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IDAHO PERSONNEL COMMISSION

STATE OF IDAHO

ZWEIGART, LA REE,)	
)	
Petitioner/Appellant,)	IPC NO. 08-13
)	
vs.)	DECISION AND ORDER
)	ON PETITION FOR REVIEW
)	
IDAHO STATE UNIVERSITY,)	
)	
Respondent.)	
_____)	

This matter came for hearing on Petition for Review on June 23, 2009 before the Idaho Personnel Commission with Commissioners Mike Brassey, Pete Black and John Cowden present. Commissioners Evan Frasure and Clarisse Maxwell were not present and did not participate in consideration of this matter. The Petition for Review concerns the October 8, 2008 decision of Hearing Officer Kelly Kumm (hereinafter "Hearing Officer") affirming La Ree Zweigart's (hereinafter "Appellant" or "Zweigart") dismissal from classified service. Zweigart was represented by Nick L. Nielson and Respondent Idaho State University (hereinafter "Respondent" or "ISU") was represented by Bradley H. Hall.

Following a four hour evidentiary proceeding, the Hearing Officer determined that ISU established, by a preponderance of the evidence, that Zweigart engaged in conduct subject to discipline pursuant to Idaho Code § 67-5309(n)(5) and IDAPA 28.01.01.190.01.e – insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the department (hereinafter “IPC Rule 190.01e.”) and affirmed her dismissal.

I.

FACTUAL AND PROCEDURAL BACKGROUND

A. Background and Prior Proceedings

Zweigart was terminated from her position as Administrative Assistant I with the Department of Sociology, Social Work and Criminal Justice in the College of Arts and Sciences at ISU effective June 17, 2008. On May 30, 2008, Zweigart received a Notice of Contemplated Action from Dr. Maureen Brandon, Interim Dean of the College of Arts and Sciences. The notice indicated that ISU was considering the termination of Zweigart’s employment for violation of IPC Rule 190.01e. The notice alleged that Zweigart had sent an email to “selected members of the department inappropriately naming the departmental faculty and incidents you believe to be responsible for the action taken. You had been specifically instructed not to do so and that those were the very actions that were disruptive and inappropriate to maintaining a collegial atmosphere.”

Zweigart timely appealed to the Commission on July 10, 2008. After an approximately four hour hearing on September 27, 2008, the Hearing Officer issued

findings of fact and conclusions of law finding that ISU had established, by a preponderance of the evidence, that Zweigart had engaged in misconduct justifying termination of her employment pursuant to Rule 190.01.e. Appellant timely filed her petition for review with the Commission on October 27, 2008.

B. Findings of Fact

Zweigart was, at all times pertinent to this appeal, an employee of ISU Department of Sociology, Social Work and Criminal Justice. Zweigart was directly supervised by Dr. Ann Hunter, Department Chair. The duties of the Administrative Assistant I included overseeing the departmental budget, submitting time cards, ordering, coordinating and arranging for supplies and equipment, providing support for the Department Chair and for faculty in three programs, maintaining forms and supervising their completeness, filing, and supervising a work study student. See Ex. K.

On December 19, 2007, Dr. Hunter gave Zweigart a Letter of Reprimand. See Ex. 1. This letter described an incident in which Zweigart failed to remove copies of confidential information from students' final exams and another in which she allegedly interrupted a meeting Dr. Hunter was having with a third party. The Letter of Reprimand alleged Zweigart violated Idaho State University Personnel Policy which mirrors IPC Rule 190.01e. (inefficiency, incompetency or negligence in performing her duties and insubordination while demonstrating conduct unbecoming a state employee or detrimental to the good order and discipline of the department). The letter required Zweigart to improve her work performance, including a requirement that Zweigart follow the directives of her supervisor and that Zweigart desist from "making hostile remarks to

me or any other member of the department.” Ex. 1. Zweigart signed the Letter of Reprimand, but, in her written reply to this Letter of Reprimand, did not agree with the accusations regarding “hostile remarks.” Ex. 2. She wrote she had “no idea what Ann is talking about with the hostile remarks.” *Id.*

