

OCT 22 2002

BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

CIVIL SERVICE COMMISSION

In re the Appeal of

KELLY GEIGER,

Appellant,

vs.

SEATTLE TRANSPORTATION
DEPARTMENT

City of Seattle

Respondent

MEMORANDUM DECISION AND
ORDER MODIFYING
HEARING EXAMINER'S DECISION

CSC Appeal No. 01-01-007

This matter comes before the Civil Service Commission on cross-review from both the Respondent, Seattle Department of Transportation ("Department") and Appellant, Mr. Geiger ("Geiger").

The Commission considered the following pleadings and submissions, the exhibits attached thereto¹:

- 1) Department's Petition for Review;
- 2) Department's Brief in Support of Reversal;
- 3) Geiger's Cross-Petition for Review of Hearing Examiner's Findings of Fact and Conclusions of Law;
- 4) Geiger's Brief in Support of Reversal of Due Process Findings in the Hearing Examiner's Decision;
- 5) Geiger's Response to the Department's Petition for Review;
- 6) Department's Response to Geiger's Cross-Petition for Review;
- 7) The Commission's September 24, 2002 Order on Review;
- 8) Department's Supplemental Brief Concerning Classification of Appellant; and,
- 9) Geiger's Brief Supporting Hearing Examiner's Decision that Kelly Geiger was a Regular Employee at the Time of His Discharge From The City of Seattle.

For the reasons stated below, the Decision of the Hearing Examiner is **Modified**.

¹ Both parties submitted pleadings and exhibits that were outside the scope of the Commission's September 24, 2002 Order on Review. The Commission did not consider any of these pleadings in reaching this decision. They will not be entered into the record for this case, and will be returned to the parties.

1 **I. Facts:** Appellant Kelly Geiger was a structural painter from 1986 until his termination, which was
2 effective October 2000. Mr. Geiger grieved his dismissal under the provisions of the collective bargaining
3 agreement. In settlement of his grievance, his termination was converted to a demotion to the position of painter.
4 He was reinstated effective April 30, 2001.

5 On June 13, 2001, Mr. Geiger had an altercation with his supervisor, Ms. Herron. During that altercation,
6 Mr. Geiger used disparaging language towards Ms. Herron. Upon their immediate return to the shop, Mr. Geiger
7 repeated his comments to the shop supervisor, Mr. Bradley, and by telephone to Mr. Bradley's supervisor, Mr.
8 Mortenson. Mr. Mortenson took Mr. Geiger to Mr. Chew, the Roadway Structures Manager. Mr. Geiger once
9 more repeated his comments about Ms. Herron.

10 On June 27, 2001, Mr. Geiger was notified that he was being recommended for a 30-day suspension, and
11 was informed of his *Loudermill* rights. On July 18th, the Department Director conducted the *Loudermill* hearing.
12 During that hearing, Mr. Geiger yelled at the Department Director. The Department Director disagreed with the
13 recommendation for a 30-day suspension, and instead decided to terminate Mr. Geiger's employment. Mr. Ge.
14 was informed of this decision by letter dated July 27, 2001 and mailed July 30, 2001.

15 **II. Probationary status.** The Department raises, for the first time on review, the question of whether the
16 Commission has jurisdiction to hear this case. The Department alleges that Mr. Geiger's demotion pursuant to an
17 April 21, 2001 Settlement Agreement (Exhibit 8) converted his employment status from that of a regular
18 employee to that of a probationary employee. Geiger contends that the Settlement Agreement between him and
19 the Department provide that his return to work would be as a regular employee.

20 Personnel Rule 8.3.200 (C) describes the process to demote a regular employee. It states in relevant part
21 that "[t]he Director shall require the employee to complete a probation period if the employee does not have prior
22 regular service in the class to which demoted."

23 In October, 2000, the Department terminated Mr. Geiger's employment. He grieved that termination
24 under the provisions of the Joint Crafts Council Collective Bargaining Agreement ("CBA"). In settlement of that
25

1 grievance, Mr. Geiger entered into a Settlement Agreement with the Department. The relevant part of that
2 Agreement is as follows:

3 2.0 In consideration of the release set forth above, the City agrees to provide Geiger with
4 the following relief:

5 2.1. The Discipline will be changed from discharge to demotion. Geiger will be
6 reinstated to employment with the City of Seattle, Seattle Transportation, in the position of
7 Painter, effective April 30, 2001. After one year of employment as a Painter, Geiger will be
8 reappointed as a Structural Painter, provided that, during the one year period, he does not commit
9 any major disciplinary offense as that term is defined, by the applicable bargaining agreement,
10 and provided that Geiger successfully completes or is successfully completing the Employee
11 Assistance Program described in paragraph 2.3 below.

