

7. A Proposed Opinion and Order was prepared and sent out to the parties on April 18, 1978.

8. Appellant filed objections to the Proposed Opinion and Order on the grounds that he had requested a hearing within the 15 day limit referred to in paragraph 6. He enclosed a copy of a letter he alleges was sent to the Board. It was addressed incorrectly and directed to the wrong agency.

OPINION

Appellant in responding to the Proposed Opinion and Order included various correspondence he had received from the Personnel Board. All such correspondence indicated clearly the name of the Personnel Board and its address. Nonetheless, appellant claims that he responded in a timely manner to the March 6, 1978, letter from the staff attorney. We conclude that he did not. Through his own oversight and negligence he misaddressed the letter. In fact, in responding to the Proposed Opinion and Order he misaddressed his letter yet again. However, it was returned to him whereupon he corrected the address and sent it again.

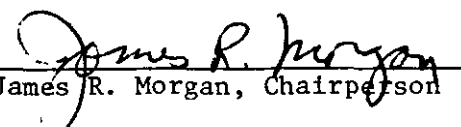
Finally, in light of the stipulation entered into by the appellant we cannot conclude that our conclusion is incorrect. Appellant clearly understood the stipulation and failed through his own negligence to respond in a timely manner to a Board inquiry.

ORDER

IT IS HEREBY ORDERED that the Proposed Opinion and Order is adopted as a final decision with the addition of the above "findings of facts" and "opinion."

Dated: 5-19, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson

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J. CLOMER CAMPBELL,
 Appellant,

v.

SECRETARY, Department of Industry,
 Labor and Human Relations,
 Respondent.

Case No. 77-195

* * * * *

PROPOSED
 OPINION AND ORDER

Before:

NATURE OF THE CASE

This is an appeal, pursuant to Wis. Stats. § 16.05(1)(e), of the respondent's decision to suspend the appellant from work. At a prehearing conference on November 16, 1977, the appellant stipulated to various facts describing the events that prompted the disciplinary action. He also stipulated to the propriety of imposing some form of discipline on him. Because of the scope of these stipulations, the Board notified the parties on March 6, 1978, that it would decide the case based on the stipulations and the remainder of the written record unless the parties advised that a hearing was necessary. Neither party so advised the Board that a hearing was in fact necessary. Thus, this case is decided on the merits based upon the entire written record as it existed on March 6, 1978.¹

FINDINGS OF FACT

1. The appellant stipulated to the accuracy of the following paragraphs of a suspension letter addressed to him and dated on September 9, 1977:

1. The entire written record as of March 6, 1978 consists of the appellant's letter of appeal (Board's Exhibit #1), the September 9, 1977, letter of suspension (Board's Exhibit #2), and the appellant's stipulations.

1. You failed to report to work on Thursday, September 8, 1977, specifically without notification to the Acting Project Manager, Juanita Williams, of your absence. Subsequently you were charged with 8 hours of unauthorized (unpaid) leave. You did, however, come into the office at approximately 2:05 p.m. to pick up your paycheck. You then immediately left the office. Your actions constituted a violation of DILHR Work Rules relating to Work Performance and Attendance and Punctuality.
2. On Friday, September 9, 1977, you telephoned the Acting Project Manager, Juanita Williams, at approximately 8:10 a.m. to request 8 hours of annual leave notwithstanding the fact that you had previously used all of your annual leave. You were informed by Ms. Williams that annual leave would not be approved and, furthermore, that if you did not report to work on September 9, 1977, you would be charged with 8 hours of unauthorized leave. You subsequently failed to report to your work station on September 9, 1977. Your actions constituted a violation of DILHR Work Rules relating to Work Performance and Attendance and Punctuality.

2. The appellant was suspended from work without pay for five days because of this misconduct.

3. The appellant had been warned and counseled by his supervisor in the past about similar rule infractions which had occurred on eight different occasions between January of 1976 and June of 1977.

4. The appellant stipulated that some form of discipline should have been imposed on him for his conduct on September 8 and 9 of 1977.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this appeal.

Wis. Stats., § 16.05(1)(e).

2. In appeals from disciplinary actions, the respondent has the burden of showing to a reasonable certainty, by the greater weight of the credible

evidence, that the alleged misconduct occurred and that this misconduct constitutes just cause for the disciplinary action imposed.

See Reinke v. Personnel Board, 53 Wis. 2d. 123 (1971).
Weaver v. State of Wisconsin Personnel Board (Mayes);
141-416, 141-493, (Dane Cty. Cir. Ct. 1974).
Voigt v. State Personnel Board (Amrhein), 142-120
(Dane Cty. Cir. Ct. 1974).

3. The Board concludes that the respondent has met this burden. The appellant's misconduct constitutes just cause for the discipline imposed.

OPINION

The appellant admits the occurrence of the alleged misconduct. He also agrees that this misconduct constitutes just cause for some type of disciplinary action. He does not, however, agree that the specific form of disciplinary action taken in this case was justified. In his appeal letter he stated that "the appeal is based on the grounds that the penalty was too stringent for the infraction." Thus, the issue in this case is whether or not the appellant's misconduct constituted just cause for the particular form and severity of discipline imposed on him.

The Board cannot say that the suspension from work without pay for five days was inappropriate in this case. The appellant had displayed similar misconduct on several occasions in the past and had been warned and counseled regarding this matter. Yet, on September 8 he still failed to report for work or to notify his supervisor of his absence although he did come to the office to collect his pay check on that afternoon. On the following day, the appellant again failed to report for work even though he had exceeded his authorized leave time. The occurrence of this conduct after the prior absences and warning

Campbell v. DILHR
Case No. 77-195
Page Four

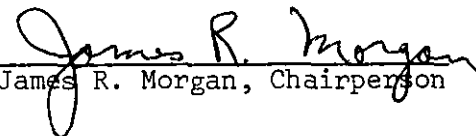
constituted just cause for the suspension imposed. The Board must conclude that the five day suspension of the appellant for his misconduct was an acceptable exercise of the respondent's managerial discretion.

ORDER

IT IS HEREBY ORDERED that the five day suspension imposed by respondent is affirmed and this appeal is dismissed.

Dated: May 18, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson