

STATE OF WISCONSIN

PERSONNEL COMMISSION

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HABIB AMIM,

Appellant,

v.

Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,

Respondent.

Case No. 81-17-PC

* * * * *

DECISION
AND
ORDER

This is a disciplinary case, involving a three day suspension imposed upon the appellant, Habib Amim, by the respondent Department of Health and Social Services. The following determinations are made after a full hearing and filing of briefs on the matter.

FINDINGS OF FACT

1. The appellant, Habib Amim, at all times relevant hereto, was employed with the respondent as an Administrative Assistant 3 - Confidential, at the Oak Hill Correctional Institution, Oregon, WI.
2. On September 25, 1980, appellant with a fellow employe, Robert Clifford, went to the University of Wisconsin-Oshkosh to attend a Division of Corrections training seminar. Approximately twenty-five people attended the seminar.
3. The seminar was held in a university building, which is leased by the respondent for such purposes.
4. Seminar training sessions took place in the basement conference hall. Out-of-town participants were provided lodging in dormitory rooms on the fifth floor of the same building. Rules of conduct were posted in the classrooms, and read as follows:

This document is furnished to each staff member of the Division of Corrections to provide a summary of the employees' responsibilities while attending sessions at the Corrections Training Center.

The Corrections Training Center is an educational facility housing participants attending various conferences and classes. In order to provide an atmosphere conducive to the educational process we have certain guidelines that employees are required to observe.

1. Employees in training are in pay status while at the Corrections Training Center and are expected to attend all sessions.
2. Employees in training have a right to privacy, sleep and study time while at the Corrections Center; therefore, quiet hours commence at 11:00 p.m.
3. It is assumed individual employees in training are responsible, and will behave appropriately. This precludes abnormally loud or disruptive behavior, damage to the residence hall, or interference in the educational process.
4. Division of Corrections employees are not permitted to possess or consume alcoholic beverages within the confines of the fifth floor of Gruenhagen Hall.
5. Arrangements for special purpose functions can be made with the Director of the Corrections Training Center.
6. All Division of Corrections employees are governed by the responsibilities as stated in the Work Rules of the Department of Health and Social Services.

Advice and assistance in interpreting these rules is available from the Corrections Training Center staff.

5. During the lunch break on September 25, 1980, appellant was seated at a table in the university cafeteria with Shirley Anderson and Jessie Foster and exchanged comments with them about the morning session.

6. Ms. Anderson and Ms. Foster were employed as probation and parole agents in respondent's Bureau of Community Corrections (BCC), Division of Corrections in Milwaukee. They attended the training seminar together and were assigned to the same dormitory room.

7. After lunch, appellant offered to show Ms. Anderson and Ms. Foster a bit of Oshkosh and they accepted. The auto tour included pointing out to the women an evening entertainment establishment often frequented by people attending seminars at UW-Oshkosh.

8. After the afternoon session, as Ms. Anderson and Ms. Foster walked towards their room, the appellant asked them what room they were in, but they refused to tell him.

9. That evening the two women had dinner at the campus cafeteria, then bought some fast food and returned to their room, dressed in nightgowns and robes and proceeded to eat their snack as they relaxed on their beds.

10. Ms. Foster became cold and left the room for a blanket. In the hall she met the appellant--his room was directly across the hall--who asked her the name of her roommate. Ms. Foster told the appellant and proceeded downstairs to get a blanket.

11. The appellant went to the two women's room door and called "Shirley" several times. Ms. (Shirley) Anderson did not reply.

12. Ms. Foster returned to the room. As she opened the door, the appellant forced his way into the room despite resistance from Ms. Foster. There was an odor of alcohol on his breath. He was wearing only white underwear briefs.

13. Before the appellant had entered the room, Ms. Foster had been using a dictating machine. The machine remained running during the period that the appellant was in the room. Ms. Foster told the appellant that he should not be in their room dressed only in shorts, and both women attempted to placate appellant in order to get him out of the room.

14. Before leaving the room, appellant gratuitously hugged Ms. Foster. As he moved toward Ms. Anderson, who was in her bed, he was averted by her screams.

15. Later, after he had left the women's room and while Ms. Foster was in the shower room, the appellant made two unsuccessful attempts to get Ms. Anderson to open the door.

16. On the third attempt the appellant gained entrance to the room when Ms. Anderson mistakenly opened the door believing that it was her roommate returning from the shower room. The appellant was dressed in slacks and a t-shirt.

17. On this occasion, the appellant asked Ms. Anderson to sleep with him. He continued to ask several times and on each occasion she refused. He then asked if Ms. Foster would sleep with him.

18. After the appellant left, Ms. Anderson, who was extremely upset, ran to the shower room and informed Ms. Foster of the incident.

19. About 9:00 p.m. that evening Ms. Foster persuaded Ms. Anderson to go out. They went to the place pointed out to them by the appellant earlier that day. The appellant and his roommate, Mr. Clifford, were seated at the bar. The two women sat several seats away from the appellant and Mr. Clifford.

20. While at the bar, Mr. Clifford told the two women that the appellant had said that he had slept with Ms. Anderson over the noon hour.

