

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DONNA BREY,

Appellant,

v.

Secretary, DEPARTMENT OF
HEALTH & SOCIAL SERVICES,
and Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondents.

Case No. 89-0051-PC

* * * * *

INTERIM
DECISION
AND
ORDER

This matter is before the Commission on an appeal of respondent's decision denying appellant's request for reclassification of her position from Social Worker I (PR12-02) to Social Worker II (PR12-04). A hearing was held on appellant's appeal, testimony was given, exhibits were received into evidence and the parties presented closing oral arguments. The following findings of fact, conclusions of law, opinion and order are based upon the evidentiary record made at the hearing. To the extent that any of the opinion constitutes a finding of fact it is adopted as such.

FINDINGS OF FACT

1. Appellant has been employed in the state classified civil service by respondent in its Division of Corrections (DOC) for three years as a Social Worker I. She has a Master's Degree and eighteen years of work experience, including work as a Correction Worker II - comparable to a Social Worker II - for the Milwaukee County Department of Social Services.

2. The respondent, the Department of Health and Social Services (DHSS) is a state agency. It is responsible for providing a variety of

health and social services to individuals and families who qualify for such services.

3. In December, 1987, appellant and Brenda Bell-White, appellant's supervisor, established a six month work plan for appellant to successfully complete in order to have her position reclassified to the Social Worker II level.

4. The criteria established for appellant to obtain the reclassification were:

- 1) Complete all in-service training as prescribed per review with Sally McBeath 250 total hours a Balance of hours needed and areas are:

Area II - Required

- 6 - An Overview of Institution Social Worker Duties for P/P Agents

Area III - Required

- 6 - The Mentally Ill Offender
 - 6 - Family Therapy/Domestic Violence
- 2) You will follow the monthly work plan objectives as prescribed. Timely completion of all new cases opening assignments, (as assigned as our Unit has an Intake Specialist) financial planning, and follow, maintenance of client contact and home visits per classification.
 - 3) To establish and/or follow case plans established (by Intake Specialist) utilizing the objective base case planning format.
 - 4) To complete one CMC to maintain skill level.
 - 5) To participate on a Regional or Divisional committee (as available) or you are to identify, plan and coordinate special service for clientele to address identified need area i.e., food bank, clothing bank, group counseling session etc. (Efforts can be collaborated with other unit staff).
 - 6) Target date for reclass will be June 2, 1988.

5. In appellant's Monthly Work Plan Quarterly Review dated December 22, 1987, which covered the period for July 1987 to December 1987, Ms. Bell-White, under the heading, Summary/Area of Growth, wrote:

This is your second review on the Monthly Work Plan Program. You have made substantial notable improvement since the last review; so much so that we negotiated your six month re-classification objectives. Reclassification target date June 2, 1988. Jan Cummings will assume Supervisor Unit 310 January 1988 the timing is good as this will also allow Jan a six month review period of your performance. Keep up the good work and Good Luck to you.

6. In January, 1988, Jan Cummings replaced Brenda Bell-White as Supervisor of Unit 310.

7. In appellant's first substantive meeting with her new supervisor, Jan Cummings, appellant expressed her priority of obtaining reclassification to Social Worker II.

8. Appellant met with her supervisor from February to June 1988 at regularly scheduled monthly meetings. During these meetings their discussions included case planning, direct contacts and home visit expectations.

9. At a regularly scheduled meeting in June, 1988, Cummings told appellant she did not believe appellant was performing at the Social Worker II level, but appellant could submit a formal reclassification request in writing and she would respond in ten days.

10. On June 15, 1988 appellant wrote her supervisor and requested reclassification of her position to Social Worker II. Appellant's supervisor responded on July 13, 1988, saying that she, as permitted under section 236.2C of the Supervisor's Manual, had extended appellant's reclassification observation period 45 days to provide time for her to personally observe appellant's performance and for appellant to complete one CMC.

