

the property fund was contracted out to a private contractor. The fund has issued approximately 10 billion dollars of insurance coverage, with an annual premium volume of 4-5 million dollars.

5. Appellant's responsibility as manager of the life and property funds, until August, 1979, included the responsibility for planning and directing the operation of the funds, including hiring and training of personnel, input into departmental policies, budget, personnel and other matters, directing the management of the life fund data processing system, establishing or modifying work rules, schedules and office procedures (Appellant's Exhibit 9).

6. When Hogoboom took a voluntary demotion to the position of chief of the State Property Fund his responsibility included administration of daily operations of the fund, including developing recordkeeping systems, preparation of financial reports, statistical analysis of loss experience, establishing premium rates (Appellant's Exhibit 10).

7. From 1978 until the time of his termination, appellant's first-line supervisor was Steven Heineck, administrator of the Consumer and Management Services Division of the office.

8. Appellant hired David Tetzlaff in 1972 as an employe of the State Life Fund, to function as an account examiner and handle accounting and data processing systems. Tetzlaff was given more and more responsibility by Hogoboom until, in 1978, he was in charge of accounting, monthly reconciliations, postings, trial balances, general ledger entries and other items essential to the operation of the life fund.

9. As of early 1979, Hogoboom's actual daily responsibility in the life fund was generally doing tasks which Tetzlaff needed to have done, such as checking premium notices, recording premiums, underwriting and processing applications for life insurance. In early 1979, however, Tetzlaff was also given responsibility for underwriting, and he was the only employee trained by Hogoboom to do underwriting.

10. Supervision of the clerical staff, including their training, was also Tetzlaff's responsibility in early 1979.

11. In addition to the responsibility of running the life fund, Tetzlaff was responsible for carrying out the conversion of the insurance policy record-keeping systems for the different sets of policies issued by the fund, into a computer system known as the LILA system. This was a major responsibility of Tetzlaff in 1977 and 1978. The LILA system was installed in 1978.

12. Hogoboom was Tetzlaff's first-line supervisor except with respect to the LILA installation project, for which Heineck was Tetzlaff's first-line supervisor.

13. While Hogoboom testified that he was unclear about the lines of authority in the life fund in 1978 and 1979, his own testimony admits that he effectively delegated away most of his authority to Tetzlaff, and that, on hindsight, he realized that he was asking too much of Tetzlaff.

14. Hogoboom had no authority to make staff hiring decisions; Steve Heineck did the hiring and Hogoboom could only make recommendations. Appellant lacked final appointment authority before the time Heineck became his first-line supervisor.

15. Hogoboom testified that he was involved in the daily clerical operations of the life fund and that he trained its employes. This testimony is inconsistent with other portions of his testimony to the effect that Tetzlaff was the actual supervisor.

16. In August, 1979, when Hogoboom demoted to the position of managing only the property fund, Tetzlaff became the manager of the life fund.

17. When Susan Mitchell became Commissioner of Insurance in March, 1979, she asked the bureau directors in the office to submit to her reports outlining the duties of their positions, the functions of their units and the nature of any problems in their operations.

18. Hogoboom sent the Commissioner a six-page memorandum in which he made reference to "the limited staff and qualifications of staff members" of the property fund in relation to the inability to expand the service programs of the fund. He cited the need for an additional position to function as loss control coordinator and of two other positions to perform risk management work with insureds. He also cited the small staff size of the life fund and the strain put on the staff by late installation of a new data processing software package, and noted the approval of an additional staff position for the next biennium which he considered insufficient (Appellant's Exhibit 1).

19. Hogoboom did not mention to the Commissioner in his introductory memorandum, or at any other time, the serious specific problems existing in the life and property funds.

