

STATE OF WISCONSIN

PERSONNEL COMMISSION

HAROLD E. SONNLEITNER,
Appellant,

v.

**Secretary, DEPARTMENT OF
HEALTH AND FAMILY SERVICES¹,**
Respondent.

INTERIM DECISION
AND ORDER

Case Nos. 94-1055-PC, 96-0010-PC

The proposed decision and order in this matter was issued on October 7, 1999. Both parties timely filed objections to the decision. The time period for filing responses to objections was extended by stipulation to November 23, 1999. Only appellant filed a response to the objections.

Having reviewed the record, including objections and the response to objections, and having consulted with the hearing examiner, the Commission has made substantive changes and modifications to the proposed decision and order. With regard to case no. 94-1055-PC, the Commission rejects the conclusion of law and opinion thereby affirming the three day suspension imposed by letter dated October 25, 1994. With regard to Case No. 96-0010-PC, the Commission modifies the conclusion of law and opinion thereby rejecting the demotion imposed on appellant by letter dated January 3, 1996, and converting the discipline to a five day suspension. The Commission agreed with the examiner's credibility determinations. Changes and modifications are highlighted through use of alpha footnotes.

This matter involves two disciplinary action appeals under §230.44(1)(c), Stats. These cases were consolidated for hearing along with Case No. 96-0090-PC-ER, a

¹ Pursuant to §9127(19), 1995 Wisconsin Act 27, the name of the Department of Health and Social Services was changed to the Department of Health and Family Services. Both 94-1055-PC and 96-0010-PC were filed prior to this name change, while 96-0080-PC-ER was filed after the change. For the sake of clarity and uniformity, the consolidated cases will be referenced as *Sonnleitner v. Department of Health and Family Services (DHFS)*

charge of discrimination based on sex or disability under the Wisconsin Fair Employment Act (WFEA), Subchapter II, Ch. 111, Wis. Stats. At the beginning of the hearing, counsel for appellant requested dismissal of Case No. 96-0090-PC-ER without objection from respondent. Case No. 96-0090-PC-ER was subsequently dismissed on September 23, 1998. Consequently, only cases 94-1055-PC and 96-0010-PC are before the Commission for a decision on the merits.

The issues for hearing in the two remaining cases were:

Case No. 94-1055-PC: Whether there was just cause with respect to the three day suspension of the appellant imposed by letter dated October 25, 1994.

Case No. 96-0010-PC: Whether there was just cause with respect to the demotion of the appellant imposed by letter dated January 3, 1996.

Both parties filed post-hearing briefs. The following findings of fact are based on the hearing record, and any findings of fact in the discussion are adopted as such.

FINDINGS OF FACT

1. Appellant, Harold E. Sonnleitner, has been employed at the Winnebago Mental Health Institute (WMHI) as a nurse since 1980, and as a first line nurse supervisor on the Forensic Behavior Treatment Unit (FBTU) since 1988.

2. On October 12, 1993, Associate Director for Forensic Services, Mary Fries, met with Director of Nursing, Kathleen Bellaire, to discuss reports from female staff members that they were uncomfortable with Sonnleitner's actions and at times felt sexually harassed.

3. As Director of Nursing Bellaire supervised a nursing staff of some 330 persons, including Nurse Managers, Staff Nurses, Resident Care Technicians (RCT) and Program Assistants. Sonnleitner, who functioned as the FBTU Nurse Manager, was under the direct supervision of Bellaire.

4. On October 27, 1993, Bellaire met with Sonnleitner regarding the complaints. She informed Sonnleitner that some female staff members felt sexually harassed by his behavior and gave him reported examples of standing too close,

touching their clothing or jewelry and commenting on their dress. Bellaire discussed behaviors that could be viewed as sexual harassment with Sonnleitner. She told him that his reported department was inappropriate and cautioned that similar complaints about him would result in discipline.

5. By letter dated October 3, 1994, Social Worker Lisa Miller informed her supervisor and Director of Social Services, Bernice Bolek, that Sonnleitner had on September 30, 1994, made some inappropriate remarks to her. In the letter, Miller states she went to the FBTU day room. No patients were there, but seated at a table were Sonnleitner and an RCT. Miller asked about patient R. Miller states the following conversation ensued:

RCT: "Why don't you go check on him in his room?"

Lisa: "Why is something going on?"

RCT: "No but why don't you make sure he's got his rhythm down right?" and laughed.

Lisa: "You guys are sick."

Gene [Sonnleitner]: "What difference does it make you're pregnant already."

Lisa: "This is sick, I don't want to listen to this anymore."

Gene: "Why it never bothered you before—I know, maybe we should get a blow-up Packer doll for [R]. He would probably like that."

At this point Miller stated she walked out saying she "didn't want to hear about it any more."

6. On October 4, 1994, Director of Nursing Bellaire held a pre-disciplinary meeting with Sonnleitner. Also in attendance were Nurse Ruth Greisinger (employee support) and Director of Human Resources, Kathy Karkula. The Miller letter (Finding of Fact #5) was read to Sonnleitner and he agreed the conversation as stated was generally accurate.

7. On October 5, 1994, Sonnleitner was placed on administrative leave, pending an investigation of the Miller incident and possible violation of DHSS Work Rules 1, 2 and 5. Sonnleitner also was informed that his work schedule was being changed to Monday-Friday, 7:00 a.m. to 3:30 p.m. and he was required to be accessible during these hours.

8. Director of Nursing Bellaire also conducted a pre-disciplinary meeting with Goodwin Peterson, the RCT mentioned in the Miller incident. This meeting took place on October 6, 1994. No discipline was issued to Peterson, because respondent concluded Sonnleitner, as supervisor, had set a tone on the unit tolerating this kind of behavior.

9. During the same period respondent conducted interviews of all members of the FBTU treatment team, regarding allegations that Sonnleitner had “engaged in sexually harassing behavior with female staff members” and “participated in derogatory and disrespectful conversation regarding patients.” These interviews, called fact finding meetings, were primarily conducted by Assistant Director of Nursing Jane Walters. In her fact finding meeting report (Respondent’s Exhibit 21), Walters concluded that staff members did not find Sonnleitner harassing or intimidating; that he engaged in innuendo-laden conversation with the unit doctor and other male staff in the presence of female staff; and as nurse supervisor, was responsible for maintaining a harassment-free workplace. However, Walters noted the unit doctor also had that same responsibility.^A

10. After completing the interviews, Sonnleitner was notified in a letter from WMHI Director Stanley York, dated October 25, 1994, that he was suspended without pay on October 26, 27, and 28, 1994, for violating DHSS Work Rules 1, 2 and 5, based on the September 30, 1994, (Miller) incident.

11. The letter of discipline dated October 25, 1994 provides in part:

This is official notification of a disciplinary suspension of three (3) days without pay for violation of the Department of Health and Social Services Work Rules Nos. 1, 2, 5 which state:

“All employees of the Department are prohibited from committing any of the following acts:

1. Disobedience, insubordination, inattentiveness, negligence, or refusal to carry out written or verbal assignments, directions, or instructions.

^A This sentence was added for clarification.

2. Abusing, striking, or deliberately causing mental anguish or injury to patients, inmates, or others.
5. Disorderly or illegal conduct including, but not limited to, the use of loud, profane, or abusive language; horseplay; gambling; or other behavior unbecoming a state employee.”

Your days of suspension without pay will be October 26, 27, 28, 1994. You should not report to work on those days. You will be expected to report to work at the start of your regularly scheduled shift on all other days.

This action is being taken based on the incident of September 30, 1994 when you made sexually inappropriate remarks about a patient in the presence of a female co-worker who found it offensive, unwelcomed and harassing.

12. Respondent, some time prior to this incident, had provided Sonnleitner and other WMHI staff members an extensive in depth training on the various forms and issues of sexual harassment.

13. Sonnleitner's employment at WMHI for the next several months was unremarkable. Bellaire evaluated Sonnleitner's work performance from December 1994 through March 1995 as meeting all job objectives and performance expectations.

14. On November 14, 1995, Sonnleitner received a package of gum balls from a member of the WMHI volunteer services and placed a bowl of them in the FBTU day room for distribution to the patients. Sonnleitner treated the gum balls like other snacks provided daily to all patients by respondent and unilaterally made the decision to provide the gum to the patients. The FBTU patient behavioral treatment program (Findings of Fact 24, 25, 26) did not prohibit the distribution of items for consumption from volunteer services.^B

15. Between November 14 and 20, 1995, Sonnleitner was on vacation. Shortly after returning on the 20th, Sonnleitner took additional leave to go deer hunting.

^B Ibid.

16. At some point during this time Sonnleitner and other staff met with Program Director Howard and discussed whether the gumballs should be made available to all patients.

17. This was considered a problem because of past experiences where patients had taken candy, fruit, and gum and stored it in their room.^C One patient was known to use such items as a treat on the days he failed to earn canteen privileges. He was also suspected in the past of disposing of his medication in gum.

18. No decision was made during this meeting as to whether the gumballs should be removed from the day room, but during Sonnleitner's vacation the gumballs were removed from the day room.

19. When Sonnleitner returned from his vacation no one informed him it was against FBTU patient treatment policy to place gum balls in the day room or that a decision had been made not to place gumballs in the day room.

20. On December 4, 1995, Nurse Darlene Gutzman observed gum in the day room and patients once again grabbing handfuls. The gum was moved to the staff table and Gutzman reported the incident to Howard.

21. That same day Dr. Maria Ruiz, a staff psychologist, held a special luncheon in the Occupational Therapy (OT) Clinic for the patients. Patients other than Level 1's normally eat in the unit cafeteria. Level 1 patients receive individual trays. When short of staff, Level 1 patients eat in the cafeteria with the other patients. Level 1 patients are permitted to attend luncheons and dinners on special occasions when deemed appropriate by the team. This activity by Level 1 patients was not otherwise prohibited by the behavioral treatment program.^D

22. Sonnleitner permitted one Level I patient to attend the luncheon. Sonnleitner believed all patients were permitted to attend special meals, provided it was unlikely the patient would be disruptive, and on that basis allowed this one patient to go.

^C *Ibid.*

^D *Ibid.*

23. Prior to allowing this patient to attend the luncheon, Sonnleitner talked about it with Roxanne Huxley, an OT. Sonnleitner talked with Huxley because the luncheon was being held in the OT area.

24. In conjunction with individual behavior treatment plans, FBTU employs a group credit program. The behavior of every patient is rated by the treatment team daily and given a numeric score for each specific behavioral category. A patient may earn special privileges based on his/her daily points or score. There are three different privilege levels available to patients based on their score: Level 1, 2 and 3. The Level 3-privilege rating is the highest.

25. The FBTU Credit Program provides that Level 1 patients are confined to the day room most of the day. Level 1 patients may go on daily walks at staff discretion and attend in-building group, but are day room restricted during off-unit activities if sufficient staff is available.

26. Exceptions to any program are generally discussed with at least two staff members who are on duty at that time. However, program guidelines require talking to at least one other staff member before implementing changes (Respondent's Exhibit 36, p. 2).^E

27. Also on December 4, 1995, at approximately 1:30 p.m., Sonnleitner, a RN and an RCT escorted three patients to the lab for DNA testing under a newly enacted sexual predator state law. A central DNA identification file was being established for all sex offenders.

28. The patients had a right to refuse the DNA test and two of the patients tended to be very resistive.

29. During his brief explanation of the test to the patients, Sonnleitner promised them a treat if they cooperated and they did.

