

VERMONT LABOR RELATIONS BOARD

APPEAL OF:)	
)	DOCKET NO. 88-69
IONE JOHNSON)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On November 29, 1988, Ione Johnson ("Appellant") filed an appeal pursuant to 3 VSA §1001(a), alleging that her dismissal from employment, during her original probationary period with the State Department of Social Welfare ("Employer"), resulted from discrimination against her on the basis of her sex.

Hearings were held on February 23 and March 21, 1989, in the Labor Relations Board hearing room, before Board Members Charles McHugh, Chairman; Catherine Frank and Louis Toepfer. Appellant represented herself. Assistant Attorney General Michael Seibert represented the State. Neither party filed briefs.

FINDINGS OF FACT

1. Appellant began work as an income maintenance review specialist in the Employer's St. Johnsbury district office on June 13, 1988. She was required to serve a six-month probationary period. As a review specialist, Appellant performed technical level work involving determination of applicant eligibility for a range of social welfare programs. Duties involved review for continuing eligibility for public assistance programs and required considerable human relations skills in dealing with clients (State's Exhibit 10).

2. There are a total of seven review specialists in the St. Johnsbury office and three intake specialists. At all times relevant,

Faye Hickock, income maintenance supervisor, was the supervisor of these 10 employees and Philip Goss was the district director.

3. When first hired, a review specialist in the St. Johnsbury office undergoes an extensive period of training before assuming a caseload. It is typical for this period to take three and one-half to four months. During this period, any work done by the review specialist on a case is reviewed by the income maintenance supervisor or a senior review specialist who is assigned to assist in training the employee. Approximately three and one-half months to four months after being hired, the review specialist typically assumes responsibility for a caseload but the employee's work is still checked by the income maintenance supervisor. Subsequently, when the supervisor believes the specialist's work no longer requires continual supervisory review, the review specialist no longer is required to have the supervisor review work and assumes total responsibility for the caseload. This may occur as early as five months after the review specialist is hired.

4. Error rates for review specialists are calculated as the percentage of cases in which their entries erroneously affect benefits. The Employer places much emphasis on error rates because the Federal government imposes sanctions of less Federal monies if error rates are too high.

5. When Appellant was first employed, Thomas McFarland, a senior review specialist, was assigned to work with her on cases. There were two or three instances in which McFarland and Hickock gave Appellant conflicting advice on how to deal with cases. Subsequently, Goss decided to have Hickock solely train Appellant, and relieved

McFarland of any training responsibilities. During the time he was training Appellant, McFarland expressed concern to Goss and Hickock about Appellant's performance. McFarland observed that Appellant had difficulty retaining explanations given to her on how to handle particular situations which arose in cases (State's Exhibit 2).

6. On October 3, 1988, slightly more than three and one-half months after beginning employment, Appellant assumed responsibility for her own caseload while still having Hickock review her work. Prior to assuming this caseload responsibility, Appellant received training in the same manner and to the same extent as other review specialists in the St. Johnsbury office had during their probationary period.

7. By October 14, Hickock became sufficiently concerned about Appellant's errors in processing cases and Appellant's approving of eligibility without referring the case to Hickock that she expressed her concerns to Goss. Goss and Hickock decided that they would have a senior review specialist, Judy Gillespie, work with Appellant to see if her performance problems could be resolved. The following minimum goals were set by Goss and Hickock, and communicated to Appellant on October 18, for Appellant to meet within the next two weeks:

- Complete data input and eligibility determination with no more than a 10 percent error rate.
- Prioritize work so that all benefits are reviewed in a timely manner.
- Develop a strategy to organize the workload to get maximum benefit of your time.
- Develop thought processes to clearly understand the complete system of eligibility determination and benefit delivery system.
- Accept responsibility for the work completed and the decisions made (Appellant's Exhibit 2)

8. Gillespie began working with Appellant on Monday, October 17. During that week, Gillespie spent most of her time with Appellant, assisting her on organizing and checking her casework for errors. Gillespie worked with Appellant until November 4.

9. Gillespie reviewed all the cases Appellant worked on during the month of October to determine Appellant's error rate. Gillespie determined an error had been committed if the client's benefits were being incorrectly affected. Gillespie determined that Appellant had made 28 errors in 104 cases during October for an error rate of 26.9 percent, and that her error rate for October 17 forward was 34 percent (i.e. 21 errors in 61 cases). Appellant's caseload during October was relatively high, but within the range expected of review specialists (State's Exhibit 3).

10. On November 4, 1988, Goss informed Appellant by letter that he was dismissing her, stating that "your error rate is in excess of the goal" (Appellant's Exhibit 3).

11. Appellant's error rate at the time of dismissal was substantially higher than that of other review specialists at the St. Johnsbury office at or near the end of their probationary periods.

12. Goss and Hickock did not treat male employees preferentially to female employees with respect to employment issues.

13. During the 12 years that Hickock has been income maintenance supervisor in the St. Johnsbury district office, she has been involved in the dismissal of two other probationary employees. Both employees were men.

14. At the time of Appellant's dismissal, five of the nine remaining intake or review specialists in the St. Johnsbury office were women. A woman subsequently was hired to fill the position left vacant by Appellant.

OPINION

At issue is whether the Employer discriminated against Appellant on the basis of her sex, in violation of 3 VSA §1001(a), by discharging her from her probationary employment as a social welfare review specialist.

The Board has established that Appellant carries the initial burden of establishing a prima facie case of discrimination. McDonnell Douglas Corp. v. Green, 411 US 792 (1973). State of Vermont v. Whitingham School Board, 138 Vt. 15, 19 (1979). Grievance of Rogers, 11 VLRB 101, 125 (1988). Grievance of Smith, 12 VLRB 44 (1989).

Once Appellant establishes a prima facie case, the burden shifts to the Employer to articulate some legitimate, non-discriminatory reason for the employee's termination. McDonnell Douglas, supra, at 802. Should the Employer carry its burden, the Appellant must then have the opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the Employer were not its true reasons, but were a pretext for discrimination. McDonald Douglas, supra, at 804. Texas Department of Community Affairs v. Burdine, 450 US 248, 253 (1981).

In applying these standards to this case, we first consider whether a prima facie case of discrimination has been established. We conclude that a prima facie case has not been established because it is evident that Appellant was not qualified to be retained as a review specialist. The burden of demonstrating that Appellant is qualified for retention is limited to showing that she possesses the skills necessary for retention. Powell v. Syracuse University, 17 EPD 6405, 6408 (1978). Smith, supra, at 54. The fact that Appellant's error

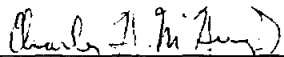
rate at the time of dismissal was substantially higher than that of other review specialists at the St. Johnsbury office, near or at the end of their probationary periods, and other evidence at the hearing leads us to conclude that Appellant did not demonstrate she possessed the skills necessary for retention.

ORDER


Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Appeal of Ione Johnson is DISMISSED.

Dated this 21st day of April, 1989, at Montpelier, Vermont.

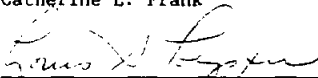
VERMONT LABOR RELATIONS BOARD



Charles H. McHugh, Chairman



Catherine L. Frank



Louis A. Toepfer