On January 8, 2008, Zweigart was provided a letter advising her that “her overall performance evaluation was being taken to Does Not Achieve performance standard” The “rating” was to remain in place for thirty (30) calendar days after which time her performance was to be reevaluated. See Ex. 3. Although this letter did not provide any specific, detailed instances, the letter alleges that on January 7, 2008 Zweigart involved faculty in matters between Zweigart and her supervisor that did not pertain to them, thus “creating disharmony and tension in the department . . . by criticizing me and by complaining about your work situation” to them. Apparently, Zweigart shared things with faculty about her troubled working relationship with Dr. Hunter, including the December 19, 2008 Letter of Reprimand. Dr. Hunter described Zweigart in the January 8 letter as being “openly hostile, rude, critical, and unprofessional.” Dr. Hunter described Zweigart’s attitude as “disruptive to the efficiency and well-being of the department” Again, Zweigart was given specific areas in which she was to improve within the next thirty (30) days, including “to refrain from questioning the intent or the assignments of her supervisor, treating the supervisor, faculty and co-workers with courtesy and respect and maintaining a pleasant work environment.” Ex. 3.

On January 9, 2009, Zweigart wrote a response to Dr. Hunter’s January 8 letter addressed to the ISU Human Resources Director, David Miller. Ex. 4. In a nutshell, Zweigart’s response contained a narrative of perceived problems she had with Dr.

Hunter and attempted to explain how various, apparently verbal reprimands concerning job performance issues were not her fault and set forth her position that Dr. Hunter is the problem and has been unreasonable in evaluating Zweigart's performance. *Id.*

Apparently, Zweigart's attitude and performance in January of 2008 improved sufficiently and Dr. Hunter returned Zweigart's rating to satisfactory at the conclusion of the thirty (30) day review period. Dr. Hunter found that Zweigart's performance had improved in all of the areas previously described as deficient. Ex. L.

However, by letter dated May 9, 2008, Dr. Hunter again placed Zweigart on "Does Not Achieve" performance standard status. Dr. Hunter listed Zweigart's resistance to assisting faculty members and, more importantly, continuing to involve faculty in matters between her and Zweigart by criticizing Dr. Hunter and complaining about her work situation to them. Once again, Dr. Hunter advised Zweigart of the areas which needed to be improved over the next ninety (90) days, all of which were nearly identical to areas needing improvement which had been previously listed. In conclusion, Dr. Hunter stated "insubordination will no longer be tolerated." Ex. 5.

Shortly after receiving this letter, on May 12, 2008, Zweigart emailed nine other selected faculty members. Ex. 6. The email clearly complains of the latest rating from Dr. Hunter and attempts to explain her point of view. The final paragraph states "I am insubordinate and disrespectful once again and if I don't straighten (sp) my act up she is going to fire me." *Id.*

Staci Jensen-Hart, an Assistant Professor in the department, was one of the recipients of the email from Zweigart. Jensen-Hart responded to Zweigart by email indicating that she was "not comfortable with receiving" the email. She testified she was

appalled and concerned that some people were left off the email and that “this kind of talking was going on.” Findings of Fact, Conclusions of Law and Order, p. 4. Jensen-Hart felt the email appeared to be disruptive by bringing other staff into a personnel issue between an employee and supervisor. Ex. 6.

Dr. Gesine Hearn, another Assistant Professor in the department, testified concerning her interactions with Zweigart. Findings of Fact, Conclusions of Law and Order, p. 4. Dr. Hearn testified that on May 9, 2008, she asked Zweigart to obtain a purchase order form for her to which Zweigart told Dr. Hearn to get the form off the internet and that she did not have time to get the form for Dr. Hearn. At this point, Dr. Hearn, Dr. Hunter, and Zweigart all agreed that Dr. Hunter intervened and reminded Zweigart that she had been warned not to question the intent of an assignment of any faculty member. *Id.* at 4-5. Dr. Hearn testified she thought Zweigart’s email was “extremely divisive.” *Id.* at 5. Due to Zweigart’s email Hunter sent a letter to the Dean recommending Zweigart’s dismissal. Ex. 7.

