

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *
 HUGH L. BUCHANAN,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 REVENUE,
 Respondent.
 Case No. 81-289-PC
 * * * * *

DECISION
 AND
 ORDER

This is an appeal pursuant to §230.44(1)(c) of the discharge of a state classified civil service employee. The following findings, conclusions and decision are based upon the evidence presented at the hearing.

FINDINGS OF FACT

1. The appellant, Hugh L. Buchanan, began employment with the state of Wisconsin in 1955 and obtained permanent status as an employee in state classified civil service.
2. At all times material, the appellant was employed as an Auditor 4 in the Bureau of Municipal Audit (BMA), Division of State/Local Finance, Department of Revenue until his discharge on May 27, 1981.
3. The reasons for appellant's discharge stated by respondent are the following: appellant's work performance for fiscal years ending June 30, 1977 and 1978, was evaluated as needing improvement. His work performance for fiscal years ending June 30, 1979 and 1980 were evaluated as unsatisfactory. Appellant failed to meet the expected level of performance for an auditor of his work classification of advanced senior.

4. On June 16, 1981, the Personnel Commission received a letter appealing appellant's discharge by the respondent Department of Revenue.

5. The Bureau of Municipal Audit, where appellant worked, had the principal responsibility for conducting audits of local units of government. Such audits were requested and paid by the given governmental unit. Fees obtained by BMA from such audits exclusively supported their operations.

6. In May, 1978, the appellant had the working title of supervising senior. This carried with it overall responsibilities for assigned audits and supervision of other auditors assigned to his audits.

7. BMA auditors identified as "seniors" were assigned and expected to perform similar work. Their specific classification in the series ranged from Auditor 3 through 7, depending upon such factors as complexity of assignment, supervisory responsibilities, length of experience and possession of C.P.A certificate.

8. On June 8, 1977, the appellant received a discretionary performance award report (DPA) from his immediate supervisor, Mr. Richard L. Ashmore, which described appellant's job performance as needing improvement. It was reported that appellant failed to make timely reports and keep records, review and make necessary corrections of final reports and submit audit reports to the office.

9. The following year in May, 1978, appellant received a similar DPA report rating from his supervisor which suggested that personal family problems were possibly contributing to appellant's poor performance.

10. On February 5, 1978, Mr. Ashmore reported to the BMA director in a memorandum that appellant demonstrated a strong disregard "for filing

required reports and submitting completed work to the office on a timely basis" and recommended that appellant be suspended.

11. The appellant was rated unsatisfactory in regard to his job performance for the period of July 1, 1978 to June 30, 1979. Subsequently, the BMA director met with the appellant to discuss appellant's work problems, which resulted in assigning a BMA control office audit reviewer to review appellant's work. By this method, the appellant was advised of deficiencies in his audits.

12. Again on October 17, 1979 and January 18, 1980 Mr. Ashmore wrote six month employe performance summaries on the appellant. In each instance it was noted that appellant continued to fail to improve and had many deficiencies.

13. On January 25, 1980 the BMA director wrote the appellant that he was concerned about the number of uncompleted 1978 audits in the appellant's possession. The appellant was directed to take all work papers of prior audits to the Eau Claire offices, where he was to be assisted in the completion of same by four other auditors.

14. Upon completing a review of appellant's work, Mr. Ashmore advised the director that the appellant had lost the respect of some of his subordinates and clients, and recommended the appellant be discharged.

15. On March 21, 1980, appellant was given written notice of suspension from work from March 24, 1980 to April 22, 1980. Specific reasons were given in the notice for the suspension and appellant was provided an opportunity to reduce the suspension period by seeking professional assistance from someone in the field of health. After the appellant sought professional help, the suspension was reduced to 14 days and the appellant was placed on sick leave until July 8, 1980.

16. After being back at work for approximately a month, appellant met with former supervisor and Mr. Steel, his newly appointed supervisor. They discussed how to improve appellant's job performance. At the conclusion of the meeting, appellant was given specific assignments, performance standards and a timetable for improvement.

