was over and have leveled with the Commissioners and told them he was not going to leave until he knew he was going to be satisfactorily located elsewhere. It is understandable that the

Commission should have to know when a high level employe was going to leave. They wanted to pin the Appellant down to a date and pin him down they did.

Except for the informality of the situation and the unbusinesslike atmosphere of the occasion, Appellant committed himself on December 22, 1969 to a resignation effective March 31, 1970.

Kautzer pinned him down most conclusively in Appellant's office within a day or two thereafter when Appellant answered "Yes" to the question, "Can we assume that March 31 will be your last day?"

The Board believes that Kautzer's testimony affords credible adequate supporting evidence that Appellant clearly expressed an intent to resign as of March 31, 1970. Kautzer is a man that must be believed. His credibility is bolstered by the evidence of what was said on December 22, 1969, and the steps that were taken after Kautzer's talk with Appellant.

The Board is not saying that Appellant is dishonest when he denies that he made a firm commitment for March 31. When one has painted himself into such a corner as Appellant had, it is easy not to recall what was said.

The Board is sympathetic with the Appellant, but all of the equities are in favor of the Board. For months Appellant had made no "bones" about his displeasure with his job and that he was going to leave. Management must find such a situation intolerable. Management must protect itself. The Board concludes that Appellant did resign as of March 31, 1970, and, having resigned, it was his voluntary act that terminated his employment, which act this Board has no jurisdiction to reverse.

Dated May 15, 1970, at Madison, Wisconsin.

I wish to express my dissent to the Board's opinion
Des. Schutte

STATE BOARD OF PERSONNEL

BY *John A. Serpe*
John A. Serpe
(A. J. ...)
John A. Serpe