

STATE OF WISCONSIN

PERSONNEL BOARD

RITA A. SALMON,

Appellant,

v.

WILBUR J. SCHMIDT, Secretary,
Department of Health and Social
Services,

Defendant.

*555

OPINION

and

ORDER

Before: AHRENS, Chairman; BRECHER, SERPE AND JULIAN,
Board Members.

JULIAN, Board Member, for himself, AHRENS, BRECHER and SERPE.

This is an appeal from an action of the appointing authority terminating the services of the appellant for allegedly filing a false expense voucher. For the reasons stated under the heading entitled "Opinion" below the action of the appointing authority must be reversed and appellant reinstated to her position with the Department of Health and Social Services. Under the heading entitled "Facts" below we find the facts as we are required to do by §227.13, Wis. Stats.

FACTS

1. Until her termination on July 14, 1972, appellant was employed as a permanent classified employee in the State Department of Health and Social Services, Division of Health, at the Green Bay District Office, with the classification of Health

Education Specialist 2, salary range 1-14.

2. As an employee of the Green Bay District Office the appellant was required to travel extensively within the State of Wisconsin in the performance of her official duties.

3. Each month appellant was required to submit to the Department and have approved by her supervisor, a standard State expense voucher in order to be reimbursed by the State for her travel and other reimbursable expenses.

4. Appellant submitted a Standard State expense voucher dated June 30, 1972, for reimbursement of expenses incurred in the performance of her official duties for the month of June 1972. This expense voucher requested reimbursement in the amount of \$401.20.

5. Upon examining the expense voucher dated June 30, 1972, which was submitted to him for his approval, appellant's supervisor disagreed with the mileage claimed for the weekend of June 17 and 18, 1972 as well as the expenses claimed for the noon meals for June 5 and 9, 1972.

6. Appellant's supervisor indicated that he would not approve the voucher in the form submitted and requested appellant to change it. He returned the voucher to her.

7. At first appellant refused to change the voucher but later agreed to do so.

8. On July 12, 1972, appellant submitted an expense voucher for June, 1972, in which the changes requested by her supervisor were made. In addition, appellant claimed on this voucher certain additional expenses which brought the total amount claimed to \$410.20. [It is this second expense voucher which the respondent claims is false].

9. Appellant's supervisor obtained a copy of the first (withdrawn) expense voucher from within appellant's office. After comparing the vouchers appellant's supervisor concluded without conferring with appellant that the second voucher was false and requested his superiors to discharge appellant.

10. The only expense voucher which was finally submitted by appellant was the second voucher submitted July 12, 1972.

11. The expense voucher of July 12, 1972 was for reimbursable expenses and mileage actually and necessarily incurred by appellant in the performance of her duties and paid for by her and then unreimbursed.^{1/}

12. Appellant was terminated on July 14, 1972.

13. She appealed her termination in a timely fashion to the Personnel Board on July 17, 1972.

OPINION

Jurisdiction is present. Sections 16.05(1)(e) and 16.05(2), Wis. Stats.

We reverse and order the reinstatement of appellant because the respondent has not convinced a majority of the Board members who heard this case that appellant filed a false expense voucher and that the decision to terminate appellant was based on just cause. On October 20, 1972, the time of hearing held in this case, this Board consisted of four^{2/} members. All four heard this appeal.

After a thorough and careful review of the entire record in this case, Board members Brecher and Serpe would sustain

^{1/} This finding is fully explained infra under the heading "Opinion." This finding is made because of the failure of the respondent to prove that the second expense voucher was false.

^{2/} Board member Susan Steineger who was appointed in November, 1972 to fill the unexpired term of former Board member Jerry M. Slechta had not been appointed by the Governor at the time of the hearing on this appeal.

the discharge of appellant.

Board member Ahrens would reverse the discharge and reinstate appellant because he believes the respondent did not prove that the second expense voucher was false. All that was proven was that there was a difference of opinion between appellant and the appointing authority. This does not amount to proof of a false expense account. In addition, Board member Ahrens would reverse on the grounds that a mere difference of opinion with respect to one expense account (as opposed to a showing that it was false) is not just cause for termination of appellant's employment.

Board member Julian concurs in Ahren's view that the respondent did not prove the second expense voucher was false, and would reverse and reinstate appellant for that reason.

The tie vote of the Board leaves neither side with a clear majority.

In Reinke v. Personnel Board, 53 Wis.2d 123, 191 N.W.2d 833(1971), the Supreme Court of Wisconsin teaches that the burden of proof or persuasion is upon the respondent. 53 Wis.2d at 133, 191 N.W.2d at 837. This means that the respondent must convince this Board that the facts upon which he relies to sustain his action are true and constitute just cause for the discharge. This Board, like other democratic agencies, has always operated on the principle of majority rule.

When this principle is combined with the teaching of the Reinke case, the conclusion is inescapable: to sustain its position the respondent must convince a majority of the Board

members hearing the case^{3/} that the facts upon which he relies are true and that there is just cause for the discharge. All four Board members who heard this appeal concur in this conclusion. Because the Reinke case teaches that the burden of persuasion always remains on the respondent and never shifts, we hold that unless the respondent can convince a majority of the Board members who heard the case that there was just cause for his actions, he ought not prevail. All four Board members who heard this case agree that the respondent has been unable to convince a majority of the Board that his discharge of the appellant should be sustained.

CONCLUSIONS OF LAW

We, therefore, conclude as required by §227.13, Wis. Stats. that:

1. We have jurisdiction to hear this appeal.
2. Just cause has not been shown for the discharge of appellant.
3. Appellant should be reinstated with back pay.

ORDER

For the reasons stated above and upon the entire record herein,

IT IS HEREWITH ORDERED that the appellant be and she hereby is reinstated to her position as a Health Education Specialist 2 with the Division of Health, Department of Health and Social Services with the same rights and privileges to which

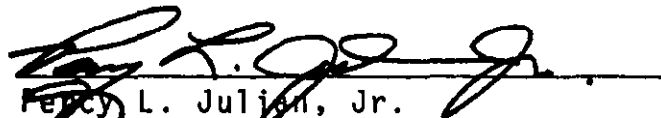
^{3/} Obviously there must be a quorum, unless the parties stipulate otherwise.

she would have been entitled had her discharge not occurred.

IT IS FURTHER ORDERED that appellant be paid wages, allowances, and benefits which would be due and owing had her discharge not occurred.

Entered this 16~~th~~ day of March, 1973.

BY THE PERSONNEL BOARD,


Percy L. Julian, Jr.
Board Member

Board Member Susan Steininger took no part in the hearing or decision of this case.