Cyd Crue, Janis Stitt, Gregory C. Leavitt, and Debbie Francis are all faculty members of the same department and all testified on behalf of Zweigart. Findings of Fact, Conclusions of Law and Order, p. 5. Crue, an Assistant Professor, testified that she had not felt supported by Dr. Hunter over prior, unrelated issues and that Crue was required to go to the Dean of the college to get her matter resolved. *Id.* Stitt testified that the day after Zweigart attended a friend’s funeral in early December 2007, Dr. Hunter came to her and asked her what she should do about Zweigart. *Id.* Leavitt and Francis both testified that they were also faculty members working under Dr. Hunter and

that they were aware of at least one other employee who had quit her job in the department because of personality differences with Dr. Hunter. *Id.*

In her initial briefing to the Commission and in her Supplemental Memorandum filed April 29, 2009, Zweigart has set forth her version of events related to her employment, primarily focusing on characterizing Dr. Hunter as “the epitome of horrifying bosses.” See Supplemental Memorandum in Support of Petition for Review, p. 2. She does not deny sending the May 12 email to faculty, for which she was ultimately terminated; however, she argues there was no specific ISU policy prohibiting such an act and, therefore, no basis for discipline and that she was unaware she might be fired for doing so. Supplemental Memorandum, pp. 7-9; Initial Briefing, p. 21. Zweigart testified at the hearing that she did not feel she was undermining Dr. Hunter’s authority by writing the May 12 email and sending it to the nine faculty members. Findings of Fact, Conclusions of Law and Order, p. 5.

II.

ISSUES

- A. Did ISU prove by a preponderance of the evidence that Appellant violated IPC Rule 190.01e.?
- B. Is the Idaho Department of Labor’s determination of eligibility for unemployment compensation relevant evidence in IPC proceedings?

III.

STANDARD OF REVIEW

When a matter is appealed to the Idaho Personnel Commission it is initially assigned to a Hearing Officer. I.C. § 67-5316(3). The Hearing Officer conducts a full

evidentiary hearing and may allow motion and discovery practice before entering a decision containing findings of fact and conclusions of law.

In cases involving Rule 190 discipline, the state must prove its case by a preponderance of the evidence. IDAPA 15.04.01.201.07. That is, the burden of proof is on the state to show that at least one of the proper cause reasons for dismissal, as listed in I.C. § 67-5309(n) and IDAPA 15.04.01.190.01, exist by a preponderance of the evidence.

On a petition for review to the Idaho Personnel Commission, the Commission reviews the record and any transcript and briefs submitted by the parties. I.C. § 67-5317(1). Findings of fact must be supported by substantial, competent evidence. *Hansen v. Idaho Dep't of Correction*, IPC No. 94-42 (December 15, 1995). The Commission exercises free review over issues of law. The Commission may affirm, reverse, or modify the decision of the Hearing Officer, may remand the matter, or may dismiss it for lack of jurisdiction. I.C. § 67-5317(1).

IV.

DISCUSSION

A. Proof of Cause for Discipline.

The question before the Commission is whether ISU established proper cause for Appellant's termination by a preponderance of the evidence and whether the Hearing Officer's findings of fact are supported by substantial, competent evidence. In proving insubordination under Rule 190.01e., ISU must show, beyond a preponderance of the evidence, that Zweigart acted knowingly or with reckless disregard for the

reasonable directives, rules, or other mandates of her employer. *Whittier v. Idaho Dep't. of Health and Welfare*, 137 Idaho 75, 44 P.3d 1130 (2002).

Zweigart contends the Hearing Officer's review and decision are in error because the Hearing Officer did not consider the lack of specific ISU policy prohibiting discussion of personnel matters with faculty members and, in essence, that Zweigart did not know such an act was insubordinate or in violation of Rule 190.01e.