11. On August 4, 1988, appellant wrote Sanger Powers, Jr., DOC Personnel Director, appealing Cummings' extension of her reclassification observation period.

12. On April 15, 1988, in a Monthly Work Plan Review memorandum, Jan Cummings informed appellant that she needed growth in the areas of home visits, financial obligations and case planning. Cummings also noted that appellant had resisted her request to sit in during client interviews or have appellant tape a session with a client for supervisory review.

13. In a memorandum dated August 15, 1988, Subject: Case Record Audits, Cummings advised appellant that she had reviewed 14 cases from appellant's case load listing and determined they did not reflect the necessary aspects of case planning, financial obligation and home visits. Cummings prefaced her remarks by noting that these cases, except for one, had been transferred to appellant and most of the intake, including case plans, had been prepared by the unit intake specialist.

14. On September 8, 1988, in a memorandum to appellant denying her reclassification request, Jan Cummings wrote:

You have met reclass objectives #1 and #4 (Exhibit A). However, as required by objectives #2 and #3, you have not met (minimum) client contact standards as prescribed by the Administrative Rules and BCC Operations Manual and, improved performance is needed in the area of case planning - implementation and modification. Essentially, you have not performed at the Social Worker 2 level for 6 months.

15. On November 1, 1988, appellant appealed Cummings' decision to Sanger Powers, Jr., the DOC Personnel Director. She sent copies of her appeal to Jan Cummings and Cummings' supervisor, W. D. Ridgely, the Assistant Chief, Milwaukee Region.

16. Shortly after he received a copy of appellant's appeal memo, Mr. Ridgely wrote Sanger Powers. He wrote:

First of all, I was astonished ... that someone who was looking to be classified would reduce to writing her obvious disdain for regulatory guidance and policy.

Later, in the memo he wrote:

Secondly, I direct your attention to Jan Cummings' memo of 9/8/88 to Donna Brey, Specifically ... to the information she relied upon in carrying out her decision....

and then finally he concluded:

... I found the tone and content of her memo to be consistent with her attitude and performance and sufficient justification for a supervisor not to recommend her for reclassification. It is obvious that she has little regard for the mission of the agency as translated into an agent's job in an accountable government agency. I found her memo to be negative, indicative of non-compliance, cynical, and a substitution of her judgment for that of her supervisor and the agency. This is a good example of why she needs closer supervision and should not be reclassified.

cc: Jan Cummings

17. On January 31, 1989 Sanger Powers wrote and informed the appellant that, after conducting a review of her reclassification request, his office agreed with and affirmed Ms. Cummings' decision.

18. The reclassification review conducted by Sanger Powers included an audit of 50 cases appellant supervised since being transferred to Unit 310 and a review of the documentation provided by Ms. Cummings and the auditors.

19. The case load audit was performed by two Field Supervisors, who conducted the audit of 50 cases including the 15 cases previously audited by Ms. Cummings.

20. The audit was performed at a table in Ms. Cummings' office and was completed in three days.

21. During the audit, the auditors asked Ms. Cummings technical questions and went to lunch with her. One of the auditors was a friend of Ms. Cummings.

22. Prior to the audit, the auditors had been informed that appellant had been denied reclassification from Social Worker I to Social Worker II based on Ms. Cummings' conclusion that appellant had failed to perform at the higher level.

23. In a memo to Sanger Powers dated January 13, 1989 regarding the audit of 50 cases supervised by appellant the auditors wrote:

The deficit areas found are summarized as follows:

Periodic Summaries missing = 14 =28%
DOC-506's missing or override not completed =6 =12%
*No DOC-10's signed by Agent Brey =33 =66%
Face to face contacts deficit =3 =6 %
Home visits not at standard and not waived =35 =70%
Case plan weak or lacking proper follow by agent =20 =40%
Violation report not done for violation =10 =20%
Employment verification lacking =20 =40%
Urine analysis needed but not done =12 =24%

*Although DOC-10's signed by other agents were found in each file, in numerous instances they should have been updated for new conditions, due to age or after new violations. The agreements would have reflected reporting requirements, a persistent problem throughout the audited cases. This is especially significant for revocation considerations.

