

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*

JOHN STASNY, \*

Appellant, \*

v. \*

Secretary, DEPARTMENT OF  
TRANSPORTATION, \*

Respondent. \*

Case Nos. 79-192, 218, 253, \*  
259-PC, 78-PC-ER-47 \*

\* \* \* \* \*

JOHN STASNY, \*

Appellant, \*

v. \*

Administrator, DIVISION OF  
PERSONNEL, \*

Respondent. \*

Case No. 79-217-PC \*

\* \* \* \* \*

OFFICIAL

DECISION  
AND  
ORDER

NATURE OF THE CASE

These cases, which were consolidated for hearing, relate to the following subjects:

- 79-192-PC - Appeal pursuant to s.230.45(1)(c), Wis. Stats., of the denial of a non-contractual grievance with respect to the denial of a medical leave of absence.
- 79-217-PC - Appeal pursuant to s.230.44(1)(a), Stats., of the administrator's approval of the transfer of appellant to a position at Fort McCoy.
- 79-218-PC - Appeal pursuant to s.230.44(1)(c), Stats., of appellant's discharge from employment.
- 79-253-PC - Appeal pursuant to s.230.45(1)(c), Stats., of the denial of a non-contractual grievance with respect to the transfer of appellant to a position at Fort McCoy.

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79-259-PC - Appeal pursuant to s.230.45(1)(c), Stats., of the denial of a non-contractual grievance with respect to the denial of appellant's transfer or bumping into a "comparable" position to the position he occupied before his initial transfer to Fort McCoy, (this initial transfer was the subject of litigation in Stasny v. DOT, 78-158-PC, decided October 12, 1979).

78-PC-ER-47 - Appeal pursuant to s.230.45(1)(b), Stats., of a finding of "no probable cause" to believe complainant (appellant) was discriminated against on the basis of handicap and as retaliation by failing to approve an extension of medical leave or to make other reasonable accommodations with respect to handicap.

#### FINDINGS OF FACT

1. The appellant at all relevant times prior to his discharge, effective August 13, 1979, was employed by the Department of Transportation with permanent status in the classified service in a position not part of a certified or recognized bargaining unit, classified as Training Officer 1.

2. On or about August 5, 1978, the appellant, while stationed at Fort McCoy, commenced sick leave.

3. On August 30, 1978, the appellant requested a leave of absence without pay, for medical reasons, for the period from September 14, 1978, to December 20, 1978. This leave was granted by DOT.

4. By letters dated October 9 and 25, 1978, Respondent's Exhibit 5 and 6, Major Lacke, Support Services Bureau, Division of Enforcement and Inspection, informed appellant of two Ambulance Inspector vacancies in pay ranges 02-08 and 02-09 respectively. The appellant was not interested in, and did not pursue, either vacancy.

5. On December 8, 1978, appellant requested an extension of his medical leave of absence without pay, from December 21, 1978, to March 20, 1979. This request was granted by DOT.

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6. On March 9, 1979, the appellant requested another extension of his medical leave of absence without pay, from March 21, 1979, to June 20, 1979.

7. The department requested from appellant's doctor further information on appellant's medical condition.

8. The appellant's doctor responded by a letter dated March 28, 1979, (Respondent's Exhibit 10), which contained an outline of at least some of appellant's medical history and the following conclusion.

"It is my belief that avoiding a transfer to another location would be a better therapy for Mr. Stasny's medical problem. However, I do feel Mr. Stasny could return to work with close medical supervision."

9. The respondent denied appellant's request. See Respondent's Exhibit 11. The reason for this denial was the respondent's determination at that time that, based on the aforesaid letter from Dr. Dukerschein, the appellant could return to work with close medical observation.

10. By letter dated April 5, 1979, Respondent's Exhibit 12, the respondent, DOT, ordered the appellant to report to work at the State Patrol Academy at Fort McCoy on April 9, 1979.

11. It was agreed between the parties that this order would be postponed, and the leave of absence would be extended, pending further examination of the appellant by his doctor.

12. Following receipt of a relatively negative pronosis from Dr. Dukerschein on April 12, 1979, see Respondent's Exhibit 13, DOT personnel office began actively to look for other positions within state service which might be suitable for the appellant, and subsequently informed the appellant of a number of vacancies both within and without DOT.

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13. During approximately April, 1979, a Police Communications Officer 3 (lead worker) position became vacant in the Fond du Lac area. The appellant was not notified of this vacancy.

14. The reason the appellant was not so notified was because it was felt that he would not be interested in a job in that geographical area because he had expressed disinterest in a previous job in that area.

15. There were only 4 Training Officer 1 positions in DOT, and no vacancies therein, during the period of appellant's leave of absence.

16. Dr. Dukerschein provided DOT Personnel with a copy of a letter dated June 20, 1979, to the Health Insurance Corporation (Respondent's Exhibit 17), regarding appellant's health.

17. As a result of analysis of this letter, Mr. Harvey, Administrator of the Division of Enforcement and Inspection, concluded at that time that it was up to the appellant whether he could return to work. Based upon the agency's pressing need to fill the Training Officer 1 position at the State Patrol Academy at Fort McCoy, he ordered the appellant to report to work in that position on August 6, 1979, by letter dated July 27, 1979, Respondent's Exhibit 18.

18. The administrator of the Division of Personnel approved, on August 3, 1979, the transfer of the appellant to the Training Officer 1 position at Fort McCoy. This approval was based on the facts that the position in question was classified as Training Officer 1 and that was appellant's current classification. This served as the basis of a determination by the administrator that the appellant was qualified for this position.

19. On August 6, 1979, the appellant and his attorney met with various DOT officials to discuss Mr. Stasny's employment situation.

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20. At that meeting, it was agreed that appellant's leave of absence would be extended to August 10, 1979, so that he and his attorney could consult at further length with his doctor regarding the medical advisability of the appellant reporting to work at Fort McCoy.

21. Also at that meeting Mr. Barnes produced a computer printout of all vacant positions in DOT and reviewed said list with appellant's attorney.

22. Also at that meeting there was discussion of a vacant planning analyst position within DOT which DOT was in the process of filling. This position was classified at a higher level than Training Officer 1, but it was agreed that the appellant would interview for the job with the understanding that if the appointing authority were interested in appointing appellant, DOT would attempt, through the state Division of Personnel, to have the classification of the position downgraded and to have the appellant transfer, without competition, into the position.

23. The appellant did interview for this position but was not felt to be qualified by the appointing authority and no action was taken to move him into this position.

24. Also at that meeting or shortly thereafter, the agency discussed with Mr. Stasny's attorney the alternative of appellant reporting to a Police Communications Officer 2 position in Madison. This position was three pay ranges below the appellant's Training Officer 1 classification.

25. A letter dated August 8, 1979, to Mr. Stasny from DOT, Respondent's Exhibit 22, summarizing the August 6, 1979, meeting, contained, in part, the following:

"If the doctor indicates that you are medically able to assume the position at Fort McCoy, we will expect you to report there by 10:00 a.m., Monday, August 13, 1979. If the doctor

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indicates that you are NOT medically able to assume the position at Fort McCoy, we are offering you a Police Communication Officer 2 position here at State Patrol Headquarters. The maximum pay for that position is \$6.937 per hour, and you would be paid at that rate. This is approximately \$1.70 per hour less than your pay as a Training Officer 1.

If you accept this position, please report to Lt. Hlavacka at 8:00 a.m. Monday, August 13, 1979. The Police Communication Officer 2 position is temporarily (for approximately 6 months) located in Madison. Should you report for work in this position, we will work toward a more permanent job placement for you during the next 6 months. Should you not report to the Training Officer 1 position at Fort McCoy on August 13, and if you do not report for the Police Communication Officer 2 position at state headquarters and should you not initiate a request for disability retirement, you will be considered as having terminated employment with this department as of the end of the work day, Friday, August 10, 1979."

26. In a letter dated August 10, 1979, from appellant's attorney to Jogn Roslak, Respondent's Exhibit 23, contained, in part, the following:

"...we met with Dr. Dukerschein on August 9 and completely reviewed John's medical condition and likelihood of improvement...The Doctor indicated that he felt that the additional incremental stress which a transfer to Fort McCoy would precipitate could have adverse impacts on John's health and he could not, therefore, give John a medical clearance to transfer at this time.