30. On the return trip after the lab tests, Sonnleitner took the three patients to the Big Canteen and bought them ice cream. At least one of the 3 patients was on the Level 2 of the FBTU Credit Program shift.

^E *Ibid.*

31. Level 2 patients, as provided in the FBTU Credit Program, do not have Big Canteen privileges, unless granted in advance by the treatment team.

32. Sonnleitner intended to reimburse his ice cream expense through unit canteen coupons, used for purchasing items for patients.

33. The three December 4, 1995, Associate Director for Forensic Services, Mary Fries, initially reported incidents to Bellaire on December 5, 1995. A memorandum followed detailing the December 4th incidents.

34. Bellaire held fact finding meetings on December 12 and 13, 1995, with Darlene Gutzman and Karla Seaver, two FBTU staff nurses, regarding their knowledge of the December 4, 1995, incidents reported by Howard about Sonnleitner's behavior on the unit.

35. By three memoranda dated December 13, 1995, Bellaire notified Sonnleitner of pre-disciplinary meetings to be held December 18, 1995, in her office. The memoranda collectively referenced the three December 4, 1995, incidents and violation of department work rule 1.

36. The pre-disciplinary meeting was held as scheduled and attended by Bellaire, Karkula, Sonnleitner and his manager support person, Dan Leeman.

37. On December 18, 1995, Sonnleitner was suspended from work with pay.

38. On December 19, 1995, Bellaire held a fact-finding meeting with RN Louis Britten, RN Nancy Beck and Karkula, regarding Sonnleitner's behavior on the unit and its impact on patient programming. That same day Bellaire held another fact finding meeting with RCT Sue Rich, Union Representative Steve Randall and Karkula, regarding the placement of gum in the day room and problems with patient hoarding. Also that day, Bellaire spoke with Diane Meschefske of Volunteer Services about the gum balls they provided Sonnleitner and with Medical Technologist Peter Kromm, who performed the DNA testing on December 4, 1995.

39. On December 20, 1995, Bellaire spoke with Occupational Therapist Roxanne Huxley, regarding her discussion with Sonnleitner concerning who should attend the special luncheon on December 4, 1995.

40. On December 28, 1995, Bellaire had two fact finding meetings: one with RCT Jeff Zeprich, who also assisted Sonnleitner in escorting the patients to the lab for DNA testing; and the other with FBTU Program Director Howard, to go over Howard's report regarding Sonnleitner's behavior on December 4, 1995.

41. Following the completion of her investigation of Sonnleitner's behavior on December 4, 1995, Bellaire met with WMHI Director Stanley York and Director of Karkula to discuss the appropriate action for Sonnleitner.

42. Based on her investigation, Bellaire concluded Sonnleitner had violated work rule 1 on three separate occasions on December 4, 1995, and had violated work rule 7 by providing management inaccurate and incomplete information during his pre-disciplinary meeting. Bellaire recommended the demotion of Sonnleitner to Nurse Clinician 2. York concurred on January 3, 1996.

43. Directors Bellaire and Karkula met with Sonnleitner and his representative RN Dan Leeman on January 3, 1996. Bellaire informed Sonnleitner of the decision to demote him from his nurse manager position. Sonnleitner was offered a staff nurse position on the STEP unit and he accepted in order to maintain his employment with the state. Sonnleitner also was informed that he would remain on administrative leave until January 8, 1996.

44. Appellant Sonnleitner was formally advised of his involuntary demotion by letter dated January 3, 1996, from WMHI Director York. The letter provided in part:

This letter is to confirm your involuntary demotion to the position of Nurse Clinician 2 effective January 8, 1996. This action has been taken due to your failure to meet supervisor and administrative duties and violation of DH&SS Work Rules #1 and #7. Your salary will remain at \$24,430 for a period of (1) one year at which time your salary will be determined by the grid rate of a Nurse Clinician 2 and your seniority.

45. The work rules referenced in the demotion letter provide:

All employes of the Department are prohibited from committing any of the following acts:

1. Disobedience, insubordination, inattentiveness, negligence, or refusal to carry out written or verbal assignments, directions, or instructions.
7. Failure to provide accurate and complete information when required by management or improperly disclosing confidential information.

CONCLUSIONS OF LAW^F

1. These two cases (Case No. 94-1055-PC and 96-0010-PC) are properly before the Commission pursuant to §230.44(1)(c), Stats.
2. Respondent in each case has the burden of proving just cause for the discipline imposed.
3. Respondent has satisfied its burden in Case No. 94-1055-PC.
4. In Case No. 96-0010-PC, respondent satisfied its burden of proof with respect to just cause for imposition of discipline, but failed to establish the imposed discipline was appropriate and not excessive. Respondent's demotion of appellant to Nurse Clinician 2 is excessive, but a five-day suspension without pay is appropriate.

OPINION

As provided in §230.44(1)(c), Stats., the basic question in an appeal of a disciplinary action is whether there was "just cause" for the action imposed. Within that frame work, the particular questions to be answered are: 1) Whether the greater weight of credible evidence shows appellant committed the conduct alleged by respondent in its letter of discipline; 2) Whether the greater weight of credible evidence shows such chargeable conduct, if true, constitutes cause for imposition of the discipline; and 3) Whether the discipline imposed was excessive. *Mitchell v. DNR*, 82-0228-PC, 8/3/84.

^F The Conclusions of Law were amended to reflect the decision of the Commission.

The Three Day Suspension^G

Appellant does not dispute the facts concerning the September 30, 1994, incident. The immediate question is whether this conduct violated respondents work rules 1, 2 and 5 (Findings of Fact (FOF) #10-11).

Regarding rule 1, the evidence supports a conclusion that appellant received training about various WMHI policies, including prohibition against the use of “any unwelcome words or actions of a sexual nature,” making “offensive or suggestive comments” or “(telling) offensive jokes or teasing.” Respondent’s Exhibit 50, pp. 2-3. Also, Bellaire counseled and instructed appellant against inappropriate statements or actions of a sexual nature (FOF #4). Based on these undisputed facts and incontroverted testimony by Bellaire that she had instructed and cautioned appellant against such behavior, it is clear appellant violated respondent’s work rule 1.

With regard to work rule 2, respondent asserts that appellant deliberately intended to cause Miller discomfort or embarrassment by his remarks to her. Respondent argues that appellant had received formal training about sexual harassment policy, had been counseled a year earlier about sexually inappropriate statements by Bellaire, but that appellant “continued to speak inappropriately even after Ms. Miller said (a second time) ‘this is sick’ and after she said, ‘I don’t want to listen to this any more.’” In opposition, the appellant argues there is nothing in the record suggesting he was hostile toward Miller, he did not initiate the conversation, Miller was free to leave when she first indicated disapproval of RCT Peterson’s comment, and that no evidence was entered showing Miller suffered “mental anguish.”

Without question Miller suffered mental anguish. Her uncontroverted testimony supports this conclusion. Miller testified to telling appellant the remarks were “sick,” feeling uncomfortable and immediately leaving the room. That evening Miller felt compelled to discuss the incident with her husband, and the following work day she reported the matter to her supervisor. The more troublesome question is, whether appellant “deliberately” caused Miller mental anguish. The evidence presented on this

^G Changes were made to this portion of the discussion to reflect the rationale of the full Commission

point is less clear. It was common during shift change reports for FBTU staff to laugh and joke about patients. It also was commonly known that one patient on the unit masturbated excessively. One staff member (not appellant) joked about getting this patient a blow up doll as a therapeutic solution. Even the unit physician reportedly participated in sexual innuendo-laden conversations. Respondent's Exhibit 21.^H

