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 DOROTHY ROBERTS, *
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 Appellant, *
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 v. *
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 Secretary, DEPARTMENT OF *
 HEALTH & SOCIAL SERVICES, *
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 Respondent. *
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 Case No. 80-169-PC *
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DECISION
AND
ORDER

This is an appeal of a three day suspension of the appellant from her civil service position.

FINDINGS OF FACT

1. At all times relevant to this proceeding, the appellant has been an employe of the respondent agency.

2. As of March 1, 1978, the appellant was classified as a Typist 3 and was assigned to provide clerical support services to the Personnel Unit within the central office of the Bureau of Community Corrections, Division of Corrections, Department of Health and Social Services. The Personnel Manager was Louis Garza.

3. The appellant's position was subsequently reclassified and reallocated so that by October, 1979, her position was classified at the Program Assistant 1 - Confidential level. Her duties were summarized in her position description as follows:

Under general supervision of the Bureau Secretary and assigned to the Personnel Unit, provides clerical support services to unit staff; provides personnel-related information and technical assistance to field staff; maintains Bureau personnel files and coordinates communications with department personnel staff and other employing units.

4. Beginning in August, 1977, the Bureau Secretary was Kathie Gherke. Ms. Gherke served as the appellant's first-line supervisor for all relevant periods except while Ms. Gherke was on maternity leave from January, 1978 through April, 1978 and from April 15, 1980 through June 27, 1980. During the latter two month period, Fred Malcolmson, the Business Administrator of the Bureau of Community Corrections, was the appellant's supervisor.

5. Because Mr. Garza, as Personnel Manager, headed the unit to which the appellant was assigned, he provided her with programmatic direction.

6. While the appellant had expressed some confusion as to the respective roles of Ms. Gherke and Mr. Garza relative to appellant's supervision/direction, this interrelationship was fully explained to the appellant on two or three occasions during 1979. The appellant was also notified that during Ms. Gherke's maternity leave in the spring of 1980, Mr. Malcolmson would temporarily serve as her supervisor.

7. During the period from March, 1978 until April, 1979, the overall responsibilities of the Personnel Unit increased. In July, 1978, the Bureau of Community Corrections (BCC) was established as a separate employing unit so that BCC functioned as an individual unit for the completion of certain transactions such as layoff, bumping and discipline. Total delegation (from the Department's Bureau of Personnel and Employment Relations) of personnel responsibilities was completed in April or May of 1979 when the BCC was assigned primary responsibility for leave accounting, health insurance reports and custody of official personnel files and payroll-related documents.

8. As the delegation occurred, the volume of work handled by the Personnel Unit increased, causing occasional to frequent overloads on the

unit's staff. However, prior to April, 1980, the workload in the unit had become less hectic.

9. During the course of an evaluation conducted in June, 1979, the appellant raised concerns regarding whether Mr. Garza or Ms. Gherke was her supervisor and also as to whether she had sufficient time to complete her assigned responsibilities. Both concerns were responded to in writing by Ms. Gherke and Mr. Garza. They also established a time logging system in which the appellant was to document how she was spending her work day. The purpose of the logging system was to get a better idea of the appellant's workload and what functions were taking up her time.

10. As of June, 1979, the appellant was ordered to use the Division of Corrections Word Processing Center for the typing of letters generated by routine personnel transactions.

11. In a memo dated September 17, 1979, the appellant's performance was analyzed specifically in light of the conclusions to be drawn from the time logging system. The memo directed the appellant to do the unit's personnel-related filing "first thing every Wednesday and Friday morning" because the filing had become too backlogged.

12. On September 24, 1979, a letter of reprimand was issued to the appellant by Ed Buehler, Director of the BCC. The letter of reprimand stated:

This correspondence shall serve as an official Letter of Reprimand for your violation of Work Rules of the Department of Health and Social Services No. 1 and No. 7 which state:

"All employees of the Department are prohibited from committing any of the following acts:

1. Disobedience, insubordination, inattentiveness, negligence, or refusal to carry out

written or verbal assignments, directions or instructions.

7. Failure to complete accurate and complete information when required by management or improperly disclosing confidential information."

Contrary to the verbal and written instructions of your supervisor, Ms. Kathie Gherke, you failed to complete time reports for the period from July 30, 1979 through August 24, 1979. At a pre-disciplinary hearing conducted on September 21, 1979 by Ms. Pamela Brandon sufficient factual information was presented to substantiate this fact and find you in violation of the DHSS Work Rules #1 and #7.

In that it has been determined that you repeatedly did not complete the required time reports this disciplinary action is taken.