20. Reasons stated for the termination of appellant were his inability to detect and resolve serious problems in his areas of responsibility, failure to adequately notify Heineck of the problems and consistent inadequate supervision of his employes in the property fund. Specific instances of failures of appellant in his performance of duties included failure to carry out the recommendations of the Legislative Audit Bureau audit of the property fund in 1979, which recommendations were to correct prior inadequacies and errors in property fund operations which occurred under his supervision; and failure to detect and correct serious problems in the operation of the life fund going back to 1978, including lack of accounting procedures, and billing delays of six months or more (Respondent's Exhibit 1).

21. The LILA system is a data processing system for the storage of raw data; it is not an accounting system, although accounting software packages are available for use with the system.

22. Before the purchase of the LILA system, the life fund had several systems for maintenance of policy information. In 1972, policy information recordkeeping was computerized, using computers at the Department of Administration. In 1977, a new series of policies was issued. The data processing system used since 1972 could not accommodate the information generated by the new series. During this period both manual and machine accounting procedures were used.

23. With the creation of a new policy series in 1977, then-Commissioner Wilde initiated a project to find and install a single data processing system to cope with the different policy series; this project ultimately resulted in the purchase of the LILA system.

24. David Tetzlaff was trained in the use of the LILA system by the vendor, Network Data Processing. Belford Hogoboom was not trained in the LILA system and when there were problems with the system, Tetzlaff was the person who was considered capable of resolving them.

25. During 1978, as the LILA project took longer time to bring on-stream than had been anticipated, Tetzlaff devoted most of his time to LILA, and Hogoboom took the overflow of Tetzlaff's other responsibilities.

26. As of November, 1979, postings in several recordkeeping journals for the life fund were completed only about mid-1978, because Tetzlaff felt that once LILA was on-stream, the life fund could catch up with the work on the policies such as computing cash receipts, nature of the receipts and assignment of proper credits to the proper policy numbers. Hogoboom did not have sufficient knowledge of the LILA system to determine whether Tetzlaff's analysis of the situation was correct.

27. Hogoboom testified at the hearing that presumably the policy forms were being kept up-to-date in detail during the LILA phase-in period and that policy information could be recaptured from information kept by the old data processing systems. Hogoboom was not in fact aware of the status of accounting in the life fund.

28. Sometime in October, 1978, Tetzlaff stopped using the old life fund data processing system which had been the system in which most policy information was stored. Not only did he stop using the old system but he erased the tapes containing the policy information; this was done before the LILA was functioning properly and before it had been fed with correct information

concerning existing policies. The final result of this action was that there was and is not accurate data from which the true financial condition of the life fund could be reconstructed.

29. Hogoboom decided that keeping monthly and yearly life fund accounting records up-to-date was not as important as processing policy applications and keeping the billings current, because no daily operational decisions had to be made from those monthly or yearly records.

30. By the end of 1978, the life fund accounting process was so far behind that it was not possible to generate the data necessary to produce the annual report required by law. A Legislative Audit Bureau audit of the life fund scheduled for summer, 1979, could not be performed because of the lack of reliable data to use in the audit.

31. The life fund, during the period of time from 1978 to 1979 when Hogoboom was in the position of chief of the fund, was not properly managed in the following respects: 1) there existed a backlog of unanswered correspondence concerning death claims, policy loans, problems with premium notices; 2) payments made to policies were inaccurately credited; 3) from October, 1978, to September, 1979, no policies were credited with payments; 4) manual and computer accounting records existed only through April, 1978, and there was no manual system used since April, 1978; 5) the LILA system had been improperly installed and the problems had not been corrected as of November, 1979, so that policy billings were not current, billings were inaccurate, policy information was inaccurate: all of these deficiencies existed with respect to a large portion of existing policies; 6) as of January, 1980,

there was a backlog of approximately 800 unprocessed applications for insurance, some dating back 6 months, which were not properly filed or handled; 7) policy underwriting had not been kept up-to-date. All of these deficiencies existed with respect to a large portion of existing policies.

32. Belford Hogoboom was responsible for the daily operation of the life fund until August, 1979, and was responsible for the problems existing in the fund through August, 1979, and for the effects of those problems as they continued beyond that date.

