

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BARBARA FEDERLIN, Appellant,

vs.

Secretary, **DEPARTMENT OF CORRECTIONS**, Respondent.

Case 16
No. 63077
PA(adv)-23

Decision No. 31094-A

Appearances:

Barbara Federlin, 3466 North Weil Street, Milwaukee, Wisconsin 53212, appearing on her own behalf.

Gloria J. Thomas, Assistant Legal Counsel, Department of Corrections, P.O. Box 7925, Madison, Wisconsin 53707-7925, appearing on behalf of the Department of Corrections.

DECISION AND ORDER

Barbara Federlin appeals the imposition of a disciplinary demotion that was effective on October 20, 2003. The parties agreed to the following issue for hearing:

Whether there was just cause for the action of demoting the Appellant that was imposed by letter of October 15, 2003.

The matter was heard on March 23, 2004, before Paul Gordon, Commissioner, serving as the designated hearing examiner. In her post-hearing brief filed on May 12, 2004, Appellant conceded there was just cause for the imposition of some discipline but contended that demotion was excessive. The hearing examiner issued a proposed decision on October 1, 2004. No objections were filed by the requisite date of November 1, 2004.

For the reasons set forth below, the action of the Respondent is affirmed. The Commission makes the following

Dec. No. 31094-A

FINDINGS OF FACT

1. Effective August 27, 2000, Appellant Barbara Federlin promoted into a Program Assistant Supervisor 2 position in the Region 3 (Milwaukee) office of the Division of Community Corrections, Department of Corrections (DOC). She successfully completed a mandatory 12-month probationary period. On April 1, 2002, she transferred from the Regional Office position to another Program Assistant Supervisor 2 position as office manager for Field Units 335/320 where she was directly responsible for supervising three Program Assistant positions. It is the Appellant's performance in the office manager position that serves as the basis for this appeal.

2. Daniel Isaacson, Corrections Field Supervisor, served as Ms. Federlin's immediate supervisor. Mr. Miles Hatch, a Corrections Field Supervisor, was her co-supervisor.

3. Respondent maintains a list of 31 Work Rules to regulate the conduct of its employees. Work rule violations are divided into three categories. Two of the categories relate to absenteeism/attendance problems, theft, abuse of inmates and other illegal conduct, none of which is relevant to this proceeding. The remaining category, Category B, is titled "Personal Actions and Appearance," and includes 23 rules.

4. Respondent has issued two schedules for progressively disciplining employees who have committed Category B violations. One of the schedules is to be applied to employees such as Ms. Federlin who are considered "exempt" for purposes of the Fair Labor Standards Act:

Disciplinary Actions for Category B violations are cumulative from the first violation of Work Rules until an employee has been free of any further violations for a period of twelve (12) months.

First Violation	Written Reprimand
Second Violation	Written Reprimand in lieu of a 1 day suspension
Third Violation	Written Reprimand in lieu of a 3 day suspension
Fourth Violation	From a five (5) day suspension without pay up to and including discharge (to be determined by the Appointing Authority)

. . . Violations, which seriously jeopardize or disrupt the security, health, safety and/or operations of the employing unit, inmates/residents, and/or staff, may be exempted from this disciplinary sequence and subject to disciplinary action up to and including discharge as determined by the Appointing Authority.

5. Appellant's office manager position description included the following position summary:

Under the general supervision of the Corrections Field Supervisor, this position serves as office manager for assigned Division of Community Corrections (DCC) unit(s). Primary responsibilities include coordinating office management and administrative operations; directing the maintenance of offender-driven data systems; and supervising assigned program support staff. In addition, this position is responsible for performing various fiscal, purchasing, and budgetary activities; managing the office's computer systems; managing forms and records; and providing program support to the Interstate Compact Specialist. This position exercises a considerable amount of individual initiative, independent judgment, and decision-making ability, while maintaining confidentiality.

The position description also identified 8 separate "goals" with associated time allocations:

- 30% A. Coordination of office management and administrative operations
- 20% B. Oversight of the maintenance of offender-driven data systems to ensure compliance with Division of Community Corrections policies and procedures.
- 20% C. Supervision and direction of assigned program support staff.
- 10% D. Performance of various fiscal, purchasing, and budgetary activities.
- 5% E. Management of computer systems.
- 5% F. Coordination of records and file management activities.
- 5% G. Provision of program support to Regional Interstate Compact Specialist.
- 5% H. Implementation of Affirmative Action/Civil Rights Compliance Plan within areas of responsibility in compliance with federal and state civil rights laws.

6. Appellant had responsibility for the following fiscal, purchasing and budgetary activities as part of Goal D:

- D1. Independently make decisions on routine office purchases.
- D2. Research major purchases, making recommendations to Field Supervisor.
- D3. Prepare necessary documents to initiate the purchase of needed goods and services.
- D4. Maintain capital inventory and coordinate the disposition of surplus office equipment/furniture.
- D5. Interpret and implement DOC/DCC fiscal procedures as necessary.
- D6. Compile fiscal, budget, or statistical reports requested by Field Supervisor, Regional Chief, or Central Office, utilizing spreadsheet software.
- D7. Review supply, printing, and internal service requisitions for accuracy and completeness; approve or reject as appropriate.
- D8. Verify travel reimbursement requests submitted by staff for accuracy and completeness.
- D9. Maintain and compile office expense data.
- D10. Prepare monthly expense report for Field Supervisor and Regional Chief.
- D11. Identify unit budgetary expenditure trends and make recommendations to alleviate expenditure problems as needed.
- D12. Audit vendor invoices for accuracy, reconcile discrepancies with vendors, and approve vendor invoices for payment.
- D13. Periodically audit receipt books.
- D14. Coordinate and monitor unit fleet car usage and maintenance to ensure local compliance with Department of Administration (DOA) fleet policies and procedures.
- D15. Process requests for Purchase of Offender Goods and Services (POGS); develop, adopt and implement systems to follow on unit POGS expenditures.

7. The Department of Administration (DOA) has the authority to establish statewide policies relating to financial matters. Those policies must be followed by all state agencies and help the agencies furnish services as efficiently and effectively as possible and avoid the duplication of efforts. The policies also assure the legislature and the governor that services are being provided to the public at agreed upon levels of quantity, quality and cost. The policies anticipate and resolve financial problems faced by the agencies. DOA has the authority to examine all books and other documentation relating to the purchase of supplies, materials and equipment. DOA may require the agencies to furnish any and all reasonable data or other information related to these functions.

8. DOC maintains special procedures for various financial activities related to the end of the fiscal year. Ms. Federlin was made aware of these procedures as they related to her responsibilities. Fiscal year FY 03 ended on June 30, 2003.

9. Some of the Appellant's responsibilities related to the "Purchasing Card" (P-Card), a credit card that is issued to various state employees to make purchases of items up to \$5,000 for official agency business needs. Every cardholder receives a biweekly account statement for information and reconciliation purposes. The cardholder is responsible for comparing the information on the statement to information recorded by the cardholder on a Purchasing Card Record Log. This reconciliation is to be performed upon receipt of every biweekly statement. After comparing the statement and the log, the cardholder must sign a statement verifying that the documents are in agreement and then promptly submit the log, the statement and all original receipts for each transaction to the cardholder's supervisor for review and approval. This process must be performed every two week period for which the cardholder receives a statement and may not be delegated to a co-worker. The supervisor must review the cardholder's submission, approve the transactions, sign the log and forward the materials to the unit's business office within 30 days following each statement date. DOC's Administrative Services Manual (ASM # 109) issued by its Bureau of Finance & Administrative Services specifies that any failure to comply with the purchasing card procedures may result in discipline.

10. Ms. Federlin was issued a P-Card and used it during the course of her employment to make purchases related to her work as office manager for Field Units 335/320.

11. Respondent regularly evaluates its employees' work performance and has designated that process as "Performance Planning & Development" (PPD). The stated purpose is to "identify major objectives and performance expectations/standards necessary to achieve satisfactory job performance and to record results." The PPD process includes a planning session at the beginning of the evaluation period and a results session at the end of the period.

12. Appellant's supervisor, Mr. Isaacson, prepared a list of performance expectations or standards for the Appellant in advance of a PPD planning session that was held on May 13, 2002. Mr. Isaacson, wrote that "Barb has difficulty with organizational skills, the ability to multi-task, and to set appropriate priorities."

13. The results session for the PPD was held on September 26, 2002. Mr. Isaacson noted that Appellant "has not met expectation" for 7 of the 33 expectations or standards listed on the planning document. All 7 of the expectations or standards fell within the main headings of "supervision and direction of assigned program assistant staff" or "performance of various fiscal, purchasing and budgetary activities." At the time she signed the completed PPD, Appellant acknowledged that steps had been "taken to improve organizational skills & to change priorities." Ms. Federlin also wrote that the "processing of all past fiscal, budget & financial items was completed 9/6/02."

14. In a letter dated October 17, 2002, Respondent issued a formal written reprimand to Federlin for violating Work Rules 1 and 4. The letter of discipline read, in part:

On July 8, 2002, you met with Corrections Field Supervisor Daniel Isaacson. During this meeting you were directed to have "monthly P.A. Sup. Conferences with the P.A. staff as well as monthly meetings." You were also directed by Supervisor Isaacson to "submit minutes from the meeting to Miles (C.F.S. Miles Hatch) and myself as well as the supervisory conference notes from her conferences." During the investigatory interview you acknowledged that you had not conducted any monthly meetings since [you] were directed to do so on July 8, 2002, you failed to conduct supervisory conferences with your staff until September 11, 2002, and have yet to turn in your conference notes of these meetings.

On August 23, 2002, Corrections Field Supervisor Miles Hatch directed you to meet with him on August 26, 2002, when you returned from your vacation, regarding the processing of financial bills. You failed to meet with or even to make an effort to meet with Supervisor Hatch on August 26, 2002. You called in sick on August 27th and August 28th. On August 29, 2002, Supervisor Hatch informed you that the financial bills were a priority and wanted to meet with you regarding all of the billings you had in your possession. You again failed to meet or make an effort to meet with Supervisor Hatch. During the investigatory interview you stated that you were on vacation the week before the 26th and that you were catching up. You further stated that on the 29th you did not have everything ready because you were ill on the 27th and 28th. You acknowledged that you should have gone to Supervisor Hatch and told him you were not prepared to meet.

On September 4, 2002, Supervisor Hatch told you again that you needed to meet with him regarding all financial billings in your possession at 8:00 a.m. on September 4, 2002. At 8:20 a.m. you had yet to report to Supervisor Hatch. Supervisor Hatch proceeded to your work area. You informed him that you had not forgotten about the meeting but you were working on some priority items given to you by Supervisor Isaacson. Supervisor Isaacson acknowledges giving you items to complete, but states that he never informed you that they were a priority.

At 8:30 a.m. you met with Supervisor Hatch regarding the financial items you left in his office and two additional billing items you brought to the meeting. During this meeting you stated that you did not have time to secure the additional items requested even though you indicated that you worked late on

September 4th and came in early on September 5th to do so. As you had still not gathered all of the requested information you met with Supervisor Hatch and Isaacson at 10:00 a.m. on September 6, 2002, to review all financial billings. You were informed that all of the items that you stamped the billing for during this meeting were to be copied and returned to Supervisor Hatch by the end of the day. During the investigation you stated that all of the copies were made on September 6th, but when you went to Supervisor Hatch's office he had already left for the day. You also stated that you did not leave the materials in his office because he had previously stated that you should not leave confidential materials on his desk and you should give them to him personally. You should have left a message informing him that you were in possession of all the materials he had verbally directed you to prepare by the end of the day and you would provide them to him immediately Monday morning. Instead you did not return these items until the afternoon of September 9, 2002.

15. Mr. Isaacson met with Ms. Federlin on December 12, 2002, for a PPD planning session. The PPD included the following "performance expectations or standards" for her fiscal, purchasing and budgetary activities

2.) Prepare all fiscal and budgetary reports for the office as needed. Process all telephone bills for the office, and for those billed through Purchase of Services for offenders. Process all POGS requests. Develop, adopt and implement systems to follow on unit POGS expenditures.

3.) Monitor the ordering of supplies for the office and approve and submit invoices for payment. Have all additions, deletions or changes in supply orders, including telephone and computer equipment, DOC forms, furniture, etc. approved by unit field supervisors in advance. Maintain a written log of all special purchases, with date of request & receipt, location and cost. E.g., telephones, voice mail recorders, labelers, etc. Develop, implement and record check-in/ check-out lists for office supplies for PA's and agents who are new or departing. . . .

5.) Audit vendor invoices for accuracy, reconcile discrepancies with vendors and approve vendor invoices for payment.

16. By letter dated February 21, 2003, Respondent issued Appellant a "formal written reprimand in lieu of a 3-day suspension" for violating Work Rules 1 and 4. The letter read, in part:

Since November 25, 2002, you failed to conduct a weekly pre-audit for money orders and then submit them to the DOC Cashier weekly as required for Program Assistant Michelle Woodard and Donald Jamnik. You informed both PA Woodard and Jamnik that they should hold the money orders because you did not have time to complete a pre-audit and send them into the cashier. . . .

In addition to failing to submit the money orders, you failed to audit the receipt book and Statement of Collections (DOC-254) of PA Woodard, Handy, and Jamnik. PA Woodard submitted her completed receipt book on July 3, 2002, and you failed to audit it for months. You failed to audit the receipt book and DOC-25 for PA Vickie Handy after she transferred on November 15, 2002, and before you reassigned the receipt book to PA Jamnik. PA Jamnik completed the receipt book and DOC-25 on November 26, 2002, you once again failed to complete the audit in a timely fashion. As mitigation, you stated that you were training a new program assistant and had other high priority duties assigned to you.

Finally, on December 18, 2002, you were directed by Corrections Field Supervisor Dan Isaacson to be the primary back-up for the receptionist for lunch and breaks, since PA Woodard was needed to assist with the ledger until it was caught up for the unit. You acknowledged that you would be the primary back-up. At 12:00 p.m. Supervisor Isaacson went to the reception area and discovered a program assistant from another work unit was covering the reception desk. You never received or asked for permission to have a program assistant from another unit cover the reception desk.

17. Mr. Hatch prepared a memorandum to Ms. Federlin on March 4, 2003, outlining some ways she could improve her performance in view of the prior discipline. Mr. Hatch wrote that he and Mr. Isaacson would be working with Appellant "to generate some positive work performance." The memorandum contained some specific directives, such as keeping her work area in appropriate order, the labeling and organizing of files, and setting aside time to meet with Mr. Hatch to review procedures for collections of court obligations and the auditing, receipting and remittance of these funds. Dates for these directives were set.

18. Mr. Hatch and Mr. Isaacson held another supervisory conference with Ms. Federlin on April 14, 2003. The notes of the conference accurately described what was discussed during the conference and included the following points:

Organization- We spoke with you regarding the expectation we had of you to have your desk organized as well as your file material organized and labeled. You indicated that it was 85% completed. We informed you that this should be 100% completed as the due date for this was on 3/21/03. You indicated that you would be able to complete this in a timely manner. We will be checking on this on **Monday April 21, 2003.**

Supervisor conference/Meeting Minutes- We discussed with you again the importance of completing minutes/notes from meetings and conferences from your staff and routing to myself and Miles. You indicated that you have not yet typed these up to date. We informed you that you should have a document that is preprinted and to take notes on this document to assist you in completing these at the conference as opposed to waiting. . . .

Prioritization- We discussed the issue of prioritizing your work. What we feel are priorities and what you feel is a priority are inconsistent. You should be able to start getting a better idea as to what should be a priority. If you are unsure come to Miles and myself for assistance. Work that I or Miles route to you does not need to be an immediate priority unless we specifically inform you of this. Otherwise our expectation is that it will be completed in a timely manner. If in doubt ask. We feel [you are] spending time on work when other work is more of a priority.

19. Federlin had been made aware that the last day to issue a purchase order obligations for FY-2003 was May 30, 2003, and that the last day for the decentralized Business offices to make June 30, 2003, entries would be on Thursday, July 17, 2003.

20. Mr. Hatch and Mr. Isaacson also convened a supervisory conference with Ms. Federlin on July 14, 2003. They discussed various procedures and the status of several matters. Topics included routing invoices, ordering supplies for other floors and employees, mileage forms and travel vouchers. Other matters discussed included handling PPDs, staff timesheets, receipt book audits, and a Unit 335 ledger audit. Some suggested actions were given to Federlin to correct problems noted in these areas. The two supervisors directed the Appellant to submit all outstanding bills in a timely manner. The supervisors also specifically referred to a June directive to submit budget items timely because the budget year was ending June 30th.

21. On or about August 19, 2003, Ms. Federlin submitted two P-Card statements, along with her related log and receipts, to Mr. Hatch. One of the statements was dated March 14, 2003, and the other was dated May 9, 2003. Both were submitted well beyond the two-week time limit specified in DOC's Administrative Services Manual. Mr. Hatch and Mr. Isaacson raised the matter with the Assistant Regional Chief, Peg Kendrigan, who directed them to look through Federlin's office for any additional material that might not have been properly processed. Hatch and Isaacson examined her office when Federlin was not present and discovered a number of additional documents that, along with the P-Card materials, served as the basis for the subsequent decision to demote the Appellant.

22. Ms. Federlin performed some of her job duties very well and she received compliments from various co-workers.

23. By letter dated October 15, 2003, Respondent notified Ms. Federlin that she was being demoted. The letter reads, in pertinent part:

This letter shall serve as formal notice of your disciplinary demotion from a Program Support Supervisor to a Program Assistant 2, effective October 20, 2003. This demotion is the result of your violation of the following Department of Corrections Work Rules:

- 1 - "Insubordination, disobedience, or failure to carry out assignments or instructions."
- 2 - "Failure to follow policy and procedure, including but not limited to the DOC Fraternalization Policy and Arrest and Conviction Policy."
- 4 - "Negligence in performance of assigned duties."

This action is being taken for your violation of the aforementioned work rules between the dates of March 14, 2003, and August 31, 2003. On March 14, 2003, and on May 9, 2003, you received the Purchasing Card statement for that respective time period. You were previously directed in June of 2003 to submit all of your outstanding billings in a timely manner as the budget year was ending on June 30, 2003. You were again directed to submit all outstanding billings in a timely manner on July 14, 2003. On August 18, 2003, you submitted the March 14, 2003 and the May 9, 2003, Purchasing Card statement to Corrections Field Supervisor Miles Hatch. Supervisor Hatch asked why you had submitted the statements so late, to which you responded that you did not have a good reason.

In addition to failing to submit the Purchasing Card statements, several items were discovered in your workstation on August 19, 2003, which had not been properly handled. You were in unauthorized possession of Region Purchase of Services material, which belonged to the Purchase of Service Coordinator and Performance Planning and Development results on a Corrections Field Supervisor. You were in possession of the Turnaround documents on offenders David Blake - dated 4/3/02, Larry Mitchell - 5/19/02, and Ronnie Horton - 5/1/02 that belonged in the agent offender case file. Finally, it was also discovered that you failed to properly process and file numerous invoices and phone bills (Please see attached for listing of invoices and phone bill). Several of these invoices dated back to 2001.