If you have reason to believe that the above-mentioned facts are not true and this action is not based on just cause, you may appeal it in accordance with the established Departmental Grievance procedures.

13. The appellant grieved the letter of reprimand through the third step of the grievance procedure. The grievance was denied at each step. However, at the third step, the Director of the BCC, Ed Buehler, directed that Ms. Gherke be given full control over the input and output of the appellant's position so that all work was to be routed through Ms. Gherke.

14. As of November, 1979, form letters were devised in an attempt to save time for the appellant so she would have more time to spend on other duties. The form letters were placed on tape at the Division of Corrections Word Processing Center (WPC). The appellant was directed to use the WPC for all letters for which there were forms rather than to type the letters herself.

15. In an Employee Performance Planning and Development Evaluation memorandum dated in January, 1980 but covering the period from June 1, 1979 to December 1, 1980, Ms. Gherke and Mr. Garza described the appellant's performance, in part, as follows:

Dorothy's overall performance has improved in some instances since the last evaluation period of 6-1-79. Specific areas to be noted are as follows:

- filing is being kept current

* * *

- using established Word Processing form letters

Although the appellant had some input into the evaluation memo, she refused to sign the document.

16. During the month of January, 1980, there were no significant problems with the appellant's use of the WPC nor with her filing practices.

17. During February, 1980, there were at least three instances in which the appellant typed a form letter herself rather than sending the draft to the WPC for typing.

18. During April, 1980, there were at least ten instances in which the appellant typed a form letter herself rather than sending the draft to the WPC for typing.

19. Mr. Garza had advised the appellant on approximately four difference occasions that she was to use the WPC for routine personnel transaction letters.

20. Approximately eight to ten letters were generated by the appellant per month that were appropriate for handling by the WPC.

21. Appellant's conduct with respect to her use of the WPC constituted disobedience or failure to carry out verbal instructions.

22. One of the appellant's primary responsibilities was to process certification request packages when they were received by the Personnel Unit. A certification request package includes several documents related to the proposed personnel transaction: a certification request document

(AD-PERS-34), a signed position description, an organizational chart of the work unit in question, and a justification or explanatory statement if particular attention to the request is necessary. Normally, once the complete package is received by the Personnel Unit, the appellant will fill in the necessary information called for on the top half of the cert request document, sign the name of the appointing authority (Mr. Buehler) on the document to indicate the initiation of the certification request and transmit the document to Nancy Lozier, Payroll and Benefits Assistant 4, another Personnel Unit employe. Ms Lozier will then complete the bottom half (payroll portion) of the cert request document, sign Mr. Buehler's name a second time to indicate completion of the certification request procedure and return the document to the appellant for distribution, along with the position description and organizational chart, to other offices.

23. On April 9, 1980, Mr. Garza was notified that a DOC employe, Mr. Robert Brown, was being terminated from a Social Worker position in Milwaukee during his promotional probation period and was being restored to a Client Services Assistant 4 position. The letter of probationary termination, dated April 9, 1980, provided that the effective date of the restoration was to be April 19, 1980.

24. On the same date (April 9, 1980), Mr. Garza gave the appellant express written and verbal instructions as to what procedures were to be followed in handling the Brown certification request document. The instructions were for the appellant to prepare the certification request document itself and to await Mr. Brown's new position description and organizational chart which were being sent from Milwaukee. Upon receipt of these documents, the appellant was to immediately transmit the certification

request package to the Department's BPER in order to secure a transaction effective date of April 19, 1980.

25. The appellant followed Garza's instructions as to the first part of the transactions: she completed the top half of the certification request document and submitted it to Ms. Lozier on Friday, April 11th. Ms. Lozier in turn completed the lower portion of the request document and returned it to the appellant later that same day.

26. Also on Friday, April 11th, Mr. Garza received Brown's position description and organization chart from Milwaukee. Mr. Garza signed the position description and placed the documents on the appellant's desk later that day.

27. The appellant was on vacation and out of her office on Monday, April 14, 1980.

28. On April 29, 1980, Mr. Garza was working late and noticed that Brown's certification package was on the appellant's desk and that it had not been transmitted to BPER. The following work day, the appellant indicated that she had forgotten about the special request. Upon Mr. Garza's instructions, she then proceeded to "break-out" the request documents and transmit them to BPER as originally directed.

29. As a consequence of the delay in processing Brown's certification request, the effective date of Brown's restoration was May 3, 1980 rather than April 19, 1980.

