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 *
 DAVID DENEEN, *
 *
 Appellant, *
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 v. *
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 Secretary, DEPARTMENT *
 OF REVENUE, *
 *
 Respondent. *
 *
 Case No. 88-0093-PC *
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 * * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This matter is before the Commission for final decision of an appeal pursuant to §230.44(1)(c), Stats., of a suspension without pay. The parties reached agreement on a written stipulation of facts which included five exhibits. The parties further agreed to submit this matter on briefs and the stipulation of facts. Respondent filed its brief January 23, 1989. Appellant declined to file a brief.

The Commission adopts as its findings in this matter the parties' written stipulation of facts which are set forth as follows:

1. Mr. Deneen has been employed by the Department of Revenue since December 1, 1972.
2. Mr. Deneen signed his expense voucher for the month of May 1988 on June 1, 1988, stating under penalty of perjury that his expense voucher was true and correct (Ex. 1).
3. A receipt from the Redwood Motel and Chalet was attached to the expense voucher, showing room charges paid in the total amount of \$123.12 for the nights of May 16, May 17, and May 18, 1988. Said receipt bears the signature of L. Ward (Ex. 1).
4. Upon investigation by the Department of Revenue, it was discovered by Department employes on June 1, 1988, that Mr. Deneen obtained the motel receipts from the Redwood Motel, Washburn, Wisconsin, without the consent of knowledge of the owner/clerk.
5. Mr. Deneen prepared the receipt from the Redwood Motel and Chalet, falsifying the room charges and forging the signature of L.

Ward, owner of the motel, on the receipt submitted with his expense voucher.

6. Mr. Deneen submitted his expense voucher on June 1, 1988, claiming lodging expenses for the nights of May 16, May 17, and May 18, 1988, which he did not incur or pay. This was discovered by Department of Revenue employees on June 1, 1988.

7. Mr. Deneen violated work rule #9 of Administrative Directive 360-1.2, "falsifying records or information requested by the Department."

8. At the time of the incident, Mr. Deneen was a Property Assessment Specialist 3. The position is that of a lead worker. The position sets examples for junior appraisers to follow. A copy of Mr. Deneen's position description at the time is attached (Ex. 2).

9. Mr. A, a co-employee of appellant, was also involved in the obtaining of blank motel receipts without the consent of the motel owner/operator, falsifying said receipts, and submitting false expense vouchers. Mr. Deneen and Mr. A both spent the nights of May 16, May 17, and May 18, 1988, at the Redwood Motel and Chalet. Mr. A's filing of his false travel voucher was also discovered by the Department on June 1, 1988. Mr. A wrote a letter to his supervisor on June 13, 1988, admitting his participation in the filing of the false travel vouchers. Mr. A also filed his false travel voucher on June 1, 1988. Mr. A also wrote that he had been motivated to file the false travel voucher because of what he perceived was poor communication between the management and the workers and because he believed he should have received an automatic promotion four months prior to the filing of the false travel vouchers. Mr. A wrote that he initiated the idea of obtaining the blank motel receipts without authorization, filling in the receipts with false information, forging the owner/operator's signature, and filing the false expense vouchers. Mr. A wrote that he then enlisted Mr. Deneen's support in this effort. Mr. Deneen also felt he was not being dealt with fairly on his job. Mr. A had been employed by the Department for three years at the time of the incident. Mr. A initiated the confession of the filing of the false travel vouchers on June 13, 1988.

10. Mr. Deneen's actual expenses for lodging at the Redwood Motel and Chalet for the nights of May 16, May 17, and May 18, 1988, were \$64.80 rather than the \$123.00 he claimed on his May, 1988 expense voucher. Thus, Mr. Deneen claimed an additional \$58.20 in lodging expenses to which he knew he was not entitled. Likewise, Mr. A claimed an additional \$58.20 on his expense voucher to which he knew he was not entitled for lodging expenses at the Redwood Motel and Chalet for the nights of May 16, May 17, and May 18, 1988.

11. A true copy of Mr. Deneen's actual lodging receipt for the nights of May 16, May 17, and May 18, 1988, is attached hereto as Exhibit 3.

12. Mr. Deneen admitted his participation in the filing of the false expense voucher to his supervisor on June 13, 1988.

13. Sometime subsequent to June 13, 1988, Mr. Deneen filed an expense voucher for the month of May, 1988, in which he claimed his actual lodging expenses for the nights of May 16, May 17, and May 18, 1988 (Ex. 4).