Zweigart's argument concerning the lack of a specific policy prohibiting emailing faculty members concerning personnel issues is without merit. There need not be a specific policy prohibiting an act or omission before a classified state employee may be disciplined for such an act or omission. Indeed, it is impractical (and likely impossible) to write a policy that would cover every conceivable manner and circumstance whereby an employee might commit a "for cause" violation. In essence, Idaho Code § 67-5309(n) and IPC Rule 190.01 set forth state policy concerning the disciplining of classified state employees, setting forth those particular grounds for doing so, including Rule 190.01e.

While there are instances where the violation of an express policy provides grounds for discipline under Rule 190.01, it certainly isn't the exclusive basis for such discipline. In fact, often there is not a specific, express policy prohibiting certain employee conduct, yet, clearly such conduct is subject to discipline under Rule 190.01. See *Webster v. Idaho Dep't of Health and Welfare*, IPC No. 96-14 (Decision and Order on Petition for Review, November 14, 1997) (widely distributing a letter of protest regarding a supervisor); *Munch v. Board of Corrections*, 105 Idaho 53, 665 P.2d 1063 (1983) (making false statements knowingly or with reckless disregard for their truth or

falsity when such statements could do nothing but bring the employer and its principal officers in to disrepute); and *Horne v. Idaho State University*, 138 Idaho 700; 69 P.3d 120 (2003) (becoming upset during a meeting with supervisors and slamming a pad and paper on a supervisor's desk and leaving the meeting without permission).

Zweigart testified she didn't believe she was undermining Dr. Hunter's authority in sending out the email. Findings of Fact, Conclusions of Law and Order, p. 5. However, she did so in the face of Dr. Hunter's reprimands for "involv[ing] faculty in matters between you and me that do not pertain to them . . . by criticizing me and by complaining about your work situation" and in so doing, creating "disharmony and tension in the department." Ex. 3; Ex 5. It's hard to see how sending the email isn't undermining the authority of her supervisor. In briefing, Zweigart also asserts she was simply seeking constructive feedback in sending the email to faculty. Supplemental Memorandum in Support of Petition for Review, p. 4. Upon review, the email can hardly be reasonably characterized as seeking constructive feedback. It appears to be more characteristic of "venting" and complaining to faculty about her work situation and Dr. Hunter's most recent reprimand, which, regardless of her subjective intent in sending the email, ironically and significantly amounts to conduct she was specifically instructed to avoid.

There was testimony from the faculty members at the hearing, some in support of Zweigart and others not. Those in support of Zweigart generally testified about unrelated issues they had with Dr. Hunter and that they were aware of at least one other employee who quit her job because of personality differences with Dr. Hunter. Findings of Fact, Conclusions of Law and Order, ¶ 9, p. 5. Others were bothered by receiving

the email. Dr. Jensen-Hart indicated she was “not comfortable with receiving [the] email” and that it was “a personnel matter that calls for direct communication between you and Ann.” Ex. 6. She felt the sending of the email had “potential to disrupt the working relationships within our department.” *Id.* She also testified she was appalled and concerned that some people were left off the email and that “this kind of talk was going on.” Findings of Fact, Conclusions of Law and Order, ¶ 7, p. 4. Dr. Hearn testified she thought the email was “extremely divisive.” *Id.* at ¶ 8, p. 5.

In this matter, the Hearing Officer rendered findings of fact, reviewing the evidence introduced in support of Appellant’s misconduct. The Hearing Officer determined there was sufficient evidence to support Appellant’s dismissal pursuant to Idaho Code § 67-5309(n) and IDAPA 28.01.01.190.01.e. From review of the record, exhibits, and decision of the Hearing Officer, it appears there is substantial, competent evidence to support the findings of fact that are crucial to the Hearing Officer’s decision.

Most critically and clearly, Zweigart did, in fact, send the May 12, 2008 email to nine faculty members complaining about Dr. Hunter’s May 9, 2009 letter regarding her “Does Not Achieve” performance standard status. Zweigart did this despite being reprimanded twice in writing for involving faculty in matters not pertaining to them, instead to be appropriately left between her and her supervisor.