The Doctor did not, however, rule out the possibility of John's transferring to Fort McCoy at some later date...

\* \* \*

Mr. Barnes also has indicated that John, if he is medically unable to transfer to Fort McCoy, must accept the PCO position or be terminated. In the event that this leave of absence request is denied, John will accept temporary assignment to this position as he considers the directive of Mr. Barnes, given under threat of termination, to be an order."

27. The aforesaid letter forwarded a leave without pay request for the period of August 13, 1979, through February 11, 1980. This was denied by DOT on August 13, 1979.

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28. The appellant did not report to the training officer position at Fort McCoy on August 13, 1979, or subsequently.

29. On the morning of August 13, 1979, the appellant received the letter marked Respondent's Exhibit 22.

30. The appellant immediately called Lt. Hlavacka and discussed the position. The appellant was informed that the position involved shift work but the first few weeks would involve training and not shift work.

31. The appellant requested in a subsequent phone conversation later that morning a week's extension in reporting so as to consult with his doctor, who was on vacation, as to whether it would be medically advisable to take this job, since it involved shift work. Lt. Hlavacka stated that the appellant would have to report by noon that day.

32. The appellant did not report to the PCO 2 position in Madison on August 13, 1979, or subsequently.

33. A letter dated August 14, 1979, from the appointing authority to the appellant, Respondent's Exhibit 27, included, in part, the following:

"This is to inform you of the termination of your employment with the Department of Transportation effective August 13, 1979. This action is necessitated by your decision not to report for work at the State Patrol Academy as directed following the expiration of a leave of absence.

Recognizing your desire to remain in the Madison area, and your concern for your health, you were offered a position in Madison as a Police Communications Operator 2 to start at 8:00 a.m. on Monday, August 13, 1979. This was subsequently changed to 1:00 p.m. on August 13, 1979, to accommodate what your attorney states was a misunderstanding. You did not report for work in this capacity either."

34. As of August 13, 1979, the appellant was physically or mentally incapable of or unfit for the efficient and effective performance of the duties

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of his position of Training Officer 1 at Fort McCoy by reason of infirmities due to the medical problems set forth in Respondent's Exhibit 17 (letter from Dr. Dukerschein to Health Insurance Corp. Dated June 20, 1979).

35. The dismissal of appellant effective August 13, 1979, was, under all of the circumstances, the last resort available to the respondent pursuant to s.230.37(2), Stats.

36. In August, 1978, Mr. Stasny filed a discrimination complaint with the Commission charging DOT with discrimination on the basis of handicap with respect to his initial transfer to the Training Officer 1 position at Fort McCoy in 1978.

37. This complaint was served on DOT, and the Commission commenced investigation interviews of DOT employes, in April, 1979.

38. In October, 1979, Mr. Stasny applied to the state Division of Personnel to be considered for reinstatement and to be placed on the reinstatement list.

39. That agency, through Dale Bruhn, checked with DOT regarding Mr. Stasny's termination and ascertained the facts concerning appellant's termination.

40. The Division of Personnel determined on the basis of the facts supplied that Mr. Stasny had been discharged for misconduct and notified him that, accordingly, he would not be eligible for reinstatement.

41. Mr. Stasny's attorney subsequently sent Mr. Bruhn a copy of the letter of termination which indicated that the appellant was eligible for reinstatement.

42. Counsel for DOT confirmed that the agency did not consider Mr. Stasny's



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dismissal to have been disciplinary in nature, see Respondent's Exhibit 34.

43. Mr. Bruhn subsequently reversed his earlier decision denying reinstatement rights, and accordingly Mr. Stasny was granted reinstatement eligibility.

44. The complainant at all relevant times was "handicapped" within the meaning of s.111.32(5), Stats., with respect to the Training Officer 1 position at Fort McCoy.

45. There is not probable cause to believe that DOT discriminated against the complainant on the basis of handicap or in retaliation for his having filed discrimination complaint in 1978, because of its denial of additional leave of absence, its actions to effect his transfer to Fort McCoy and its directions to him to report there or to the PCO position in Madison, and his termination, as set forth in the complaint of discrimination filed September 5, 1979, and the letter dated December 7, 1979, from Attorney Hesslink to the Commission appealing the Initial Determination of no probable cause.