14. The Department of Revenue suspended Mr. Deneen without pay of ten working days as a result of the filing of the false expense vouchers (Ex. 5). In arriving at their decision, Mr. Deneen's

supervisors considered a range of options from a reprimand to termination. It was decided that a ten day suspension would be the most appropriate discipline for his offense.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(c), Stats.
2. Respondent has the burden of proof. Reinke v. Personnel Board, 53 Wis. 2d 123, 191 N.W. 2d 833 (1971).
3. The sole issue in dispute is whether the degree of discipline imposed was excessive.
4. Respondent has sustained its burden of proof, and it is concluded that the appeal was not excessive.

DISCUSSION

It is clear from the appeal and various other documents in the file that the only matter in dispute is whether the suspension imposed was excessive. In Barden v. UW-System, No. 82-237-PC (1/9/83), the Commission held as follows:

In considering the severity of the discipline imposed, the Commission must consider, at a minimum, the weight or enormity of the employe's offense of dereliction, including the degree to which, under the Safransky¹ test, it did or could reasonably be said to tend to impair the employer's operation, and the employe's prior work record with the respondent.

The forging of purloined motel receipts in order to defraud the State of Wisconsin for personal gain is an inherently serious offense for any employe. Furthermore, appellant's position of Property Assessment Specialist 3 can be concluded on this record to require integrity and the upholding of the public trust, which would be undermined by awareness of

¹ Safransky v. Personnel Board, 62 Wis. 2d 464, 215 N.W. 2d 379 (1974).

this misconduct. See State ex rel Gudlin v. Civil Service Commn., 27 Wis. 2d 77, 87 133 N.W. 2d 799 (1965); accord, Safransky v. Personnel Board, supra. Therefore, appellant's misconduct is more serious than it would have been if he were in a position that did not involve the public trust.

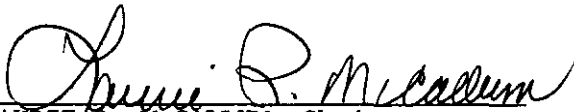
While appellant had 16 years of employment with DOR as of the date of this disciplinary action, this does not make the discipline excessive in the Commission's opinion, given the seriousness of the misconduct in question. Respondent has cited in its brief a number of cases involving employe discipline for various acts of misconduct by way of comparison. The Commission will not reiterate all these cases, but simply notes they support a conclusion that the discipline imposed here was by no means excessive. To cite but one example, in Clark v. DOR, No. 80-97-PC (6/3/81), the Commission upheld a five day suspension on a first offense by an auditor with an otherwise excellent work record who filed his Wisconsin Income Tax return nine months late. In that case, there was no finding that the employe's misconduct was willful, whereas appellant's misconduct was deliberate and fraudulent in nature and justified more substantial discipline.

In his appeal letter, appellant indicated that the 10 day suspension, which he claims cost him more than \$1100 out-of-pocket, was excessive when compared to the fact that he only stood to have gained \$58 by his actions. This contention is extremely weak. Appellant deliberately attempted to defraud the State of Wisconsin. The amount involved, in context, certainly was not de minimis. Under these circumstances, respondent had the right to impose substantial discipline, and the amount involved in the attempted fraudulent action is of little significance.

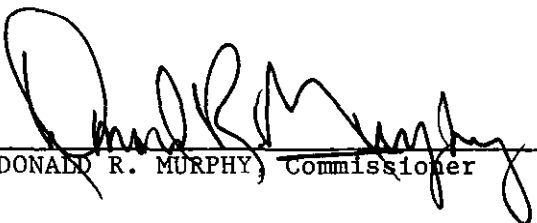
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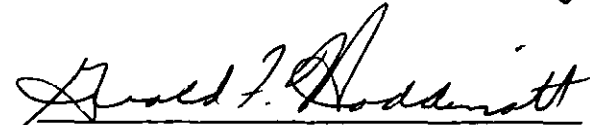
Respondent's action imposing a 10 day suspension without pay is affirmed, and this appeal is dismissed.

Dated: March 24, 1989 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr
DPM/2


DONALD R. MURPHY, Commissioner


GERALD HODDINOTT, Commissioner

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