17. During September, 1980, appellant was closely supervised. Appellant's new supervisor met with him several times, noting audit deficiencies and outlining the work necessary to complete such audits.

18. On December 4, 1980, the appellant, BMA director and appellant's supervisor met in the State Office Building, Eau Claire, Wisconsin to discuss the progress of the appellant. The appellant was advised that he was still having problems with organization, compliance with auditing standards and poor client relations. The director suggested to appellant that in the interest of both parties, the appellant should consider seeking other employment.

19. In the ensuing months, other BMA auditors objected to being assigned to work with appellant and clients requested that he not be assigned to their audit.

20. On April 29, 1981, the appellant's supervisor, the BMA director and the division administrator together with several other personnel members met and decided to discharge the appellant.

21. At that time, no other feasible or appropriate positions within the agency were available through transfer or demotion to the appellant.

22. From July 8, 1980 to May 13, 1981, the job performance of the appellant was unsatisfactory.

23. The basis of appellant's discharge was his lack of competence as an Auditor 4.

CONCLUSIONS OF LAW

1. The Personnel Commission has authority to hear this matter pursuant to §230.44(1)(c), Stats.
2. The respondent has the burden of persuasion to show there was just cause for termination of the appellant from the position of Auditor 4 and that the discipline imposed was not excessive.
3. The respondent has met his burden of persuasion.
4. There was just cause to terminate appellant from the position of Auditor 4 and such discharge was not excessive.

OPINION

The respondent presented documentation of appellant's job performance from May 1978 until his discharge in 1981. This documentation was corroborated by the testimony of several witnesses. From this evidence, it is clear that the appellant consistently failed to effectively use his time and meet time deadlines. It is also clear that work done by the appellant was unsatisfactory and that his actions had begun to impair the efficiency of his unit.

The appellant was first made aware of his poor job performance in 1977. The respondent explained to the appellant that he needed to improve certain aspects of his work. Over the next four years, respondent engaged the appellant in discussions, conferences and work improvement plans to improve his work performance. Other incentive techniques employed by respondent were reprimands, suspension and warnings; however, all were unsuccessful. Appellant's work failed to improve to an acceptable level.

The appellant offers several arguments in support of his position that there was no just cause for his discharge. He contends that prior to

March, 1980, respondent assigned him Auditor 5 level work instead of Auditor 4 work for which he was classified and paid. He argues that during this period, BMA made a large number of changes without adequate inservice training which created a stressful situation and caused him to suffer "stress and/or job burn-out." The record is absent evidence which supports these claims. To the contrary, the evidence shows that in July, 1979, appellant's supervisor assigned an audit reviewer to review appellant's audits, advise the appellant of any work deficiencies and assist him in making the necessary adjustments. No evidence was presented by appellant regarding improper assignment of work.

The appellant also asserts that he conducted professional and competent audits and that his job performance was satisfactory. While there is evidence that appellant performed some portions of his work adequately, the total work product was not at an acceptable level.

Finally, appellant claims that Mr. Steel, his supervisor, was the source of his problems with clients. The evidence is that Mr. Steel asked clients and former clients who expressed verbal dissatisfaction with appellant, to put their complaints in writing. Under the circumstances, the supervisor's action was appropriate.

In William Ruff v. State Personnel Commission, Cir. Ct. of Dane County, Case No. 81-CV4455 (7/23/82), the court held that the word "just" in the term "just cause" as provided in §230.34(10(a) may be equated with reasonable or well founded. The court further held that it is only right that a person in public service be expected to perform the tasks of his position and if he/she cannot or will not perform, the public service suffers and it is reasonable to discharge that person.

For all the reasons previously stated and based upon the record,
respondent's decision should be affirmed.

ORDER

Respondent's discharge of appellant from employment is affirmed and
his appeal is dismissed.

Dated: December 8, 1982 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner

DRM:jmf


JAMES W. PHILLIPS, Commissioner

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