In fact, Zweigart sent the May 12 email to faculty complaining about her work situation, and in essence criticizing Dr. Hunter, directly following receipt of the May 9 letter from Dr. Hunter in which she is reprimanded for doing exactly that sort of thing. This demonstrates insubordination; a knowing, reckless disregard for reasonable directives of the employer. Further, certain faculty members who received the email

found it to be divisive and disruptive to the working relationships in the department to the detriment of good order and discipline in the department. Ex. 6; Findings of Fact, Conclusions of Law and Order, ¶¶ 7-8, pp.4-5; Rule 190.01e.

B. Department of Labor Unemployment Compensation Eligibility Determinations Are Not Relevant in IPC Proceedings.

Zweigart also argues the Hearing Officer should have recognized the Idaho Department of Labor's determination (Decision of the Appeals Examiner, Ex. H) of her eligibility for unemployment compensation (in which it found ISU had no policy "prohibiting employees from discussing their own personnel matters with co-workers") as evidence that ISU had no cause for her termination under Rule 190.01e.

Determinations by the Department of Labor, Industrial Commission regarding employee eligibility for unemployment benefits have no relevance in IPC proceedings. *Webster v. Idaho Dep't. of Health and Welfare*, IPC No. 96-14 (Decision and Order on Petition for Review, November 17, 1997, p. 8). The rules and standards regarding misconduct for unemployment compensation purposes are different from those applicable in IPC matters concerning dismissal for cause. The two administrative proceedings arise out of different statutory provisions, have different purposes, and utilize different standards of proof in reaching a determination. *Id.* In fact, these differences are recognized in the statutory scheme governing unemployment compensation. Idaho Code § 72-1368(11)(b) specifically provides that "[n]o finding of fact, or conclusion of law contained in a decision or determination rendered pursuant to this chapter by an appeals examiner, the industrial commission, [or] a court . . . shall have preclusive effect in any other action or proceeding" Idaho Code § 72-1368(11)(b).

While the Hearing Officer admitted the Decision of the Appeals Examiner as Exhibit H (ISU stipulated thereto), he apparently afforded it no weight in reaching his decision since it is not at all mentioned therein. Simply put, Industrial Commission determinations on unemployment compensation eligibility of former classified state employees have no bearing on whether a state agency has shown cause for disciplinary termination under the Personnel System Act and IPC rules.

V.

CONCLUSION

The Hearing Officer conducted the four-hour hearing and was able to judge credibility of witnesses and consider the weight of the testimony and relevancy of the exhibits in making findings of fact and rendering his decision. There is substantial and competent evidence in the record to support of the Hearing Officer's findings of fact and decision.

The Hearing Officer's decision affirming ISU's termination of Appellant is upheld.

VI.

STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

(1) That the findings of fact are not based on any substantial, competent evidence;

(2) That the commission has acted without jurisdiction or in excess of its powers;

(3) That the findings of fact by the commission do not as a matter of law support the decision. Idaho Code § 67-5318.

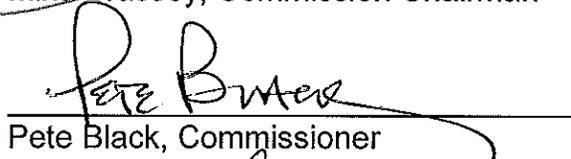
DATED this 30th day of July 2009.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION



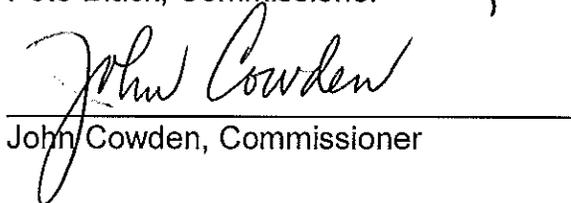
A large, stylized handwritten signature in black ink, appearing to read "Mike Brassey".

Mike Brassey, Commission Chairman



A handwritten signature in black ink, appearing to read "Pete Black".

Pete Black, Commissioner



A handwritten signature in black ink, appearing to read "John Cowden".

John Cowden, Commissioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by the method stated below on this 30th day of July, 2009.

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