12 The Commission does not assert that it has the authority to interpret the provisions of this or any
13 collective bargaining agreement. However, the language used in the Settlement Agreement raises the question of
14 whether, by entering into the Settlement Agreement, Mr. Geiger and the Department intended that Personnel Rule
15 8.3.200 (C) would not apply to Mr. Geiger. Since the Settlement Agreement is ambiguous as to whether the
16 parties intended to effect the application of Personnel Rule 8.3.200 (C) as it applies to Mr. Geiger, the
17 Commission will look to extrinsic evidence as well as to the conduct of the parties to determine their intent.

18 Mr. Geiger states in his Affidavit that he did not agree to be placed on probationary status as a result of
19 signing the Settlement Agreement. Geiger Declaration, page 2. The Settlement Agreement contains no language
20 expressly providing for a new probationary period, nor does it provide notice to Mr. Geiger that his status would
21 change to that of a probationary employee. None of the Department's correspondence to Mr. Geiger since his
22 return to work mentioned probationary status. Specifically, neither the Department's June 27, 2001 notification
23 of discipline (Exhibit 13) nor its July 27, 2001 "Loudermill" decision (Exhibit 18) say anything that would
24 indicate the Department considered Mr. Geiger's status as anything but a regular employee. Finally, the
25 Commission notes with particular disfavor the Department's 'discovery' of this issue for the first time on review,
when the Department's conduct since Mr. Geiger's return, and through the original hearing in this matter, has
been consistent with treating Mr. Geiger as a regular employee.

1 The Commission concludes that, pursuant to the Settlement Agreement, the parties intended to modify
2 provisions of Personnel Rule 8.3.200 (C) as applied to Mr. Geiger. Therefore, upon his return to work in the
3 classification of Painter, Mr. Geiger did not lose his status as a regular employee. The Commission has
4 jurisdiction to hear this appeal.

5 **II. Application of Progressive Discipline.**

6 The Department claims on review that the Hearing Examiner erred in her consideration of comparative
7 discipline and in her application of City Personnel Rules pertaining to progressive discipline. The Commission
8 agrees.

9 Adopting the Hearing Examiner’s Findings of Fact 10 through 17, the Commission nonetheless concludes
10 that Hearing Examiner’s Conclusions of Law Numbers 2 and 3 misapply the law to these facts. The Hearing
11 Examiner’s decision to impose a ten-day suspension does not adequately account for Mr. Geiger’s responsibility
12 in escalating the severity of his outburst. Mr. Geiger not only called Ms. Herron, his immediate supervisor, a
13 “bitch,” but when she questioned him, he immediately repeated that slur (Finding of Fact Number 10). Then, Mr.
14 Geiger returned to the shop “yelling and screaming,” repeated the slur to Mr. Bradley, and used additional
15 profanity (*id*). Still later the same day, Mr. Geiger repeated the slurs to Mr. Bradley’s supervisor, Mr. Mortenson
16 and repeated them yet again to Mr. Chew (Findings of Fact Numbers 11, 12).

17 The Commission concludes that Mr. Geiger’s actions are more serious than the actions of other
18 employees used by the Hearing Examiner for the purpose of comparison. Mr. Geiger’s unacceptable, aggressive
19 behavior continued through four levels of supervisors. The Commission notes that Mr. Geiger has served the City
20 for fifteen years, and therefore is reluctant to uphold his termination. However, the Commission also notes with
21 extreme disapproval Mr. Geiger’s inability to accept responsibility and to control his anger both during the
22 incident and one month later, at his Loudermill hearing before Mr. Grigsby. The Commission finds his use of
23 unprovoked profanity towards fellow employees and supervisors unacceptable. Additionally, Mr. Geiger’s
24 refusal to accept personal responsibility for his actions and his inability to control his anger towards his
25 supervisors lead this Commission to impose the most severe discipline it can, short of termination. While the

Commission has the authority to award any remedy it deems appropriate, the Commission feels very strongly that back pay is not warranted in this case.

Based on its conclusions, the Commission enters the following:

ORDER

1. Mr. Geiger's termination is **reversed**.
2. Mr. Geiger's termination shall be converted to a thirty (30) day suspension without pay.
3. Mr. Geiger shall not be awarded back pay or benefits.

CITY OF SEATTLE CIVIL SERVICE COMMISSION


Kenneth R. Morgan, Commission
Chair


Ellis H. Casson, Commissioner


Elizabeth Ford, Commissioner

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