33. The problems existed in the life fund because Hogoboom did not have adequate operating procedures for daily operations, because he did not adequately supervise either Tetzlaff or the clerical staff of 3.5 full-time positions assigned to the fund, and because he did not understand the LILA system sufficiently to determine whether it was being properly used after its installation.

34. From March, 1979, until November, 1979, no person in a position of authority in the life fund (Heineck, Hogoboom or Tetzlaff) accurately reported to the Commissioner the nature and extent of the problems in the life fund. Until November, 1979, the Commissioner believed that the backlogs could be cleared up and the annual report prepared simply by emergency staffing assignments. On November 26, 1979, two examiners were sent to the life fund from other areas in the office to determine the status of the books and to determine how to bring the fund current (Respondent's Exhibit 8). On November 27, 1979, the examiners were able to report to the Commissioner and describe the status of the backlog in accounting. This information had not been conveyed to the

Commissioner by life fund employes during the eight months during which she had attempted to get information on the status of the fund.

35. The Commissioner immediately upon receipt of information in November, 1979, called an examination of the life fund. The examination was conducted from November, 1979, through April, 1980. During that period additional discoveries of major problems were made by the examiners, Robert King, Director of the Bureau of Financial Examinations, and Sandra Mathy, then Administrator of the Division of Administrative Services in the Office. The improper use of the LILA system was not discovered until early 1980.

36. King and Mathy, using the existing life fund staff and additional staff brought in on an emergency basis, succeeded in doing the following work from November, 1979, to April, 1980: 1) develop accounting procedures; 2) correct problems with the LILA system; 3) institute standard procedures for handling policies, for handling data processing entries and proper use of the LILA system; 4) correct most of the almost 100% error rate which had existed in new policy issues; 5) catch up on the backlogs of premium notices and processing of new applications; 6) train existing staff to run the fund on a daily basis; and 7) filed annual reports required by law.

37. As of November, 1980, the life fund was operating properly and currently with the same number of permanent staff which had been assigned to it in 1978 and 1979.

38. Hogoboom was in charge of daily operation of the State Property Fund from 1968 to the time of his termination. From early 1979 onward, Hogoboom was more involved in the operation of the property fund than the operation of the life fund.

39. In the summer of 1979, the Legislative Audit Bureau began an audit of the property fund, and during the course of the audit discovered many problems with the operation of the property fund. A series of 28 audit memos were issued by the auditors, describing their findings and making recommendations for correcting incorrect accounts and inadequate procedures.

40. The auditors met originally with the Commissioner, with Heineck and Hogoboom at the beginning of the audit process. The first four audit memos were discussed with Hogoboom, but the auditors had difficulty working with him and the Commissioner subsequently designated Heineck to meet with the auditors to discuss the rest of the audit memos.

41. Hogoboom did not satisfactorily carry out the recommendations of the auditors although he had been directed by the Commissioner to do so.

42. In February, 1980, Bud Mandt, Director of the Bureau of Compliance and Market Conduct in the Office, was assigned by the Commissioner to temporarily supervise the property fund and to produce the annual report for the fund as required by law. Mandt worked with the property fund, in addition to his other duties, from February through June, 1980.

43. Mandt discovered in March, 1980, that 1) the property fund general ledger was complete through the end of 1978, and that there were no entries since December 31, 1978; 2) reconciliations of receipts and disbursements were complete only through January, 1979; 3) the figures for insurance in force provided by Hogoboom to the fund's reinsurance agent were overstated by an amount which, if undetected, would have cost the fund an additional \$50,000 - \$60,000 in reinsurance rates; 4) incorrect insurance rates were

used by Hogoboom in issuing certain types of policies ; 5) accounting problems had not been found and corrected in the cash receipts and disbursements journals; 6) the accounting system used by the fund was an antiquated system; 7) billings were being sent out several months late; 8) there was a large backlog of policies applied for but not underwritten; 9) endorsements to existing policies were processed very inefficiently.

44. With the existing number of permanent staff and temporary assistance from three other employees of the office, the property fund was brought up-to-date by June, 1980.