30. The appellant was negligent and/or inattentive in her failure to promptly process certification request documents.

31. Primary responsibility for doing the personnel-related filing within the Personnel Unit lay with the appellant. Documents ready for filing

were placed in alphabetical order near the appellant's desk. These documents were not secure.

32. Despite the directive on September 17, 1979 to file "first thing every Wednesday and Friday morning," the appellant made it a practice to file "as time permitted."

33. As of May 7, 1980, a filing backlog of up to one month existed for personnel-related documents and correspondence. On that date the appellant was directed to bring the filing up to date. She did so by the following day, May 8th.

34. Appellant's conduct with respect to her filing practices constituted disobedience or failure to carry out written and verbal directions.

35. By letter dated May 30, 1980, and after a pre-disciplinary hearing, Mr. Buehler notified the appellant that she was suspended without pay for a period of three days for violating DHSS Work Rule #1. The suspension letter identified three separate violations, 1) "the processing of Certification Request #390-195 (restoration of Robert A. Brown);" 2) the one month filing arrearage; and 3) the failure to utilize the DOC Word Processing Center.

36. The appellant's conduct constituted three distinct violations of DHSS Work Rule #1.

37. The work rule violations had a tendency to impair the performance of the duties of appellant's position and the efficiency of the group with which she works.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(c), Wis. Stats.

2. The respondent has the burden of proof.
3. There was just cause for the imposition of discipline.
4. The discipline imposed was not excessive.

OPINION

In disciplinary appeals, the Commission is required to apply a two step analysis:

First, the Commission must determine whether there was just cause for the imposition of discipline. Second, if it is concluded there is just cause for the imposition of discipline, the Commission must determine whether under all the circumstances there was just cause for the discipline actually imposed. If it determines that the discipline was excessive, it may enter an order modifying the discipline. Holt v. DOT, Case No. 79-86-PC (11-8-79).

The Wisconsin Supreme Court has defined "just cause" in the context of employe discipline as follows:

"... one appropriate question is whether some deficiency has been demonstrated which can reasonably be said to have a tendency to impair his performance of the duties of his position or the efficiency of the group with which he works." State ex rel Gudlin v. Civil Service Commn., 27 Wis. 2d 77, 87, 133 N.W. 2d 799 (1965); Safransky v. Personnel Board, 62 Wis. 2d 464, 474, 215 N.W. 2d 379 (1974).

In the present case, the appellant was charged with three separate violations of DHSS Work Rule #1, which provides:

"All employees of the Department are prohibited from committing any of the following acts:

1. Disobedience, insubordination, inattentiveness, negligence, or refusal to carry out written or verbal assignments, directions, or instructions."

Brown Certification Request

The appellant was given express instructions as to how to deal with the Robert Brown Certification Request in order to have Mr. Brown restored to his former position by April 19, 1980. The instructions were not followed, the

transaction was delayed, and the effective date was set back by a period of two weeks.

The appellant testified that she didn't see Mr. Brown's PD and organization chart on her desk until after Mr. Garza spoke with her on April 30th. This testimony is inconsistent with Mr. Garza's testimony that he placed the PD on appellant's desk on April 11th, Ms. Lozier's testimony that she returned the completed certification request document to the appellant on April 11th, and Mr. Garza's testimony that he discovered the entire package, clipped together and on appellant's desk on April 29th. The Commission is satisfied that the PD was in fact placed in appellant's in-basket on April 11th by Mr. Garza, rather than April 14th as he had stated in his deposition (Commission's Exhibit #1). This conclusion is based upon evidence that Mr. Garza actually signed the PD after receiving it in Madison on April 11th.

Nothing in the record indicates that the appellant had intentionally refused to follow Mr. Garza's express instructions regarding the processing of the Brown cert request. The evidence suggests that the delay was caused by appellant's negligence or inattentiveness, thereby fitting within the prohibitions of Work Rule #1. This violation also clearly had a negative effect on the efficiency of both the appellant's and the unit's performance with respect to the Brown certification request.

Filing Backlog

The evidence showed that the appellant's filing practices had been a matter of long-standing concern. The appellant had been instructed to file every Monday and Wednesday morning. However, the appellant stated that her normal practice was to file "as time permitted" and she failed to indicate a reasonable basis for her inability to comply with the Monday/Wednesday rule.

Testimony indicated that there was no filing backlog as of January, 1980. However, the problem was only in temporary remission. Based on appellant's standard filing procedure a backlog was likely to reappear, as it did in May of 1980. Dates on the unfiled documents suggested that little or no personnel filing had been done by the appellant for a period of up to one month.