#### CONCLUSIONS OF LAW

##### 79-192-PC

1. This case is properly before the Commission pursuant to s.230.45(1)(c), Stats.

2. The appellant has the burden of proving that the respondent's actions denying the extension of his medical leave of absence violated a civil service administrative code rule or statute.

3. The appellant has not sustained that burden.

4. The respondent's actions denying the extension of appellant's medical

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leave of absence did not violate any civil service statute or administrative code rule and must be affirmed.

79-253-PC

1. This case is properly before the Commission pursuant to s.230.45(1)(c), Stats.

2. The appellant has the burden of proving that the respondent's actions in transferring appellant to Fort McCoy, as set forth in the findings, violated a civil service administrative code rule or statute.

3. The appellant has not sustained that burden.

4. The respondent's actions transferring the appellant to Fort McCoy did not violate any civil service statute or administrative code rule and must be sustained.

79-259-PC

1. This case is properly before the Commission pursuant to s.230.45(1)(c), Stats.

2. The appellant has the burden of proving that the respondent's actions denying him the exercise of bumping rights violated a civil service administrative code rule or statute.

3. The appellant has not sustained that burden.

4. The respondent's actions denying the appellant the opportunity to exercise bumping rights did not violate any civil service administrative code rule or statute and must be sustained.

79-217-PC

1. This case is properly before the Commission pursuant to s.230.44(1)(a), Stats.

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2. The appellant has the burden of proving that the decision of the administrator was incorrect in that it violated a civil service administrative code rule or statute.

3. The appellant has not sustained that burden.

4. The decision of the administrator was not incorrect and must be affirmed.

79-218-PC

1. This case is properly before the Commission pursuant to s.230.44(1)(c), Stats.

2. The respondent has the burden of proving that there was just cause, in accordance with s.230.37(2), Stats., for the dismissal of the appellant.

3. The respondent has sustained that burden.

4. There was just cause pursuant to s.230.37(2), Stats., for the appellant's discharge, and the respondent's actions must be affirmed.

78-PC-ER-47

1. This case is properly before the Commission pursuant to s.230.45(1)(b), Stats.

2. The complainant has the burden of proving that there is probable cause to believe that the respondent discriminated against him as is charged in the complaint of discrimination filed September 5, 1979, and the letter dated December 7, 1979, appealing the Initial Determination of no probable cause.

3. The complainant has not sustained his burden of proof.

4. There is not probable cause to believe that the respondent discriminated against complainant on the basis of handicap and retaliation, and this

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complaint must be dismissed.

OPINION

79-192-PC

This is an appeal pursuant to s.230.45(1)(c), Stats., of appellant's non-contractual grievance with respect to the denial of his request for extension of his medical leave of absence.

The respondent objects to subject-matter jurisdiction in the absence of the promulgation of rules by the Secretary of the Department of Employment Relations. The Commission previously rejected this argument and this decision was affirmed on this point by the Dane County Circuit Court. See DOT v. Wisconsin Personnel Commission (Kennel, Brauer, and Murphy), No. 79CV1312 (7/21/80).

With respect to the merits, the court in the preceding case discussed the effect of the Administrative Practices Manual which provides a basis for hearing such appeals as follows: "...a complaining party would not be entitled to relief under the APM rule for perceived unfairness or for questionable interpretations of the statutes and rules which fall short of actual statutory violations..."

The appellant makes a number of arguments as to why the denial of the extension of leave of absence was unfair or inequitable. However, he does not cite any statutory or rule violations. In fact, he has not cited any substantive criteria relating to the grant or denial of medical leaves of absence by appointing authorities, and there appear to be none. The respondent must be sustained in his decision of this grievance.

79-253-PC

This is an appeal pursuant to s.230.45(1)(c), Stats., of the denial of a

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non-contractual grievance regarding the transfer of appellant to Fort McCoy.

