

**IDAHO PERSONNEL COMMISSION**  
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**IDAHO PERSONNEL COMMISSION**

**STATE OF IDAHO**

<b>MARSA PLUMMER,</b>	)	
	)	
<b>Appellant,</b>	)	<b>IPC NO. 17-1</b>
	)	
<b>vs.</b>	)	<b>DECISION AND ORDER ON</b>
	)	<b>PETITION FOR REVIEW</b>
<b>IDAHO INDUSTRIAL COMMISSION,</b>	)	
	)	
	)	
<b>Respondent.</b>	)	
_____	)	

This matter is on petition for review from the May 15, 2017 Findings of Fact, Conclusions of Law and Preliminary Order (“Preliminary Order”) of Hearing Officer Jean Uranga (“Hearing Officer”) denying Appellant Marsa Plummer’s (“Appellant” or “Plummer”) appeal and upholding the Idaho Industrial Commission’s (“Respondent” or “Industrial Commission”) termination of Appellant from classified service.

The Hearing Officer found that Respondent had sufficient factual and legal basis for dismissal of Appellant based on job performance failure to meet established performance standards over a lengthy period of time pursuant to IDAPA 15.04.01.190.01.b. (“IPC Rule 190.01.b.”). Appellant timely appealed the Hearing Officer’s May 15, 2017 decision on June 8, 2017.

The Commission requested and obtained the transcript for the evidentiary hearing before the Hearing Officer, and issued a briefing schedule for the parties. Briefs were timely received from both parties and oral argument was scheduled for December 14, 2017. On December 11, 2017,

Appellant requested oral argument be vacated. Respondent had no objection to waiver of oral argument and so indicated on December 11, 2017. The Commission, therefore, vacated oral argument and took the matter under advisement on the established administrative record before it, including, but obviously not limited to, the hearing transcript and briefs of the parties.

## **I. FACTUAL BACKGROUND**

The relevant facts are laid out concisely by the Hearing Officer in the Preliminary Order, pp. 1-5, set forth in the record and the Commission hereby affirms and adopts the Hearing Officer's Findings of Fact stated therein. Based on the exhibits and the hearing transcript, it is clear the Findings of Fact are supported by substantial evidence in the record. A more thorough, lengthy chronological factual background relied upon as basis for discipline by the Respondent is set forth in the Notice of Contemplated Action ("NOCA") set forth in the record as Exhibit N. Exhibits A-M, clearly provide substantial evidence for the facts set forth in the NOCA and, ultimately for the Findings of Fact and Conclusions of Law set forth in the Preliminary Order.

Appellant did not provide a response to the NOCA in time allowed prior to the Industrial Commission's ultimate decision and notice of termination. While not challenging a majority of the factual findings, Appellant has consistently maintained that the Industrial Commission has never illustrated established performance standards for the Fiscal Department (and her position as Financial Support Technician), and that the performance objectives for accuracy are unreasonable and unattainable.

## **II. ISSUE**

Did the Industrial Commission prove by a preponderance of the evidence that there was basis for discipline of Appellant pursuant to IPC Rule 190.01b.?

### **III. STANDARD OF REVIEW**

The standard of review on disciplinary appeals to the Commission is as follows:

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 15.04.01.201.06. 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. Once a single violation is established on any proper cause issue, it is not the function or the jurisdiction of the Commission to second-guess the state's decision on the level of discipline imposed.

On a petition for review to the Idaho Personnel Commission, the Commission reviews the record, any transcript submitted, and briefs submitted by the parties. I.C. § 67-5317(1). Findings of fact must be supported by substantial and competent evidence. *Hansen v. Idaho Dep't of Correction*, IPC No. 94-42 (December 15, 1995). We exercise 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). *Zweigart v. Idaho State University*, IPC No. 08-13 (Decision and Order on Petition for Review, July 30, 2009).

### **IV. DISCUSSION**

Ultimately, the crux of Appellant's appeal is that she wasn't provided "established performance standards", wasn't provided adequate feedback on performance and how to improve performance, and that ultimately requiring her to do 100% accurate work every day is unattainable;

that it's an unreasonable performance expectation. The record does not reflect support for her contentions.

**A. Established Performance Standards.**

Although only generally stated, the job description for Appellant's position as a Financial Support Technician does set forth the primary objective for the position to "[a]ccurately account for all items related to accounts receivable." Exhibit G, unnumbered p. 15. In addition, more definitively, the Performance Review standard for an employee's quality of work for the position measures their "work in terms of consistency, thoroughness, and accuracy;" examples of which include: "Completes work accurately and thoroughly." Exhibit G, p. 5.