There also is nothing in the record suggesting appellant had any feeling of ill will or animus toward Miller. They had worked together on the same unit for several months and engaged in numerous conversations, some of a humorous nature. The appellant testified that he did not believe Miller would find the comments offensive and he did not intend to cause Miller any mental anguish by anything he said. The appellant testified Miller smiled and did not appear offended, but that he never mentioned her pregnancy again after she said the comments were sick. Appellant then changed to talking about getting the patient a Packer blow up doll. Miller testified she believed appellant's comment, "Why, it never bothered you before," referred to prior conversations where she and other staff would "goof around," i.e. joking and discussing the deviant behavior of patients. This testimony is consistent with appellant's testimony that he did not intend to upset Miller. Given these circumstances, the evidence is insufficient to establish appellant "deliberately" intended to cause Miller mental anguish and the Commission cannot conclude that the appellant violated work rule 2.

As to work rule 5, the evidence supports a conclusion that appellant violated that rule. Appellant, at the October 4, 1994, pre-disciplinary meeting, acknowledged his comments to Miller on September 30, 1994, were inappropriate for a manager, and it is plain such comments are unbecoming, improper and inappropriate.

Next we consider the question of whether the imposed discipline—3 day suspension without pay—was excessive. In *Kleinsteiber v. DOC*, 97-0060-PC, 9/23/92

^H Respondent's exhibits 11, 12 and 13 were erroneously cited in the Proposed Decision and Order. They were not offered for admission into the record. The reference to them, as a result, was deleted.

(p. 12), the Commission addresses factors to consider in answering this question as follows:

Some factors which enter into this determination include the weight or enormity of the employee's offense or dereliction, including the degree to which, under the Safransky test, it did or could reasonably be said to tend to impair the employer's operation; the employee's prior record; the discipline imposed by the employer in other cases; and the number of these incidents cited as the basis for discipline for which the employer has successfully shown just cause. (citations omitted)

Respondent's imposition of the three day suspension with loss of pay was based on its determination that appellant had violated three work rules. However, respondent failed to prove appellant "deliberately" caused Miller mental anguish, an element of the second of the three work rules appellant was accused of violating. Even so, the Commission agrees (as argued by respondent in its objections to the proposed decision) that appellant's remarks, linking the patient's sexual behavior with Miller's condition of pregnancy, are sufficiently flagrant to support the imposed discipline. Moreover, the appellant's supervisory responsibilities included taking appropriate action to assure work rules were observed, i.e., in this instance, assuming his unit was free of "abusive language" and "other behavior unbecoming a state employee"; but here appellant was a participant in such prohibited conduct. For reasons expressed and based on the record, the Commission concludes the three-day suspension with loss of pay was warranted. See *Asche v. DOC, 90-0159-PC, 5/21/97*.

The Demotion¹

Respondent demoted appellant to Nurse Clinician 2 for violating work rules 1 and 7, when he allegedly, on December 4, 1995, committed three actionable offenses: 1) placed gum balls in the FBTU day room for patient access; 2) escorted three patients to the Big Canteen and treated them to ice cream; and 3) made a unilateral decision allowing a Level 1 patient to attend a special luncheon. The basic question here, as in the suspension case, is whether there was just cause for the imposed disciplinary action;

¹ This portion of the discussion was changed to reflect the rationale of the full Commission.

and the same method of analysis is employed here. Each incident will be addressed separately. However, it should be noted that respondent's general assertion with respect to each incident and collectively is that these alleged actions by appellant "sabotaged" the FBTU patient behavior treatment program.

I. Allegation one: Placing Gumballs in Day Room

The evidence establishes that on November 14, 1995, appellant, having received two packages of gum balls from Diane Meschefke of WMHI volunteer services, placed a bowl of them in the FBTU day room for distribution to the patients. Appellant treated the gumballs like other snacks provided by the hospital and made the decision to provide the gum to all patients. Between November 14 and 20, appellant was on vacation. Shortly afterward, appellant took additional leave for deer hunting. At some point, the appellant discussed whether the gumballs should be made available to all patients with Program Director Howard and some other staff members. One of the patients was using the gumballs as a replacement on days he did not earn canteen privileges. No decision was made as to whether the gumballs should be removed from the day room. While appellant was on vacation, the gum balls were removed from the day room. When appellant returned from vacation, no one told him it was wrong to place gumballs in the day room. Appellant testified that once after November 14th he observed gumballs in a container (not the one he had used) in the day room behind the RCT table. At the time, staff were present and patients could not obtain the gum balls without asking the staff for them. Appellant credibly testified he never placed gum balls in the day room after November 14, 1995. The Commission concludes that the appellant did not violate a work rule based on the gumball allegation.

II. Allegation 2: Treating Patients to Ice Cream

There is no dispute that on December 4, 1995, at approximately 1:30 p.m., appellant, together with an RN and an RCT escorted three patients to the lab for DNA testing under the newly enacted state sex offender law. The patients had the right to refuse the test. Appellant testified that two patients tended to be very resistive and one

could be very violent. Appellant's undisputed testimony was that he promised them a treat if they cooperated. The patients took the DNA test and, afterward, appellant testified he treated them to ice cream at the canteen using his own money. Appellant intended to use available unit coupons for reimbursement. Under the FBTU Credit Program (Respondent's Exhibit 37) at least one of the patients was prohibited from making purchases at the canteen. Appellant testified that given the circumstances, he believed he had supervisory discretion to resolve the problem by offering the patients an incentive. However well intended, the Commission concludes that the appellant failed to comply with the unit patient treatment plan and violated respondent's work rule 1, when on December 4, 1995, he treated three patients to ice cream at the canteen.

III. Allegation three: Special Luncheon Decision Regarding Level 1 Patient

The undisputed evidence is that on December 4, 1995, a staff psychologist in the OT clinic kitchen provided a special luncheon to FBTU patients. Under the patients' credit program all Level 1 patients are to have their meals on the unit. However, there had been some instances where the treatment team decided it was appropriate to allow Level 1 patients to attend special luncheons or dinners.

Respondent asserts that appellant violated work rule 1 by unilaterally deciding to allow a level 1 patient to attend the December 4, 1995, special luncheon. This allegation is more particularly described in Director of Nursing Bellaire's January 2, 1996, recommendation of discipline for appellant to WMHI Director Stanley York, which provides:

3. Violation of work rule 1. Based on the information provided it was determined that Sonnleitner violated work rule one when he unilaterally decided to send one patient to a special luncheon who had not earned it while holding a second patient on the unit. In his pre-disciplinary meeting Sonnleitner stated he had discussed the luncheon attendance with Roxanne Huxley and the two of them had decided together to allow one of the patients to go while holding the other back. Huxley denied any such conversation and stated she was not even present at the luncheon. In addition, Mary Howard, program director was available and should

have been consulted about such a decision but was not. Sonnleitner's actions were in contradiction to the treatment program of FBTU and countertherapeutic for the patients involved (Respondent's Exhibit 39).

The appellant credibly testified that he believed all patients were allowed to attend special occasions, if it was not likely the patient would be disruptive. Appellant also credibly testified to discussing with occupational therapist Roxanne Huxley about allowing one patient to attend the luncheon. Huxley did not specifically recall the discussion, except to the extent of possibly discussing names of patients whom would receive luncheon trays on the units. This testimony differs somewhat from Bellaire's Log Notes (Respondent's Exhibit 34) where Bellaire wrote that she spoke with Huxley on December 4, 1995, and "Huxley denied discussing who should attend the luncheon on that day." Also, contrary to the statement contained in Bellaire's recommendation, the hearing record established that Mary Howard was unavailable for consultation. Howard testified that she was at a meeting and returned after the patients went to the luncheon. The Commission concludes that the appellant did not violate a work rule with respect to the special luncheon allegation.

IV. Other Allegations: Violation of Work Rule 7, Other Misconduct

Bellaire's January 2, 1995, disciplinary recommendation of involuntary demotion, sent to York, included the following:

4. Violation of work rule 7. Based on the information presented by staff in the fact finding meetings held it has been determined that Sonnleitner violated work rule 7 when he provided management with inaccurate and incomplete information during his pre-disciplinary meeting.

In addition to his work rule violations Sonnleitner, based on the reports by staff, has been neglecting his duties as a nursing supervisor to the point where staff found it necessary to go to the program director for information and decisions which they had previously gone to their nurse manager for. He has also failed to participate in treatment activities on the unit such as patient review and treatment conferences. Sonnleitner reportedly spent much of his time daily in the day room area watching TV. Many of these performance issues were addressed in a focussed

PPDR during 1995. The focussed PPDR also included working cooperatively with the program director in unit decision making which he clearly has not.

In the involuntary demotion meeting on January 3, 1996 (FOF #17), Bellaire informed appellant that one violation of work rule 7 occurred based on inaccurate information he provided management at the time of his pre-disciplinary meeting. Bellaire also told appellant that “his actions were believed to be purposeful with the intent of thwarting the authority of the program director on FBTU” and that “his staff felt he has withdrawn from his leadership role on the unit.”

Respondent presented scarce, if any, evidence pertaining to its allegation that appellant violated work rule 7. Respondent never charged appellant with violating work rule 7 at his pre-disciplinary meeting, and appellant argues Bellaire mislead York and “made him an unwitting accomplice in her attempt to deprive Sonnleitner of due process.” In rebuttal, respondent only directs attention to Bellaire’s testimony that the imposed discipline was justified without a violation of work rule 7. Regardless, as initially noted, the evidence presented on this question is *de minimis* and does not support a conclusion that appellant violated work rule 7.

Respondent has established just cause for disciplinary action. The remaining question is whether the imposed penalty of demotion was excessive. In support, respondent argues that complainant’s discipline is comparable to discipline imposed on two other supervisory employes. (Respondent’s Exhibits R44, R51). The employe in the first comparison (R-44) was given a five-day suspension for “knowingly and with intent” failing to follow directions of a supervisor. The employe in the second comparison (R-51) failed to follow verbal and written instructions of her supervisor. Previously this employe had received a one-day suspension for violating the same work rule. Respondent concluded that a three-day suspension was appropriate for the second violation. The penalty of demotion for the appellant for treating at least one patient to ice cream in breach of respondent’s policies appears harsh in comparison.

We find respondent's argument untenable for several reasons. First, as previously opined, respondent failed to confirm two of three principal allegations, and capitulated with respect to the fourth. Second, considering the circumstances, appellant's decision as a supervisor to reward three patients for cooperating in a DNA test by providing them ice cream, breaching the credit program and violating work rule 1 (the only sustained allegation) is an insufficient reason for demotion. Prior to the three-day suspension, she had worked at WMHI approximately 14 years—six years as nurse supervisor—without incurring any disciplinary action. In terms of progressive discipline, the next step would be a 5 day suspension which the Commission concludes is appropriate here.

ORDER^J

Respondent's action of suspending appellant for three days without pay (case number 94-1055-PC) is sustained and this appeal is dismissed. Respondent's action of demoting appellant (case number 96-0010-PC) is rejected and this matter is remanded for action consistent with this decision. Jurisdiction is retained by the Commission to address any application for fees and costs which may be filed.

Dated: February 18, 2000.

DRM:rcr:941055Adec1

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Harold E. Sonnleitner
4225 W Breezewood Lane
Oshkosh WI 54904

Joe Leann
Secretary, DHFS
PO Box 7850
Madison WI 53707-7850

^J The Order section was modified to conform to the changes in the discussion section