The comments made with respect to jurisdiction in No. 79-192-PC apply here. As to the merits, there were no actual violations of statutes or rules. In addition to arguments of unfairness, the appellant argues that there was a failure of compliance with s.230.29, Stats. He argues that the transfer was not approved by the Secretary of the Department of Transportation. However, s.230.29 only requires approval by the administrator of the Division of Personnel.

#### 79-259-PC

This is an appeal pursuant to s.230.45(1)(c), Stats., of the denial of a non-contractual grievance concerning the denial of appellant's request to exercise bumping rights, which request was based on the theory that his position was abolished while he was on leave of absence.

At the time the appellant commenced his leave of absence he was stationed at Fort McCoy in a Training Officer 1 position, and there is no basis for a conclusion that his position was abolished, nor for the conclusion that there was a violation of s.Pers 18.05(2), WAC. The respondent must be sustained in his decision of this grievance.

#### 79-217-PC

This is an appeal pursuant to s.230.44(1)(a), Stats., of the administrator's approval of the transfer of appellant to a position at Fort McCoy.

The administrator based his approval of this transaction on the facts that the position was classified as Training Officer 1 and the appellant had been occupying a position so classified. The appellant argues that there

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should have been consideration given to appellant's medical and personal situation and his difficulties with classroom instruction.

The statutes require that the administrator authorize transfers, s.230.29, but do not provide any criteria to be applied by the administrator. The administrative code provides at s.Pers 15.01:

"Definition. A transfer is the movement of an employe with permanent status in class from one position to a vacant position allocated to a class having the same pay rate or pay range maximum and for which the employe meets the qualification requirements."  
(emphasis supplied)

Section Pers 2.04, Class specifications, provides in part as follows:

"(2) Qualification standards shall contain a description of the required knowledges, skills, abilities, education, training and experience or any such other credentials which a person shall possess to insure reasonable prospects of success in the position, area of specialization, option, or class as described in the position standards. These standards shall be considered basic guidelines and shall not preclude more definitive nor more general statements in recruitment announcements, provided that the kind and level of qualifications are not decreased."

In the Commission's opinion, it cannot review the administrator's decision on the basis of criteria in addition to those provided by statute or rule. Thus, in addition to the proscriptions imposed by Subchapter II of Chapter 111 which are not invoked here by appellant, the criteria for review by the administrator are as set forth in s.Pers 15.01, WAC. The only criterion which is in issue is the last one, "...for which the employe meets the qualification requirements." (emphasis supplied) This criterion is more limited than the more general kind of qualification standard urged by the appellant, and is satisfied on the facts of this case where the employe has been occupying a position with the same classification as the position to which transfer was sought.

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79-218-PC

This is an appeal pursuant to s.230.44(1)(c), Stats., of the appellant's discharge from employment.

The respondent argues that this discharge was pursuant to, and complied with, s.230.37(2), Stats., which provides in part:

"When an employe becomes physically or mentally incapable of or unfit for the efficient and effective performance of the duties of his or her position by reason of infirmities due to age, disabilities, or otherwise, the appointing authority shall either transfer the employe to a position which requires less arduous duties, if necessary demote the employe, place the employe on a part-time service basis and at a part-time rate of pay or as a last resort, dismiss the employe from the service." (emphasis supplied)

There can be little question on this record that the appellant was "physically or mentally incapable of or unfit for the efficient and effective performance of the duties of his...position..." While he had been serving in this position previously in 1978, he went on sick leave and, ultimately, medical leave of absence. In Respondent's Exhibit 17, while appellant's physician did say that the appellant should be able to return to his former or a similar position, he also specifically stated that the appellant should "avoid emotional upsets, namely, his transfer to the Northern part of the state..." With respect to prognosis, he stated "it appears that he is heading in a chronic direction, with a great deal of agitation. Precipitating factors, I believe, would be the transfer to the Camp McCoy area..." The doctor's evaluation on August 9, 1979, as summarized by appellant's attorney in Respondent's Exhibit 23, was that

"...John is corrently suffering from hypertension caused, in part, by anxiety and stress...The Doctor indicated that he

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felt that the additional incremental stress which a transfer to Fort McCoy would precipitate could have adverse impacts on John's health and he could not, therefore, give John a medical clearance to transfer at this time."