Furthermore, and rather significantly, from the first performance evaluation after her hire, dated March 25, 2013 (See Exhibit A), and continuously until her termination in December 2016 (3 ¼ years later) the Appellant was repeatedly informed of her expected performance standard. Appellant's first Performance Review on March 20, 2013, conducted after her probationary period, records that her Supervisor had "discussed the need for increasing accuracy in her work." (See Exhibit A, pg. 2.) Seven months later, on October 25, 2013, her Supervisor sent her a memo reiterating her concern about the continued lack of accuracy in Appellant's work and stating the department's "goal of complete accuracy meant no errors." (See Exhibit B.) The Appellant's Performance review for the period ending March 31, 2015, under the Quality Performance Standards, informed Appellant that: "Fiscal's goal is to achieve 100% accuracy." (Exhibit D, pg. 5.) That same Performance Review, under Objectives for Next Review Period, set detailed performance standards for accuracy during the next performance period. (Exhibit D, pg. 8.) Six months later, on September 4, 2015, her new Supervisor sent Appellant a memo outlining the specific accuracy performance standards that she was expected to meet during the next six month

performance period. (Exhibit E.) Even beyond this, review of the transcript and other Industrial Commission exhibits, shows documentation of many meetings between Appellant and her supervisor, Therese Ryan, going over her performance over a recent time period. Exhibit F (Performance Meeting Notes- 29 Sep 2015 through 28 Jan 2016), Exhibit H (Performance Meeting Notes- 27 Apr 2016 through 8 Jan 2016), Exhibit J (Performance Meeting Notes- 15 Jun 2016 through 24 Aug 2016) and Exhibit L (Performance Meeting Notes – 31 Aug 2016 through 24 Oct 2016).

The evidence in the record does not support Appellant's position of not knowing what was expected from her performance, and to contrary, shows ample feedback was consistently provided regarding her performance and how to improve it over the final 3 ¾ years of her employment with Respondent.

**B. Evidence Establishes Appellant's Performance Failed to Meet Established Performance Standards.**

Appellant has maintained the position that her work was generally accurate and that the Respondent set an unreasonable method to calculate her error rate. She argues it was unreasonable to treat an entire batch as being 0% accurate when there may only a single entry or minimal entries with errors. However, at the evidentiary hearing, her supervisor, Therese Ryan testified about "batches" and how they are processed and explained why any batch given back requiring an addition, update, change, or deletion is an error. Ryan testified that batches can contain between 1 and 99 entries of accounts, payable, for example<sup>1</sup>, and are processed through the Stars system in a lump. Transcript p. 15, lines 9-20. Therefore, if there are any entries with errors in a particular

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<sup>1</sup> Ryan also testified that Appellant's average batch contained 15 entries and, on average, 3 errors per batch, based on what she had seen over the past six months. Transcript, p. 30, lines 5-18, p. 31, lines 16-21.

batch, the batch is returned without approval and processing, and corrections must be made and reprocessed before Ryan could release to Stars. Transcript p 15, lines 22-25, p. 16, lines 1-17.

When Ryan became Appellant's supervisor in July 2015, she noticed several errors in her work and ultimately established clear performance expectations including setting forth what constitutes an error and how they are calculated. These objectives were also set forth in a September 4 memo outlining performance objectives. Transcript p. 9, lines 3-21; Exhibit E.

Appellant further argues that "the requirement of 100% accurate work every day is unattainable;" implying that disciplinary action was taken because she did not achieve that goal. Brief, pg. 8. However, disciplinary action against Appellant was not taken because she could not achieve 100% accurate work. The record shows that the Appellant's Supervisors set reasonable and achievable performance standards that were designed to lift Appellant's performance to an acceptable level over time. It wasn't until her third Performance Review, in March of 2015, that her Supervisor found it necessary to set specific goals for Appellant's accuracy for her next review period. Even then, the goals were set in terms of the number of errors, not a percentage; which started at a baseline of 18 errors to no more than 3 errors. Exhibit D., p. 8. When Appellant's new Supervisor started, she did set goals in terms of percentages, with a final goal of 100% accuracy over a three month period. Exhibit E. She was never able to meet the accuracy goals in any given month and toward the end, accuracy declined. After another three months of weekly counseling with Appellant, the Supervisor wrote her final Corrective Action Plan Review on November 4, 2016, and reported that Appellant's accuracy rate for Crime Victims batches for the prior three months was 27, 46 and 43%. The action taken against Appellant was not because she did not achieve 100% accuracy; it was because she could not achieve even 50% accuracy in her work.

**V.  
CONCLUSION**

The record in this matter shows a lengthy, laborious attempt by two different supervisors at the Industrial Commission to work with Appellant, counsel Appellant, and to improve quality of her work to a level acceptable for her position. It isn't as if she wasn't provided ample opportunity over the last 3 ¾ years of her employment. Further, there was detailed documentation via performance evaluations, and multiple corrective action plans in that time period.

The Industrial Commission has proven by a preponderance of the evidence that Appellant has failed to meet established performance standards over the course of her employment and had just cause in terminating her from employment pursuant to IPC Rule 190.01b. The Commission unanimously affirms the Industrial Commission's termination.

Commissioners Mark Holubar, Diana Bishop, Sara E. Griffin, and Amy Manning CONCUR.

**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.

BY THE ORDER OF THE  
IDAHO PERSONNEL COMMISSION

  
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Mike Brassey, Commission Chairman

**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 2 day of February, 2018.

FIRST CLASS MAIL and STATEHOUSE MAIL

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