21. Ms. Anderson had no contact with the appellant at the club, but Ms. Foster danced with him.

22. There was minimal contact between the two women and the appellant during the next day.

23. Upon returning to work the next day, Ms. Anderson and Ms. Foster reported the incident to their field supervisor and regional chief. The account of the event included playing the tape recording made by Ms. Foster the first time that the appellant entered their room. Afterwards, Ms. Anderson was instructed to file a complaint.

24. The incidents in question were investigated by an employee relations specialist in the Bureau of Adult Institutions. The investigative report was submitted to the Oakhill facility appointing authority, other DOC officials and to the appellant. The tape recording made by Ms. Foster of the appellant's statements had been lost and was not reviewed during the investigation.

25. On March 13, 1981, a pre-disciplinary hearing was held by appellant's appointing authority. Appellant appeared with his representative and made no comment.

26. In a letter dated March 16, 1981, and signed by the Superintendent of the Oakhill Correctional Institution, the appellant was informed that he was being suspended without pay for three days: March 17, 18, and 19, 1981. The letter stated, in part:

It is my conclusion that there is reasonable grounds to believe that the evidence presented by the writers of the original incident report is substantially correct and that your behavior constituted sexual harassment as defined by the U. S. Equal Opportunity Commission guidelines on Sex Discrimination employment.

27. On March 18, 1981, Mr. Amim filed an appeal of his suspension with the Personnel Commission.

CONCLUSION OF LAW

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

2. The respondent has the burden of proving that the discipline imposed was for just cause.

3. The respondent has proved there was just cause for disciplinary action against the appellant.

4. There was just cause for the three day suspension without pay imposed against the appellant. The disciplinary action was not excessive.

OPINION

A principal question in this case is credibility. The appellant testified that: 1) after the training session at 4:30 p.m. on September 25, he, his roommate, Robert Clifford, and another male state employe went out for some drinks; 2) they returned to their dormitory room to shower, change clothes and go back out to a night club; 3) the door to the appellant's room and the door to the room of Ms. Anderson and Foster were both open; 4) on his way to the shower dressed in gym shorts, he invited the two women to go out. The appellant denied being in the two women's room, wearing only underwear briefs while talking to them, attempting to hug Ms. Anderson through bed covers, going to their room the second time, requesting sexual favors from either Ms. Anderson or Foster, or telling anyone that he had slept with Ms. Anderson.

Mr. Clifford's testimony partially corroborated the appellant's testimony. However, portions of Mr. Clifford's testimony were inconsistent with his own prior statements to the Division of Corrections investigator. Mr. Clifford also testified that appellant wore gym shorts with blue piping, while appellant testified that he was wearing plain white running shorts and a T-shirt. Mr. Clifford's testimony was also inconsistent with the testimony of Ms. Beverly Fisher, a fellow Oak Hill employe, who was

described by Clifford as being a friend. She testified that Clifford had told her shortly after September 25, 1980, that he was embarrassed by appellant's behavior at the Oshkosh Training Center and that appellant spent his time attempting to gain the favors of the two black women.

Ms. Anderson's and Ms. Foster's testimony of appellant's behavior toward them on the evening of September 25, 1980, does not materially vary from their first written report on subsequent narrations provided other DOC officials. The Commission believes their testimony to be more reliable.

29 C.F.R. §1604.11(a) and (d) provide:

"(a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

"(d) With respect to conduct between fellow employes, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employes) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action."

It is clear from these federal guidelines on sexual harassment and the testimony provided that appellant's behavior constituted sexual harassment. The reliable testimony was that he made unwelcome sexual advances, requested sexual favors, engaged in gratuitous physical conduct of a sexual nature and made baseless statements about a fellow employe that created hostility. The evidence is also clear that most, if not all, of these acts by appellant took place in a work environment during hours supervised by

the respondent employer. The testimony also established that Ms. Anderson was intimidated by appellant's behavior, concerned about possible loss of respect from fellow employes and reluctant to attend future training sessions.

In mitigation, appellant's conduct did not cause Ms. Foster not to dance with him less than an hour after the incident in question. Ms. Foster testified that she was offended by the appellant when he forced his way into the room shared with Ms. Anderson, dressed only in his underwear briefs, but did not construe his hug to be a sexually motivated caress.

These factors, including appellant's misunderstanding of the initial friendly attitude of the two women, are not sufficient to excuse the behavior exhibited by the appellant. For the reasons stated previously, and based upon the record, the Commission concludes that the disciplinary action imposed upon the appellant by the respondent was justified.

ORDER

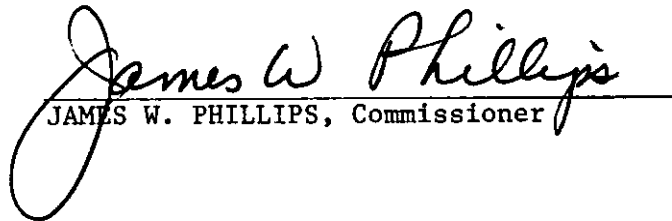
Respondent's action imposing a three-day suspension without pay is affirmed and this appeal is dismissed.

Dated: March 19, 1981 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner

DRM:jmf


JAMES W. PHILLIPS, Commissioner

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