The respondent presented no countervailing medical evidence.

Furthermore, whatever doubts as to Mr. Stasny's medical condition that certain individuals in DOT management may have harbored at various points in the process, in the final analysis DOT left the question up to the appellant's doctor. See the letter to Stasny from Barnes dated August 8, 1979, Respondent's Exhibit 22:

"If the doctor indicates that you are medically able to assume the position at Fort McCoy, we will expect you to report there by 10:00 a.m. Monday, August 13, 1979."

Section 230.37(2) provides a number of options to an agency with respect to an employe who, like Stasny, is unable to perform the duties of his or her position. Dismissal is warranted only as a "last resort."

The Commission has been unable to find a definition of the phrase "last resort." In the Commission's opinion, the use of this term in this statute means that the agency must exhaust all other reasonable alternatives prior to dismissing the appellant.

In evaluating the evidence on this issue, it should be kept in mind that the question of appellant's lack of fitness on a long-term basis to return to work in the Fort McCoy position was not clear-cut immediately upon the commencement of the appellant's leave of absence. This did not make for a neatly-defined personnel situation, and the following facts must be evaluated in that context.

There were no other vacancies in the appellant's classification, Training



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Officer 1, during the period that he was on leave of absence. In October, 1978, Major Lacke notified the appellant of certain vacancies. The DOT personnel unit, once it became apparent that there was a substantial question as to whether the respondent could return to his prior position, began to look for alternative positions. See, e.g., Respondent's Exhibit 13, a letter from the Chief of Personnel Services, Mr. Barnes, to Dr. Dukerschein dated April 17, 1979:

"...you indicated his present blood pressure situation is very bad. You indicated that it may very well not be in the best interest of his medical situation to have him transferred to a position out of town due to a variety of reasons, not limited to depression, high blood pressure, overweight, etc...

\* \* \*

We will be meeting with Mr. Stasny and his lawyer sometime in the near future to discuss the possibility of Mr. Stasny remaining in the Madison area in a position classified in the same or lower pay range..."

See also Barnes' statement, Transcript, V.1, p.92: "...and on April 17, which is Exhibit 13, at the point our Bureau actively started looking for other positions for John." A number of vacancies subsequently were brought to the appellant's attention.

At the August 6, 1979, meeting, just prior to appellant's dismissal on August 13th, various vacancies in the department were discussed and Mr. Barnes reviewed with the appellant's attorney a list of all vacant positions in the agency. See transcript, V.1, pp.124-125:

Q Does the Department have, for want of a better word, a computer printout on a monthly - or print all vacancies within the Department of Transportation?

A Yes, we do.

Q Was that a document we discussed in this August 6th meeting?

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A Yes it was.

Q Do you recall we made a request for copies of positions within the Department?

A Yes, and we showed it to you.

Q Do you know whether or not we made a request for all the positions within the Department?

A I don't think that request was made. I think after we went through all the positions pertinent to John, and a position vacancy doesn't mean that position would be filled.

See also Roslak's testimony, T., V.1, p.125.

The agency did fail to notify the appellant of the PCO 3 vacancy in Fond du Lac, around April, 1979. However, there was basis for the agency to believe that the appellant would not be interested in the job, and it was not established that this vacancy occurred after the point that DOT personnel began actively looking for another position for the appellant.

Pursuant to s.230.37(2), Stats., the respondent had the authority to have involuntarily demoted the appellant to the Madison PCO position rather than to have offered him what would have amounted to voluntary demotion. By making this offer, agency left the option of demotion or dismissal with the employee. This approach was in keeping with the intent of the law and was an appropriate application of s.230.37(2).

78-PC-ER-47

This is an appeal pursuant to s.230.45(1)(b), Stats., of a finding that there was "no probable cause" to believe that the respondent had discriminated against the complainant on the basis of handicap and retaliation, the latter on account of a discrimination complaint filed in 1978.