Your lack of judgment in these matters is extremely serious. Your continued insubordination accompanied with your failure to perform your assigned duties on a continued basis have permanently damaged your credibility as a Program Support Supervisor and effectively make it impossible for you to carry out the duties and responsibilities of the position. These incidents coupled with your previous discipline leave me no other recourse other than to demote you to a Program Assistant 2 position.

...

AMENDMENT #1

1. The improperly filed and/or processed items include:
 - A. Copy of invoice dated 4-12-01 in amount of \$97.75 for "phone kit" from Boise Cascade, which was marked for Jan Shorts (334) billed to State of Wisconsin/DOC Federal Grant (FDOA) which was not properly filed.
 - B. Original invoices dated 5-15-01 and 7-3-01 in amount of \$195.00 for a conference for women workshop for Supervisor Glenda Meeks (323), which was not properly processed and was not filed.
 - C. Copy of invoice dated 7-18-01 in amount of \$52.00 for motel room at Best Western for Peg Kendrigan which was processed for payment but had not been properly filed.
 - D. Original invoice dated 8-31-01 in amount of \$32.00 for supply purchases from Boise Cascade order date 8-30-01 marked for Administration which was not processed and was not properly filed.
 - E. Original invoice and sales slip dated 6-13-02 in amount of \$236.95 for purchase and labor for security cage for vehicle for Unit 335 from Streicher's which was not processed and was not properly filed.
 - F. Original phone billing dated 1-1-03 in amount of \$248.31 for EMP phone service with SBC Phone Company for DOC#326501, Agent 33501 which was not properly processed and was not properly filed.
 - G. Original phone billing dated 1-1-03 in amount of \$313.48 for EMP phone service with SBC Phone Company for DOC#304020, Agent 33501 which was not properly processed and was not properly filed.
 - H. Copy of invoice billing dated 1-22-03 in amount of \$405.00 for copy service from The Kubichek Office Products Group which was processed but was not properly filed.
 - I. Copy of invoice dated 4-24-03 in amount of \$1435.00 for office furniture from Badger State Industries which was processed but was not properly filed.
 - J. Copy of invoice dated 8-1-03 an amount of \$371.42 for office furniture from Badger State Industries which was not properly filed.

24. Ms. Federlin engaged in all of the conduct described in the letter of discipline.

25. Respondent has demoted other employees, including Correctional Field Supervisors, for violations of work rules 1, 2, or 4.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to sec. 230.44(1)(c), Stats.

2. The Respondent has the burden of proof and has sustained that burden.

3. There is just cause for demoting Appellant from her Program Support Supervisor 2 position to a position as a Program Assistant 2.

ORDER

Respondent's decision to demote the Appellant from a Program Support Supervisor 2 position to a Program Assistant 2 is affirmed and the appeal is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 24th day of November, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Parties

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Federlin vs. Department of Corrections

MEMORANDUM ACCOMPANYING INTERIM DECISION AND ORDER

In its recent decision of DEPARTMENT OF CORRECTIONS (DEL FRATE), DECISION NO. 30795, (WERC, 2/04), the Commission explained the legal standard it applies when analyzing an appeal of a disciplinary action under Sec. 230.44(1)(c), Stats.:

On appeal of a disciplinary matter the Respondent must show by a preponderance of credible evidence that there was just cause for the discipline. Section 230.34(1), Wis. Stats., requires that demotion of an employee with permanent status in class . . . be for just cause. The Courts have equated this to proof to a reasonable certainty by the greater weight or clear preponderance of the evidence. REINKE V. PERSONNEL BOARD, 52 WIS.2D 123 (1971); HOGOBOOM V. WIS. PERS. COMM, DANE COUNTY CIRCUIT COURT, 81-CV 5669, 4/23/84; JACKSON V. STATE PERSONNEL BOARD, DANE COUNTY CIRCUIT COURT, 164-086, 2/26/79. The underlying questions are: 1) whether the greater weight of credible evidence shows the appellant committed the conduct alleged by respondent in its letter of discipline; 2) whether the greater weight of credible evidence shows that such chargeable conduct, if true, constitutes just cause for the imposition of discipline; and, 3) whether the imposed discipline was excessive. MITCHELL V. DNR, 83-0228-PC, 8/30/84. In considering the severity of the discipline to be imposed, the Commission must consider, at a minimum, the weight or enormity of the employee's offense or dereliction, including the degree to which it did or could reasonably be said to have a tendency to impair the employer's operation, and the employee's prior work record with the respondent. SAFRANSKY V. PERSONNEL BOARD, 62 WIS.2D 464 (1974), BARDEN V. UW, 82-237-PC, 6/9/83.

We find that the greater weight of credible evidence shows that Federlin engaged in the conduct described in the letter of discipline, that the greater weight of credible evidence shows such conduct constituted just cause for discipline, and that the demotion from a Program Support Supervisor to a Program Assistant 2 is not excessive in view of the SAFRANSKY/BARDEN considerations.

1. The Conduct Issue

As noted above, Ms. Federlin has conceded there was just cause for the imposition of some discipline but contends that the demotion was excessive. Her post-hearing brief reads, in part:

The Appellant is appealing the degree of discipline imposed by the Department of Corrections. . . . The Appellant believes that the degree of discipline, that of demotion, is excessive. . . .

Just cause for imposition of discipline exists, but the issue is one of performance as opposed to work rule violations. As such, the discipline of demotion is excessive. Filing paperwork late, or not filing documents for which the actual work was completed, cannot be construed as a violation so serious that it impairs the employer's operation or undermines the public confidence in the Department of Corrections Division of Community Corrections.

The Commission construes this as a concession that Federlin engaged in all of the conduct described in the letter of appeal as well as a concession that there was just cause for the imposition of some discipline for the conduct. Even if she had not made the concession, the record supports the finding that she engaged in the conduct described in the letter of discipline dated October 15, 2003. Federlin's contentions relating to mitigating circumstances are addressed under the heading of excessiveness.

2. The Just Cause Issue

Federlin also does not contest whether there is just cause for imposition of discipline. While she frames the issue as "one of performance as opposed to work rule violations" (brief, p. 7), the greater weight of the credible evidence shows that her conduct violated three separate work rules. In determining whether certain conduct constitutes just cause for discipline, the Personnel Commission, and the Wisconsin Employment Relations Commission has followed the test set forth by the Wisconsin Supreme Court in *SAFRANSKY V. PERSONNEL BOARD*, 62 WIS 2D 464 (1974), i.e., whether some deficiency has been demonstrated which can reasonably be said to have a tendency to impair the performance of the duties of the position or the efficiency of the group with which the employee works. See, *DEL FRATE V. DEPARTMENT OF CORRECTIONS*, DEC. NO. 30795 (Feb. 27, 2004). Violation of multiple work rules impairs the efficiency and operations of Federlin's unit, the Division of Community Corrections and the Department of Corrections. The policies and procedures for purchase card use, fiscal year-end reporting, goods and services procurement, billing, filing and record keeping, all impact accountability, quality control, the ability to conduct audits and the prevention of fraud or abuse. The improper filing and retention of supervisory materials, another employee's performance review and inmate records impairs personnel administration and the supervision of those under the Agent's charge. Failure to follow instructions and directives impairs the reliability and credibility of the employee, Federlin, herself. This impairs the employer's operations.

The work rules prohibited certain types of conduct. A common element in the three rules involved here is the prohibition against not following directed duties and procedures. Federlin was aware of the work rules, policies and procedures. Her violation of work rules 1, 2 and 4 provides just cause for discipline. LARSEN V. DOC. 90-0374-PC, 91-0063-PC-ER, 5/14/92.

3. The Excessive Discipline Issue

The final step in the just cause analysis is to determine whether the level of discipline actually imposed by Respondent was excessive. The demotion from Program Assistant Supervisor to Program Assistant 2 takes into consideration the minimum factors required by the SAFRANSKY/BARDEN test recited above.

Federlin denies that her conduct “impairs the employer’s operation.” However, this is not the standard to be applied when determining whether the level of discipline was excessive. In SAFRANSKY, the court held that “the degree to which [the conduct] did or could reasonably be said to have a *tendency* to impair the employer’s operation” is one of the factors to consider. Actual impairment is not a requirement. Nevertheless, the record in the present case is sufficient to establish actual impairment. In TEWS V. PSC, 89-0150-PC, 89-0141-PC-ER, 6/29/90, the Personnel Commission (PC), the agency that formerly held authority to review appeals filed under Sec. 230.44(1)(c), Stats., concluded that “it is axiomatic that failure to meet the performance standards for a position, as has been shown here, impairs the performance of the duties of Appellant’s position.”

In this case the same conduct violates three work rules and is related to the underlying failure to follow several different policies, procedures and directives. This undermined the effectiveness of the DCC unit and compromised the integrity of the financial reporting system of the DOC.

The work rules and their application are set out in DOC Executive Directive 43. The work rules involved in this case fall within the scope of category B violations. Violations of category C rules may generate severe discipline, including discharge, for a first offence. Violations of category A rules generally anticipate a series of reprimands and suspensions (seven in total), but may include discipline as severe as reprimands and suspensions (seven in total), but may include discipline as severe as discharge under some circumstances. Category B work rule violations anticipate a shorter series of reprimands and suspensions (four), and may include disciplinary action up to and including discharge under some circumstances. However, exceptions are specifically permitted to this disciplinary sequence.

This is the third discipline of Federlin within 12 months. The first two also involved substantial problems with financial records, billings and related procedures. Respondent issued Federlin the first discipline, a written reprimand, by letter dated October 17, 2002. This level of discipline was consistent with the schedule set forth in Finding 4. However, Respondent veered from the schedule when, in the second letter of discipline issued on February 21, 2003, Respondent issued a written reprimand in lieu of a 3 day suspension, rather than a written reprimand in lieu of a one day suspension. The February 21st disciplinary action is not being substantively reviewed in the present case. Instead, it serves as the base level of discipline from which progressive discipline is to be applied when considering whether the October 15, 2003, demotion was excessive. The schedule provides that for the next violation after the imposition of a written reprimand in lieu of a 3 day suspension, the discipline should fall within the range “from a five (5) day suspension without pay up to and including discharge (to be determined by the Appointing Authority).” While discipline does not have to be meted out in incremental steps (*SAFRANSKY V. PERSONNEL BOARD*, 62 WIS.2D 464, 215 N.W. 2D 379 (1974); *PAUL V. DHSS*, 87-0147-PC, 4/19/90; *KODE V. DHSS*, 87-0160-PC, 11/23/88; *MILLER V. DOC*, 99-0108-PC, 5/8/02) the subject discipline fell in the middle of the range designated in the schedule after Federlin’s February 21st written reprimand in lieu of a 3 day suspension. Thus, the demotion was not inconsistent with the concept of progressive discipline for an employee, such as Federlin, who was “exempt” under the Fair Labor Standards Act.

Among other things, the letter of discipline outlines at least five incidents where financial records were not processed and filed and five more that were not properly filed. Federlin argues that filing paperwork late, or not filing documents for which the actual work was completed, cannot be construed as a violation so serious that it undermines the public confidence of the Department of Corrections Division of Community Corrections. This argument is not persuasive. The impairment to the DOC’s operations here is significant. For example, the purchase card procedures are to ensure, as stated, that the purchase volume appears reasonable, the card is being used for appropriate transactions, documentation is complete, the agency is following the required procedures and that proper internal controls exist with regard to the program. Budget year-end reporting is crucial for State-wide and local DOC budgeting and accountability. Discrepancies of even relatively small dollar amounts, if multiplied over numerous offices and several years, would call into question the reliability and efficiency of an entire department, let alone individual units. It is no consolation that the total dollar amounts in this case are not large. It is the integrity of the entire system which is impacted. If accurate and timely information is not maintained through a large State agency then no one inside or outside of government would know if any errors were small or large, or if actual fraud and abuse were being committed. Failure to follow procedures, policies and directives of superiors is a failure to meet reasonable performance standards and it impairs the efficiency of the group with which the employee works. The continuing failure to meet reasonable work expectations meets the burden of proof in regard to this part of the just cause analysis. *RUFENER V. DNR*, 93-0074-PC-ER, ETC., 8/4/95.

Similarly, the possession by Federlin of documents such as a supervisor's PPD, offender records, and purchase of services materials of others impacts the ability of other DOC employees to do their jobs. Other employees must have their complete documents to do their jobs effectively and efficiently.

It is reasonable to anticipate that errors and disputes are going to occur in the purchase card program as well as in any other budgeting and record keeping activity. Federlin argues that her actions were a matter of "performance" and that there was no moral or unethical misconduct in this case. However, that does not justify not performing the duties and procedures in the first place. There are embedded procedures to address errors or disputes in these processes, and revisions can be made if needed. Yet, those corrective procedures themselves must be followed. This minimizes the potential severity of the impact of any mistakes. Failure to follow procedures aggravates the impact of mistakes.

Federlin argues that she should have received more training. But it is not clear that her failure to follow the procedures and directives was due to any lack of training. Moreover, she did have access to materials and personnel. She had several conferences with her supervisors about policies and procedures. She was encouraged by her supervisors, both orally and in writing, to work with them on performance issues and if she had questions to discuss them with them. This is reflected in the March 4 and April 14, 2003 memorandums. Her PPDs for the periods prior to the actions resulting in her discipline (both signed by her prior to her violations), outline specific financial, procedural and budgetary expectations. Her disciplinary letter of October 17, 2002 certainly put her on notice that failure to prioritize and attend to financial record processing and record keeping could result in additional discipline. No other units experienced the type or degree of problems and there is no persuasive evidence that others in Program Assistant Supervisor positions received more training. Federlin's violation of work rules cannot be said to be due to any lack of proper training and supervision. *ZEHNER V. PERS. BOARD, DANE COUNTY CIRCUIT COURT, 156-399, 2/20/78.*

Federlin points out that she provided support to other Corrections Field Supervisors, Program Assistant Supervisors, Agents and Program Assistant staff, including personnel not in her direct area. Even though she may have been helping them to function more efficiently, this does not excuse her from performing her own duties. She had been told by her supervisors to prioritize her work. She admits that she "often put her work 'on the back burner' to do things for them." (Brief, p. 5) This may explain why she failed to perform her duties, but it does not excuse their nonperformance or lessen the impact on operations.

Federlin was in a supervisory position. The example she set for her subordinates has the potential to impact her unit. The example set by supervisory employees is considered when deciding issues of excessive discipline. *HEBERT V. DHSS, 89-0093-PC, 6/27/90; DEL FRATE V. DOC, DEC. NO. 30795, 2/27/04.* In turn, her supervisors must be able to rely on the accuracy and completeness of the work for which she is responsible. Failure to perform her duties, insubordinately, negligently or otherwise, damages her credibility as a supervisor as the letter of discipline noted.

The demotion here is consistent with discipline in other cases considered by the Personnel Commission. A 10-day suspension without pay and a demotion to a non-supervisory position was found appropriate in a corrections case where allegations of fraternization were not proven and there were no significant security implications, but where there were deficiencies in the health care practiced by a health care manager with no previous discipline. *KLEINSTEIBER v. DOC*, 97-0060-PC, 9/23/98. Here, there are multiple work rule violations, two previous disciplines, and no suspension. In *ROBERTS v. DHSS*, 80-0169-PC, 3/17/83, a three day suspension was upheld when the appellant, a program assistant, was negligent or inattentive in processing a certification request which resulted in a two week delay in the effective date of a restoration, where appellant did not file documents on the days identified by her supervisor and had a filing backlog of up to one month and where appellant had disregarded her supervisor's express instructions to use the word processing center for all form letters. The appellant had previously received a written reprimand for a comparable violation. In this case, Federlin was a supervisor, had already received a written reprimand in lieu of a suspension for a second violation, was several months late in processing some purchase card records and budget year-end reporting, did not file other documents, did not follow several supervisory instructions on filing and financial record processing, and had other unauthorized documents in her possession. This was Federlin's third discipline. Compared to *ROBERTS*, she had more violations, her actions more severely impaired the organization's operations and she had more instances of prior discipline.

As noted above, Federlin contends that her discipline should be viewed as an issue of performance. But her discipline was for violating work rules, not for performance standard issues. Even so, that topic will be addressed because of its close association to the underlying facts of the work rule violations. The Personnel Commission has previously considered the effect of continued work performance problems in analyzing the issue of excessive discipline in a termination case.

Respondent's primary responsibility was not to appellant, but to the public that it serves and respondent finally concluded, after a considerable investment of its resources, that the public interest would not be served by allowing appellant to continue in a position the performance standards of which she had failed to meet on a consistent and continuing basis. *TEWS v. PSC*, 89-0150-PC, 89-0140-PC-ER, 6/29/90.

In *RUFENER v. DNR*, 93-0074-PC-ER, ETC., 8/4/95, the Personnel Commission concluded that a discharge for poor performance was not excessive where the record showed that the employer had "devoted considerable resources to its attempt to improve Appellant's performance to a satisfactory level and that, despite this, Appellant's performance did not improve to this level."

The Commission in other parallel fact situations has concluded that discharge is not an excessive action. *BUCHANAN v. DOR*, 81-289-PC, 12/2/82; *RUFF v. STATE INVESTMENT BOARD*, 80-0105, 0160, 0222-PC 8/6/81, *AFF'D DANE CTY. CIR. CT.*, *RUFF v. STATE*

PERSONNEL COMM., 81-CV-4455, 7/23/82, AFF'D WIS. CT. APP., 82-1572 (DIST IV, 11/8/83). This is not a discharge case and the discipline is not for performing beneath established goals, but the parallels are clear. Federlin has been disciplined three times for consistently and continually failing to perform procedures and directives concerning financial, billing, budget, purchasing and related matters which were her responsibility. The public would not be well served by allowing her to continue in her previous position. Her demotion addresses these considerations and is less severe than discharge.

The level of discipline here is consistent with the demotion in EFT v. DHSS, 86-0146-PC, 11/23/88, where there were several work rule violations by a regional supervisor who had been disciplined at least twice previously. The demotion here is also consistent with the discipline imposed in KODE v. DHSS, 87-0160-PC, 11/23/88. In KODE, the Appellant, who had previously been counseled for disobeying an order, was demoted from his position as a police lieutenant in a correctional facility. The demotion was based on disobeying a direct order. The appellant committed a breach of security and management could no longer rely on her to perform her duties as a lieutenant.

Given Appellant's repeated violation of the same or similar work rules, her consistent failure to follow financial and other record keeping procedures, the generally progressive yet unavailing nature of the previous discipline over the course of 12 months, and the impairment of DOC's operations, Respondent's action of demoting Ms. Federlin was not excessive.

CONCLUSION

Respondent DOC has satisfied its burden of establishing that Appellant, Barbara Federlin, committed acts which constitute just cause for demoting her from Program Support Supervisor to Program Assistant 2, and that such demotion is not excessive. Respondent's action is affirmed.

Dated at Madison, Wisconsin, this 24th day of November, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner