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JOSEPH PAGLIANO,
 Appellant,

v.
 Secretary, DEPARTMENT OF
 VETERANS AFFAIRS,
 Respondent.

Case No. 82-99-PC

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DECISION
 AND
 ORDER

This matter is before the Commission as an appeal from a three day suspension. The parties agreed to the following issue for hearing:

Whether the discipline as set forth in the suspension letter dated April 19, 1982, and suspending the appellant for three days commencing April 27, 1982, was based on just cause, and did the three day suspension constitute excessive discipline.

FINDINGS OF FACT

1. The appellant serves as the director or supervisor of the Bureau of Claims, Division of Veterans Benefits, Department of Veterans Affairs. The Bureau of Claims is also referred to as the Milwaukee claims office and serves to provide assistance to veterans in presenting their claims for compensation, education and pensions to the federal Veterans Administration.

2. The appellant has been an employe of respondent agency for approximately 10 years and assumed his present supervisory responsibilities in July, 1978.

3. As director or supervisor of the Milwaukee claims office, the appellant is responsible for providing day-to-day supervision of the office, for processing veterans claims and for reviewing the work of 12-14 subordinates in the office.



4. The claims office is located in a federal office building housing the Veterans Administration regional office. The office itself is located in the middle of a large open area and is surrounded by the offices of four veterans organizations (Veterans of Foreign Wars, American Legion, AmVets, Disabled AmVets) with which the respondent department has frequent contact. Due to the physical arrangements, sound produced within the claims office travels readily to the surrounding offices of the veterans organizations.

5. During all periods relevant to this appeal, Mr. Clifford Wills has been the appellant's direct supervisor. Mr. Wills serves as the Deputy Director of respondent department and also functions as the liaison between the Milwaukee claims office and the department's administration in Madison.

6. One of the appellant's subordinates at the Milwaukee claims office is Ed Erickson. Mr. Erickson is known to frequently swear when he is in the claims office. Mr. Erickson's conduct is such that some co-workers find it extremely difficult to work with him. Five or six times a week, the appellant would discuss the problem of inappropriate language with Mr. Erickson. Some friction existed between Mr. Erickson and the appellant although the friction was only intermittently evident. This friction was manifested in loud arguments between the two men.

7. Early in 1981, the appellant sought supervisory assistance from his supervisors with respect to handling Mr. Erickson. As a consequence of that request, Mr. Wills told the appellant to only criticize Mr. Erickson when absolutely necessary, to back off if any confrontation appeared likely and to document and report incidents of inappropriate behavior by Mr. Erickson. In a letter dated May 22, 1981 to Mr. Erickson, Mr. Wills stated, in part:

I must remind you that Mr. Pagliano is the supervisor, and is entitled to have all reasonable directions obeyed.

After all due consideration, I have decided to ask you to write me regarding orders from Mr. Pagliano which you do not consider to be reasonable or suitable for the best interest of the claims office. I am also asking that you provide Mr. Pagliano with a copy of any such letter. I also ask that such letter be written instead of debating the issue publicly in the office. Any such letter from you will be investigated promptly.

81. On January 29, 1982, Mr. Erickson made the following statement to the appellant: "One of these days you'll insult me in front of everyone and I'll get so mad I'm going to set you right on your ass. No man has ever before insulted me in front of others the way you have." The appellant took no disciplinary action against Mr. Erickson for this statement.

9. On February 9, 1982, Secretary Moses of the respondent department issued the following written reprimand to the appellant:

Reports of your loud arguments with a subordinate employee in the Milwaukee Claims Office persist despite the direction by Deputy Secretary Cliff Wills that you not respond publicly and thereby affect the reputation of the department.

I have refrained from becoming involved because Cliff Wills assured me he was handling the matter.

Last Wednesday following the CVSO Advisory Council meeting in this building, it was reported to me that you were guilty of another public outburst of temper in front of CVSO's, DVA staff, and other occupants of this building. Such conduct is highly unprofessional, is detrimental to the department and cannot be tolerated.

In addition, in this instance, the argument was apparently due to your unwillingness to accept direction from Bob Shaver and Cliff Wills after a decision had been made regarding department policy of long standing.

You leave me no alternative but to issue this reprimand which will go into your personnel file.

10. On February 10, 1982, the appellant and Mr. Erickson were involved in a heated discussion at appellant's desk about a change in office procedure. The appellant sensed that the situation could become out of control so he got out of his chair and walked to a nearby water fountain. Mr. Erickson

also walked away but when doing so said: "No son of a bitch, no asshole is going to tell me what to do," or words to that effect. The appellant was incensed by Mr. Erickson's comments and walked toward him but stumbled into a chair before reaching Mr. Erickson. When the appellant was approximately ten feet away from Mr. Erickson another office employe stepped between the two men, they calmed down and went in separate directions. There was no physical contact between the appellant and Mr. Erickson. However, appellant's action of walking toward Mr. Erickson constituted a threat of physical contact. The appellant did not initiate any discipline against Mr. Erickson as a consequence of this incident.

11. Word reached respondent's Madison office about the February 10th incident. On February 17, 1982, Secretary Moses sent the following memo to the appellant.

It has been brought to my attention from several sources that there was an altercation in your office last week which involved a shouting and shoving exercise between you and one of your employes.

Since this is not the first such incident to come to my attention, and since any incident of this type reflects adversely upon the reputation of the department and adversely affects the effective operation of your section, I would like you to give me a full report in writing on what exactly took place.

12. The appellant responded in a letter dated February 18th to the Secretary:

This will answer your memo of 2/17/82 in which you requested a report on a recent altercation in this office which allegedly involved a shouting or shoving exercise as your sources charged. Mr. Erickson and I discussed office procedural policy on an issue for a few seconds but, I repeat, NO SHOUTING! NO SHOVING.

It does seem apparent that your several sources gain some sadistic satisfaction with their attempts to discredit the operation of this office and what is more annoying is that some people seem eager to believe the worst.

I don't like what's happening any more than you do but inasmuch as it seems to be a "Get Joe" attitude on somebody's part, I'll just have to work harder on overcoming this increasing harassment.

13. The Secretary responded by memo dated February 22, 1982:

Your letter of February 18 was not an acceptable response to my request for a full report in writing on the altercation in your office between you and another department employee.

No one is trying to "get Joe", as you suggest, but when reports reach me from a number of outside sources about the shouting and shoving incident I asked to have explained I cannot accept your suggestion that it was only a gentle discussion of office procedure.

Unless you "dignify the alleged occurrence" with the report I asked that you provide me, I will have the matter investigated fully from outside your bureau, take statements from the department employees in the office and from such others outside the department who witnessed the incident. I cannot and will not permit the reputation of the department to be damaged by open and notorious bickering within your office.

I am informed that the incident referred to became general knowledge throughout regional office within minutes of its occurrence.

I repeat my request of February 17, 1982 that you give me a full and detailed report on the incident, who was involved, what triggered the "discussion", what was said, and how it was resolved.

14. The appellant then followed up the Secretary's memo with a letter dated February 25th:

Your memo dated 2/22/82 mentioned your intention to have the above subject investigated fully from outside this office with statements taken from the department employees and from others who witnessed the incident.

I favor and welcome this suggested action, but I would prefer the acquisition of written statements rather than oral so that justice can be fairly administered.

The accusing agitators who have grossly exaggerated the "altercation" should enjoy the furnishing of these written statements.

15. In a letter dated March 2, 1982, Secretary Moses advised the appellant that Mr. Wills and a staff attorney would visit the Milwaukee

office on March 10th to investigate the February 10th incident by taking statements from the appellant and other employees in the office. The letter went on to state:

You are directed to advise all employees in the department claims office that they are expected to be present on that day and to be individually interviewed in private as to any information they may be able to provide on the incident. Written statements will be taken.

You are further directed to be present, to submit to the same interview, to provide your full cooperation to the members of the investigative team, and to do nothing that will hinder or impede the investigation.

16. On the morning of March 10, 1982, before the arrival of Mr. Wills and the staff attorney, the appellant called a meeting of the Milwaukee office staff to inform them about the interviews to be conducted that day. There were thirteen persons present at the meeting. The appellant made the statement that the meeting was sort of like the last supper because there were thirteen people sitting around the table and the appellant asked if there could be a Judas present. At least one of the employees in the room felt intimidated by the remark.

17. The interviews were conducted later that day. After the interviews were completed, the appellant stated to the office, generally, that, "Now I will find out who my friends are."

18. The conduct of the appellant of entering into loud arguments with a subordinate employee had a negative effect on the efficiency of the department's operation to the extent that it damaged the relationship of the department with the Veterans Administration and with the four veterans organizations with offices adjacent to the claims office. The appellant's conduct during and after the February 10th incident also undermined his relationship with his supervisors and with his subordinates.