Based on complainant's medical condition, there can be no question but

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that he was handicapped with respect to the Fort McCoy Training Officer 1 position, in that he had "...a disadvantage that makes achievement unusually difficult; esp.: a physical disability that limits the capacity to work." Chicago M. St. P.& P. RR Co. v. DILHR, 62 Wis. 2d 392, 398, 215 N.W. 2d 443(1974). However, given the nature of complainant's medical problems, which stemmed from the geographical location of the position rather than the job itself, it is difficult to see, to the extent that accomodation might have been required, what respondent could have done with respect to the position in question. Furthermore, s.111.32(5)(c), Stats., provides that "Nothing in this subsection shall be construed to prevent termination of the employment of any person physically or otherwise unable to perform his duties..." The complainant clearly fell within the coverage of this statute and was subject to termination, subject to the requirements of s.230.37(2), Stats.

As to the charge of retaliation, there is very little evidence to support a finding of probable cause. The agency's course of conduct in dealing with the complainant must be evaluated in the context of all the circumstances, including a number of salient facts.

The agency had a pressing need to have an employe functioning in the Training Officer 1 position at For McCoy. Pursuant to s.Pers 18.05(2), WAC, the complainant was entitled, upon expiration of his leave of absence, to be reinstated to his position "or one of like nature," and there were only four Training Officer 1 positions in DOT. There was no indication from Dr. Dukerschein that Mr. Stasny could return to his position in the foreseeable future. Under these conditions, the agency had valid and substantial personnel and

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program management reasons for refusing to continue to extend complainant's leave of absence and to keep his position vacant. Appellant's dismissal was effected only after the agency had attempted to find another position for the complainant and, as a last resort, had offered him the opportunity of accepting a demotion in lieu of dismissal.

With respect to the failure to notify the complainant of the PCO position in Fond du Lac, it was not established that anyone in the agency know of the original complaint at the time of this vacancy. Also, there was a reasonable explanation given for not notifying Mr. Stasny of the vacancy.

Finally, the initial denial of complainant's reinstatement rights cannot be ascribed to any improper retaliatory motives by DOT. The department explicitly had informed Mr. Stasny at the time of this termination that it was not considered disciplinary and that he had three years permissive reinstatement rights. Following Mr. Stasny's request for reinstatement, the state Division of Personnel ascertained from DOT certain facts relating to the termination, and reached the conclusion that it had been disciplinary in nature.

#### All Cases

It is noted that there was a consolidated hearing as to all cases. Rulings were received on several evidentiary questions. All outstanding objections at this time are overruled.

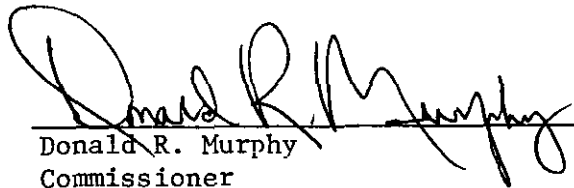
Stasny v. DOT  
Case Nos. 79-192,218,253,259-PC  
78-PC-CS-47  
Stasny v. DP  
Case No. 79-217-PC  
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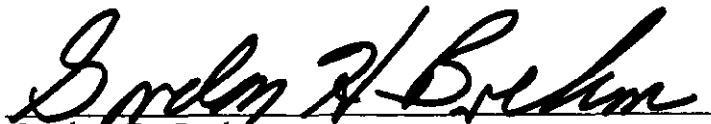
ORDER

With respect to Case Nos. 79-192-PC, 79-217-PC, 79-218-PC, 79-253-PC, 79-259-PC, the decisions and actions of the respondents are affirmed and these appeals are dismissed. With respect to Case No. 78-PC-ER-47, the complaint of discrimination is dismissed.

Dated January 12, 1981

STATE PERSONNEL COMMISSION

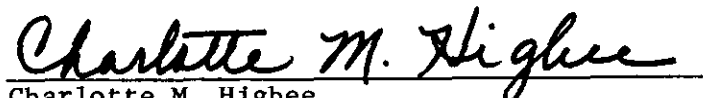
  
Donald R. Murphy  
Commissioner

  
Gordon H. Brehm  
Commissioner

Dissent as to 79-218-PC:

I dissent as to 79-218-PC. There was not just cause pursuant to §230.37(2), Wis. Stats., for the appellant's discharge, and the respondent's action should be rejected.

Dated January 12, 1981

  
Charlotte M. Higbee  
Chairperson

AJT:mgd

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