24. After the reclassification denial by Sanger Powers, appellant requested a re-review of the reclassification decision by respondent's Bureau of Personnel and Employment Relations (BPER).

25. On April 14, 1989, BPER affirmed Power's decision. In its letter to appellant, BPER said its review of the case load audit report prepared by Power's office showed there was an average of 34% non-compliance overall in 50 cases audited.

26. On May 16, 1989, appellant appealed BPER's - respondent's - decision to the Personnel Commission.

27. The classification specifications for Social Worker I and Social Worker II are identified as a function of a progression series.

28. The state Social Worker I Class Description definition is:

This is the beginning level in the field of social welfare casework. This class is primarily used as a training level as most of the employes are engaged in either the department's inservice training program or are taking graduate training in a school of social work. The assigned work is limited in scope and difficulty and is performed under close supervision. As knowledge and skills are acquired, the variety and difficulty of assignments increase and more latitude in judgment and decision is permitted. Training and supervision are carried out through individual and group conferences, reading of reports and records, assignment of professional reading, attendance at training courses and other training devices.

29. The state Social Worker II Class Description definition is:

This is responsible, professional journeyman level social work. Employes in this class provide a full range of casework services intended to bring out social, mental and economic readjustment of cases under care. The work involves the application of professional skills in obtaining information, counseling clients and family members and in aiding them in utilizing all available resources. The work is performed within the limits of established regulations, but the employes exercise considerable initiative and independent judgment in the performance of their duties, seeking advice only with the most difficult and unusual cases. Review is accomplished by a higher level social worker through an evaluation and reading of case remarks and through conferences.

30. During the reclassification review period, appellant carried at least as many cases or points as other agents at the Social Worker 2 and 3 level.

31. All case assignments were distributed randomly. Cases assigned appellant were as complex as those assigned agents at the Social Worker 2 and 3 level.

32. During the six month review period, Ms. Cummings scheduled monthly conferences with appellant as she did with each of her subordinate agents. She also met with appellant and other agents daily.

33. Respondent's monthly ledger summaries from January 1988 through July 1988 (Appellant's Exhibit 1A) show appellant as having the highest number of clients in her unit for 4 of the 6 months and the second highest number of clients for the other 2 months.

34. Respondent's cashier's report (Appellant's Exhibit II) showing amounts collected by each agent in units 310 and 311 of the Milwaukee

regional office from January 1988 through July 1988, establishes that appellant's average monthly collection was double the total average monthly collection per Social Worker.

35. Respondent's cashiers' unit quarterly obligation report (Appellant's Exhibit 1C) which lists cases with undetermined financial obligations, shows appellant as having no more cases with financial obligations than other agents in the office.

36. In May, 1988, Ms. Cummings audited two (2) cases of agent Willie Snowden prior to granting his reclassification.

37. In June and July 1988, Ms. Cummings audited two (2) cases of agent Jan Travis prior to granting her reclassification.

38. While auditing Ms. Travis' cases, Ms. Cummings found Ms. Travis deficient in home visits and case planning in fifty percent (50%) of the cases.

39. Respondent has standards for case auditing, but none regarding the number of cases to be audited by a supervisor prior to granting or denying reclassification.

40. There is a large variance of opinion by agency supervisors regarding the value of carrying out home visits as required by the agency's administrative rules.

41. As a matter of practice, supervisors gave "blanket" home visit waivers to units, upon implementation of an excessive workload plan; individual waivers to agents, as a part of a monthly work plan; and individual waivers to agents as requested.