19. In a letter dated April 19, 1982, Secretary Moses informed the appellant that he was being suspended for three days for his failure to provide a full report of the February 10th incident despite two written requests, for attempting to hinder the investigation of that incident, for appellant's actions on February 10th, and for failure to impose discipline against Mr. Erickson for his abusive language and threats on January 29th and February 10th.

20. Mr. Erickson was notified by another letter dated April 19, 1982 that he was suspended for one day for his conduct on January 29th and February 10th.

21. The respondent's work rules include the following provisions:

PROHIBITED CONDUCT

I. WORK PERFORMANCE

A. Insubordination, including disobedience, or failure or refusal to carry out assignments or instructions.

* * *

G. Negligence in performance of assigned duties.

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IV. PERSONAL ACTIONS AND APPEARANCE

A. Threatening, attempting, or doing bodily harm to another person.

B. Threatening, intimidating, interfering with, or using abusive language towards others.

* * *

J. Failure to exercise good judgment, or being discourteous, in dealing with fellow employees, or the general public.

22. Appellant's conduct constituted violations of Work Rules I.A, I.G and IV.J.

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 reasonable 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, 98, 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 violating DVA Work Rules I.A, I.G and IV.J. In addition, the suspension letter stated that the appellant's conduct on February 10th "gave Ed and other observers the impression that you intended to physically attack Ed."

The facts in this matter provide overwhelming support for a finding of just cause for the imposition of discipline against the appellant. There was

a history of loud arguments between the appellant and Mr. Erickson. The appellant, in his role as a supervisor, did not adequately deal with the problem which included at least one physical threat to the appellant. Ultimately, the appellant himself became sufficiently angry at Mr. Erickson that he walked toward Mr. Erickson in a physically threatening manner. Then, when asked twice by the Department Secretary to submit a report on the incident, the appellant essentially refused. An investigation was subsequently conducted by the Department but not before the appellant intimidated some of his subordinates by his reference to finding a Judas.

At least some of the appellant's actions can be traced to an apparent misunderstanding on his part about the concept of progressive discipline. Although the appellant was aware that he had the authority to impose discipline, he testified that the only discipline he had ever imposed was discharging two employes for excessive absenteeism. The appellant also testified that Mr. Erickson was an extremely able employe whose manners and speech were inappropriate and that as a supervisor, he did not want to get Mr. Erickson fired. However, the appellant's analysis ignores the possibility of reprimanding (in writing) or suspending Mr. Erickson for behavior which the appellant admitted would have made other people feel it was intolerable to work with Mr. Erickson. The Commission is not swayed by the appellant's statements that Secretary Moses would have had Mr. Erickson fired rather than merely reprimanded or suspended if the appellant had documented Mr. Erickson's conduct. While the appellant may well have been concerned about family and other personal problems experienced by Mr. Erickson, nothing in the record suggests that Secretary Moses would have

ignored the principle of progressive discipline in dealing with Mr. Erickson's conduct.

The appellant also testified that in May of 1981, he understood Mr. Wills to be advising him to document any inappropriate behavior by Mr. Erickson and to put it in Mr. Erickson's annual performance evaluation. In contrast, Mr. Wills testified that he told the appellant not to wait until the annual evaluation but to submit any reports of improper conduct as they occurred. The Commission concludes that the appellant's expectation of waiting for the annual performance evaluation to document Mr. Erickson's behavior was unreasonable and that the documentation should have been completed as specific incidents occurred. Similarly, reports should have been submitted to Mr. Wills whenever Mr. Erickson's conduct would have justified the imposition of discipline, e.g. January 29, 1982.

The respondent presented testimony indicating that the absence of barriers between the various offices in the Veterans Administration building in Milwaukee insured that any loud noise or argument in the DVA claims office would be heard by employees of the Veterans Administration and the four veterans organizations on the same floor. The incident on February 10, 1982 was clearly disruptive of claims office operations and it can also be presumed to have adversely affected the supervisory relationship between the appellant and his subordinates. The respondent has therefore met the just cause definition set out in Safransky (supra) by showing that appellants conduct impaired his performance of his supervisory duties and the efficiency of the group with which he works. By meeting this standard, the respondent has established just cause for the imposition of discipline.

The final question raised by this appeal is whether the amount of discipline imposed was excessive. The fact that the appellant violated three separate work rules and that he had previously been reprimanded in writing for failing to accept direction from his supervisors supports the imposition of a three day suspension. Based on the record in this matter, the three day suspension was not excessive discipline.

ORDER

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

Dated: February 7, 1983

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner

KMS:ers

Parties

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