45. The operation of the property fund was contracted out of the Office of the Commissioner to a private agency in July, 1980.

46. The problems which existed in the property fund were attributable to Hogoboom's inadequate supervision and training of staff. By his own admission he was primarily involved in the property fund in 1979, yet the problems dating to 1978 were not corrected by early 1980.

47. The appellant took frequent long lunch hours and slept at his desk in the afternoons during the time periods relevant to the problems existing in the life and property funds.

48. The appellant did not properly perform the duties of his position as chief of the life and property funds or as chief of the property fund and did not improve his performance after he had notice that his performance was not satisfactory.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this appeal pursuant to Section 230.44(1)(c), Wis. Stats.
2. The burden of persuasion is on the respondent to show by a preponderance of credible evidence that there was just cause for the termination of appellant.
3. The respondent has met her burden of persuasion.
4. There was just cause for the termination of appellant.

OPINION

The appellant in this case has not contested the facts alleged by the respondent as strenuously as he has contested his responsibility for the conditions which are cited as the basis of the termination. While some of the facts in the case were in dispute, the primary focus was on whether the appellant was terminated because of the existence of problems for which he argued Heineck and Tetzlaff were primarily responsible.

The appellant admitted that there were major operational problems in both the life and the property funds during the period of time he was responsible for both, and in the property fund when he was responsible only for that fund. He argued that Tetzlaff was not effectively under his supervision in 1978, but rather was more directly supervised by Heineck. He also admitted, however, that he delegated too much work to Tetzlaff and that he did not supervise him closely. This situation was one of appellant's creation, not one which was imposed upon him from above. He did not have his authority taken away from him. He effectively gave up his authority.

Appellant also testified that some of his staff was not properly qualified to carry out many of their functions. He also testified that he trained his staff. He also testified that he had lacked authority to appoint staff prior to the time Heineck became his immediate supervisor, so that Heineck did not take away anything from appellant. Hogoboom also testified in particular that he trained Tetzlaff. The record is quite clear, however, that while Heineck supervised Tetzlaff with respect to the installation of the LILA system, the operation of the LILA system on a daily basis was part of the responsibility of the chief of the life fund, which position appellant occupied until August, 1979, almost one year after the time LILA was installed. The record is also quite clear that Hogoboom did not know enough about the LILA system to be able to determine whether Tetzlaff was using it properly. Further, Hogoboom apparently did not recognize the errors which were made on the actual policies issued by LILA. In short, the quality of supervision provided by appellant and his lack of substantive knowledge in certain areas was a major factor contributing to the serious problems discovered in the life fund.

The same weaknesses of appellant were factors contributing to serious problems discovered in the property fund. During the entire period at issue, Hogoboom had decided that he was not allowed to directly approach the Commissioner to communicate his concerns about the funds. His interpretation of the Commissioner's preference for reporting through the chain of command was too literal. An individual in appellant's position, who is in charge of operating two insurance funds insuring thousands of lives and billions

of dollars worth of State and municipal property, can reasonably be expected to use independent judgement as to when and how to go around a chain of command. Further, when he was specifically requested to describe operational problems in his bureau, in 1979, he failed to do so.

The question of whether others beside himself were also responsible for the problems in the life and property funds is irrelevant to the case since the record shows that the appellant personally, through his acts and omissions was sufficiently directly responsible for the problems that he may be held accountable for them.

There was just cause to discipline the appellant. The discipline imposed was not excessive under the facts and circumstances of the case. Appellant was in an administrative position of great responsibility. For at least two years prior to his termination, he failed to properly carry out the duties of his position, with the result that the problems which existed early on were magnified with the passage of time as mistake was added to mistake, and neglect of certain functions made it extremely difficult to bring the property fund up-to-date, and literally made it impossible to accurately reconstruct the records of the life fund.

ORDER

The action of the respondent is affirmed and the appeal is dismissed.

Dated October 2, 1981

STATE PERSONNEL COMMISSION

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