42. Respondent practiced no predetermined home visit compliance standard, when making reclassification decisions.

43. Respondent's standards for reclassifying a position to the Social Worker II level were ambiguous.

44. Appellant's job performance record from January through July 1988 is comparable to other agents at the Social Worker II and III level.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to §230.44(1)b), stats.
2. Appellant has the burden of proving respondent's decision to deny reclassification of her position was incorrect.
3. Appellant has met the burden of proof.
4. Respondent's decision to deny reclassification of appellant's position was incorrect.

OPINION

Appellant, pursuant to §230.44(1)(b), stats., appealed respondent's decision to deny reclassification of her position from Social Worker I (PR12-02) to Social Worker II (PR12-04). These two classifications are described in the Social Worker Position Standard, the basic authority for reclassification, as a part of a progression series. Positions in a progression series are eligible for reclassification upon the incumbent's attainment of specified education or work experience. It is undisputed that appellant met the specified education requirements for the Social Worker II level. The question before the Commission is whether appellant met the work experience requirement for the Social Worker II level.

The evidence adduced compels the Commission to answer in the affirmative.

In denying reclassification, respondent stated that appellant was deficient in the areas of home visits, case planning and financial obligation; and failed to meet the performance standards in the department's administrative rules, policies and procedures, the standards all agents

must show compliance with. The following is a review of the record on these alleged deficiencies.

The appellant acknowledged she did not not adhere to agency regulations regarding home visits. Her particular failing was that, on many occasions, she neglected to request a home visit waiver from her supervisor, Ms. Cummings. This was a technical or procedural error, which gave rise to respondent's belief appellant was contemptuous of agency regulations and exhibited a poor attitude. However, the evidence also makes plain that most DOC agents were deficient in home visits. In fact, respondent did not adhere to its regulations on home visits. In 1988, due to an excessive case load, DOC instituted home visit waivers. In some instances, blanket unit waivers were given by supervisors for six months. Other home visit waivers of varying length, were readily available upon an agent's request. In essence, respondent had no uniform work performance standard for home visits. Home visit requirements were as directed by individual supervisors. For example, during this same period, appellant's supervisor reclassified another agent to the II level, who had a 50% home visit compliance rate.

Case planning is evaluated by auditing an agent's case files. During the period relevant to this matter, respondent had no objective criteria in place, regarding auditing cases as a method of evaluating an agent's work performance as a part of making a decision about reclassification. It was within the authority of the supervisor to determine the number of case files audited, the method of selecting such case files, and what constituted a satisfactory performance for reclassification. Appellant's supervisor reclassified an agent to Social Worker II, who demonstrated an average of 50% non-compliance for case plans in cases audited.

On the subject of financial obligations, appellant presented reproductions of respondent's records, which, in summary, showed appellant's work performance in this area was comparable to the other agents in DOC.

The clear evidence supports the position that appellant, from January through June 1988, was performing work of the quality and level sufficient for reclassification of her position to the level of a Social Worker II. The evidence plainly shows that appellant's job performance was comparable to other DOC agents at the II level.

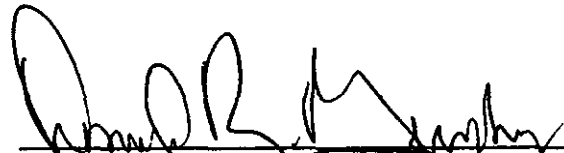
It would appear respondent denied reclassification because of its belief appellant exhibited a poor attitude and was contemptuous of agency regulations. However, reclassification is a function of duties and performance. In this instance, the evidence demonstrates that the level of appellant's work was comparable to other agents at the Social Worker II level and on that basis her position qualifies for reclassification to that level.

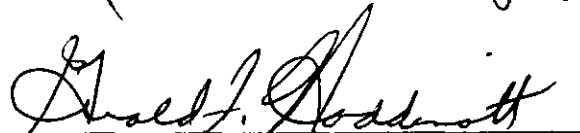
ORDER

Respondent's decision not to reclassify appellant's position to the Social Worker II level is reversed and these matters are remanded to respondent for action in accordance with this decision.

Dated: February 22, 1990 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

DRM:gd
JMF04/2

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