The Commission is unpersuaded that, as argued by appellant's counsel, there was a lack of filing cabinets that would have had an impact on appellant's ability to keep the filing current. In addition, the filing responsibilities of the other employes in the unit apparently did not extend to those personnel documents that had made their way to the alphabetical file at appellant's desk.

The failure to maintain the personnel files had several adverse consequences for the unit's operations. It took longer to find information if the personnel documents had not yet made their way into a file. Decisions could conceivably be rendered without reference to material information contained in unfiled documents. Also, the unfiled materials were not secure and therefore posed a risk with respect to their confidentiality.

Use of Word Processing Center

The appellant clearly disregarded her supervisor's express instructions to utilize the WPC for all form letters. The amount of time actually saved by the appellant if she were to religiously make use of the WPC is open to serious question. Ms. Gherke testified that, as a supervisor, she occasionally if not frequently decided not to use the WPC for form letters over which she had control. Similarly, the appellant raised what must be presumed to be legitimate concerns regarding the speed and accuracy of the WPC operation.

However, none of these arguments refute the fact that the appellant was directed to use the WPC and that she frequently disregarded that directive.

The extent of the appellant's refusal to use the WPC was not the 1% of the time as she characterized in her testimony. During the month of March, she typed ten form letters herself instead of forwarding them to the WPC. Testimony suggested that the appellant did not generate many more than ten form letters in an average month.

The appellant also argued that the WPC was not operating during at least part of the period in question. The exhibit in question (Appellant's Exhibit #2) indicates only that priority matters could not be handled during a very limited period. The appellant's form letters were not priority items and therefore could have been processed, albeit possibly more slowly, at all relevant times.

Appellant's reluctance or refusal to utilize the WPC can be said to have a minimally adverse effect on appellant's own performance as well as a negative effect on the supervisory relationship between the appellant and Ms. Gherke.

Excessiveness

The discipline imposed in this matter was not excessive in light of the fact that there were three separate violations of Work Rule #1 and that the appellant had previously been given a written reprimand for a comparable violation. In the absence of these facts, any one of the three violations, when viewed in isolation, would not have justified the imposition of a suspension. However, there was a continuing course of conduct in this case that justified the three day suspension.

Other Issues

The appellant has raised several specific legal arguments in her effort to show that the discipline imposed was inappropriate. Appellant cites an arbitration decision and award (Bartle and Local 171, WSEU v. State of Wisconsin and University of Wisconsin-Madison) issued by arbitrator George R. Currie on April 10, 1978 for the proposition that the respondent should be barred from relying on a filing problem that was identified as of September 17, 1979 and was one of the three grounds for the May, 1980 suspension where a reprimand, issued to the appellant on September 14, 1979, had failed to mention any filing concerns. Assuming, arguendo, that the Bartle decision can be read to bar an employer from using evidence of pre-reprimand misconduct for justifying the imposition of a subsequent suspension, and assuming, arguendo, that the Bartle decision is entitled to precedential deference by the Commission, the argument still fails to recognize that the filing misconduct that is mentioned in the instant suspension letter occurred in April and May of 1980, rather than September of 1979. Irrespective of whether there was a filing backlog in September of 1979, the appellant was directed to file documents twice each week. The subsequent suspension is based, in part, on appellant's failure to comply with those directions.

The appellant also argued that the respondent in this matter failed to articulate any quantifiable standards against which the appellant's performance could be compared. This argument has little applicability to the work rule violations that have been shown to exist here. In the present case, negligence was the basis for only one of the three alleged violations; i.e. where the appellant failed to properly process a very unusual certification request despite express written and verbal instructions from

Mr. Garza. It would be highly unrealistic to require an employer to promulgate standards for judging an employe's response to every instruction that is given. The other two violations were based on appellant's reluctance or refusal to carry out instructions. Insubordination is simply not something that can be determined based upon compliance with production quotas.

A third argument relates to the appropriate role of progressive discipline in this case. The appellant suggests that the purpose of progressive discipline is to rehabilitate rather than to punish and that, therefore, her discipline should have been limited to a verbal or written reprimand. However, the respondent had already reprimanded the appellant for violating Work Rule #1. Respondent had also made numerous efforts to improve the appellant's performance before the discipline in question was imposed. The record shows that the respondent's actions in this matter were, therefore, consistent with the concept of progressive discipline.

ORDER

The action of the respondent suspending the appellant for a three day period is affirmed, and this matter is dismissed.

Dated: March 17, 1983

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

KMS:ers


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

James W. Phillips concurs in the decision to impose some discipline in this matter, but concludes that the suspension should not have exceeded one day.

Parties:

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