

OB 87-0425

ARBITRATION

OHIO REHABILITATION SERVICES COMMISSION

and

O.C.S.E.A. LOCAL 11 A.F.S.C.M.E. A.F.L.C.I.O. (Isabel Jackson Grievance)

DECISION AND AWARD

The issues presented in this proceeding is whether the five (5) day suspension of the Grievant by the Ohio Rehabilitation Services Commission (hereinafter "Commission") on January 12, 1987 through January 16, 1987 was without "just cause" and therefore in violation of Section 24.01 of the parties' Collective Bargaining Agreement; and whether the disciplinary action taken was commensurate with the offense.

The following joint exhibits were admitted into evidence:

1. Contract between the State of Ohio and O.C.S.E.A., Local 11, A.F.S.C.M.E.
2. The grievance trail.
3. Prior disciplinary actions.
4. Office Memo dated February 27, 1985, entitled "Case Operation Goals and Standards".
5. Case Management Plan dated January 15, 1986.
6. Final Management Plan assessment, dated February 26, 1986.
7. Handwritten list by Grievant of claims, dated October 6, 1986.
8. Handwritten list by Grievant of claims, dated October 21, 1986.
9. Case Management Plan, dated August 31, 1984.
10. Case Management Plan, dated July 18, 1985.
11. Notarized Affidavit of Laura Stehura.
12. Notarized Affidavit of Charles Taylor.
13. "Management Plan" Memo from Leonard Herman, dated October 17, 1983.

In addition, the following exhibits were also admitted into evidence:

Management Exhibit A. Desk audit of Grievant, dated November 6, 1986.

Management Exhibit B. Desk audit of Grievant, dated November 12, 1986.

Union Exhibit A. Compilation of disability claims, dated October 27, 1986.

Union Exhibit B. Compilation of disability claims, dated November 3, 1986.

The facts are as follows:

The Grievant, who has been employed since 1981 with the Bureau of Disability Determination (BDD), a bureau of the Commission, is a Disability Claims Adjudicator I. The Grievant had previously been suspended for one (1) day in January, 1983 and in August, 1985 for neglect of duty, i.e., unexplained time lapses (UTL's) on claims received by the Grievant for adjudication. In addition, Grievant was demoted from her classification of Disability Claims Examiner II to Disability Claims Examiner I on November 5, 1984 for her inability to control her case load. As stated by Chris Elia, Disabilities Claims Supervisor, the policy developed by the Commission was based on a need to move on disability claims quickly due to the claimants' needs for finances. Oftentimes such claimants have no other source of income, because they are unable to work. Therefore, it is required of all Adjusters (Examiners) to process claims as quickly as possible without error.

Mr. Elia stated that BDD operates from Title II and Title XVI of the Social Securities Act in determining disability claims. He testified that standards had been developed by the Commission adjudicators, including the Grievant for

expeditious handling of claims. He stated that the goal of the Commission is that adjusters should try to expend three (3) working days for meaningful action to be taken on each claim. Each adjudicator should spend no more than five (5) working days for a meaningful action. In order to effectively move through the claims, each adjudicator would receive three (3) disability claims per day on average.

Mr. Elia testified that he supervised the Grievant from 1983 through 1986. He stated that the Grievant had problems taking timely actions on claims within the maximum five (5) working day goal. As a consequence, Mr. Elia developed a case management plan to help the Grievant eliminate UTL's on January 15, 1986. This plan was a six (6) week plan wherein the Grievant was to reach the goal of five (5) working days to take meaningful action on each claim. Three areas are required for meaningful action on a claim. They are production, processing time, and quality. Mr. Elia stated that, depending on the circumstances, failure to reach the goals of the management plan could lead to disciplinary action. During the Grievant's six week management plan, Mr. Elia stated that she made significant progress and met the goals. Her quarterly assessments in 1986 were good; in fact, the Grievant was statistically above the average in production, processing, and quality.

On or about July, 1986, BDD was inundated with a great number of disability claims. This caused Mr. Elia to issue a memo to the staff expressing concerns about the heavy receipts of claims. This occurrence, coupled with the departure of staff members, led to heavy case loads for the remaining adjusters. In order for him to be apprised of the movement of claims and UTL's, Mr. Elia required that each adjuster prepare slips showing all case names and the reason for their delays in meaningful action. Mr. Elia was provided slips from the Grievant on

October 6 and October 21, 1986, wherein he marked those claims that required priority. He stated that he became concerned when he saw that new claims were coming in with no action taken by Grievant.

When Mr. Elia returned from his vacation, he and staff members reviewed cases to determine the dimension of the problems regarding UTL's. Specifically, he stated that he was concerned about the Grievant's UTL's. As a consequence, he ordered desk audits on November 6 and November 12, 1986 of claims on the Grievant's work area. He stated that the audit revealed that on November 6, 1986, the Grievant had eleven (11) claims out of a total of twenty-five (25) claims with UTL's of at least thirty (30) days. He stated that this was extremely out of line with ordinary time lapses. The November 12, 1986 audit revealed that the Grievant had seventeen (17) UTL's of at least thirty (30) days and up to two hundred twenty-nine (229) days.

Mr. Elia testified that he met with the Grievant regarding these desk audits. Inasmuch as the UTL's previously discussed were highly irregular, he said that he would recommend disciplinary action. He further stated that the Grievant offered no explanation for the UTL's. A pre-disciplinary hearing was timely held and the Grievant received notice of a five (5) day suspension in January, 1987.

Mr. Elia further testified that prior to the January, 1986 case management plan, the Grievant had worked under two other management plans in 1984 and 1985. He stated that the basis for these previous management plans, i.e. UTL's was essentially the same as the one in 1986. It should be noted that the strategies employed in the case management plans for the Grievant were to prioritize 120 day claims and all other aspects of claims processing. Mr. Elia went on to discuss prior disciplinary actions, which have been noted above. Mr. Elia stated that he felt that disciplinary action was necessary because the

Grievant had developed tools through previous case management plans to avoid the problems with UTL's in 1986.

On cross-examination, Mr. Elia acknowledged that weekly printouts are a barometer for determining the rapidity in which claims have received meaningful action. However, he stated that such printouts do not show UTL's, and it is impossible for Mr. Elia to review all of the cases on an individual basis. As to the problem in the summer of 1986 wherein BBD received an unprecedented number of disability claims, he stated that the claims receipts were higher for all staff members. He stated that other employees had high pending rates, but there were no other desk audits at the time that the Grievant was audited. According to Mr. Elia, the Grievant appeared to have the worst problem. Her UTL's dated from March, April, and May, hence, prior to the large influx of disability claims for the summer of 1986. This was determined from the desk audits conducted by Mr. Elia regarding the Grievant.

Mr. Elia further acknowledged that the management plans for the Grievant resulted in her improvement, but only during the life of the plan. He stated that he sees disciplinary action as a method of correcting the Grievant's behavior, since the carry-overs from previous case management plans have not been effective. He further stated that a five (5) day suspension of the Grievant was commensurate with the offense of neglect of her duties.

When asked whether the Grievant approached him with problems about her case load and UTL's sometime in August, 1986, Mr. Elia testified that the Grievant said that she had some problems but that she did not specify. Mr. Elia stated that he did not suspect a major problem. He did not pursue it any further with her other than to give her words of encouragement.

Mr. Elia elaborated on some situations where claims will be over 120 days for a legitimate purpose. He referred to "medical hold" cases, i.e. heart attacks and the like.

Suzanne Smith, Columbus Area Administrator for the Commission, testified about the standards for all adjusters to meet and further discussed the previously noted agency goals. She stated that as a matter of policy, these goals are based on the need to financially assist claimants who are not gainfully employed. She testified that management plans are designed to assist employees in improving their performance to an acceptable level in accordance with goals and standards. Failure to meet management plan goals, she stated, does not always lead to disciplinary action. For example, employees may become ill, change supervisors, or may show marked improvement even though the management plan goals were not met. She stated that, usually, no subsequent management plans are needed if the performance goals are met by the employee. She further stated that such goals are expected to be maintained.

Ms. Smith stated that she knows the Grievant. In the fall of 1986, she became aware of the Grievant's UTL's. Mr. Elia shared with Ms. Smith the desk audits of the Grievant (management exhibits A and B). She stated that Mr. Elia requested that the Grievant be suspended.

Ms. Smith stated that the Grievant approached her, but she did not contest the disciplinary action taken. However, the Grievant did question the number of days in which she would be suspended. The Grievant then discussed with Ms. Smith the difficulty of the case action requirements. Ms. Smith testified that she advised the Grievant that the case action requirements were no different for any of the other adjusters in the Grievant's unit.

On cross-examination, Ms. Smith stated that there were no goals and standards set during or after August, 1986, which would reflect the inordinately high number of pending cases. However, according to Ms. Smith, neither the Grievant nor other Disability Claims Adjuster I's received more than three cases per day.

The Grievant, Isabel Jackson, testified that she has been employed in BBD since 1981 as an Adjudicator. She described her duties as reviewing and analyzing claims as received by her; validating information contained in the claims; talking with physicians regarding the individual claims; and writing rationales for mentally and physically impaired claimants. The Grievant stated that she works primarily with claims involving the mentally impaired. She testified that conversations with relevant persons, such as physicians and psychologists, can take anywhere from 45 minutes to 2 hours. She further defined the following:

Pending - the number of claims assigned.

Production - the time it takes to make a decision on a claim.

Trailer Mail - mail coming in after the claim has left the office (e.g. additional doctor's reports).

Follow Up Call - calls made to any treating source (e.g. hospitals, mental health agencies).

The Grievant testified that she has had three case management plans during her tenure in BBD. Two of them lasted for 2 months each and the last one lasted for approximately 1 month. She testified that the basis for all 3 management plans were because of her UTL's. She testified that she successfully completed each of the management plans.

The Grievant testified that the Bureau received a high number of pending claims in June, July, and August, 1986. She stated that she received a number of psychiatric claims, which are more time consuming than other types of claims. Grievant stated that Mr. Elia always pressured her for her production. Therefore, the Grievant would make production at the expense of more involved cases, such as psychiatric claims. She further stated that since Mr. Elia encouraged production; if the Grievant were to do only the psychiatric cases, she would have to neglect other claims, which would result in a drop in production.

Grievant testified she discussed her problem with Mr. Elia and that she needed assistance. The Grievant talked about another management plan. Mr. Elia advised her that a management plan was not available and "everyone is in the same boat." The Grievant stated that she approached Suzanne Smith, who advised her that Mr. Elia should have administered a management plan.

Referring to Union Exhibits A and B, which are lists of cases on the Grievant's desk for 5 days or more, the Grievant stated that all of those cases noted were psychiatric claims, thus requiring more time to complete than other types of claims. The Grievant further stated that it is unrealistic to do 12 of such claims in one day's time. The Grievant further stated that her supervisor, Mr. Elia, marked psychiatric claims for her to complete, but he did not state to her that they were priorities.

The Grievant stated that during part of the period in which the BBD received a high number of cases, she was under a doctor's care. She further stated that she sometimes received more than 3 cases in a day.

The Grievant also testified that at least 4 other adjudicators had pendings (pending cases) of over 200 cases with UTL's. Only one other adjuster was audited in addition to the Grievant. However, the other such audit was at a later time.

On cross-examination, the Grievant acknowledged that the prior management plans she received gave her directives for priorities. She further stated that the assignment of claims to the various adjudicators was done on a random basis, and that other adjudicators in her unit were getting psychiatric cases as well.

The Grievant stated that many of the letters that she is required to write are form letters wherein the adjudicator fills in the blanks with relevant information. The Grievant further stated that she did not use available dictaphones or write while talking on the telephone with physicians or other specialists in connection with psychiatric care claimants.

The Grievant also testified that, during previous management plans, she improved her handling of psychiatric claims. However, this improvement was shown only during the life of those respective plans.

Sharon VanMeter-Bailey testified that she is a Disability Claims Adjudicator II and has been employed with the agency for 12 1/2 years. Her duties include vocational advice, duties as a representative of her union and President of the Union Rehabilitation Services Chapter. Ms. VanMeter-Bailey is also co-chairperson of the Labor-Management Committee of BBD. In October, 1986, Ms. VanMeter-Bailey became the Chapter President of the Labor-Management Committee, and was a steward for the union. Ms. VanMeter-Bailey testified that she has dealt with the Grievant and others who experienced performance problems and engaged in case management plans. Ms. VanMeter-Bailey cited 3 employees who had UTL problems similar to the Grievant. She highlighted, in the case of 1 employee, 5 or 6 case management plans offered to that particular adjudicator in a two year period, from 1984 to 1986. That employee received a letter of reprimand, which was followed by a management plan. Later that employee was

disciplined further. In another instance, an employee received several management plans in a 1 1/2 year period. Another disability claims adjudicator received management plans from autumn, 1984 to spring, 1986. Ms. VanMeter-Bailey compared those 3 employees of examples of disparate treatment as it relates to the Grievant insofar as her management plan beginning in January, 1986 was only for a 1 month period.

Ms. VanMeter-Bailey pointed out that her direct supervisor, Mr. Hicken, defined significant UTL's for review only those UTL's in excess of 30 days. She further stated that Mr. Herman's acceptable pending rate was 110 days.

The witness further stated that the receipts of claims in the Grievant's unit were very high during the summer of 1986. To that end, she stated in a Labor-Management committee that the goals and standards indicated in joint Exhibit 4 do not account for situations involving high receipts of claims.

On cross-examination, Ms. VanMeter-Bailey acknowledged that two of the three employees used by her as examples of receiving several management plans had also received disciplinary action against them.

Deborah Guy Bogard, Disability Claims Adjudicator II, described her duties, which were similar to those duties of the Grievant. Ms. Bogard stated that she was aware of the desk audits conducted by Mr. Elia regarding the Grievant's UTL's and the subsequent notice of suspension. She testified that she had written a statement on December 3, 1986, alleging that management was singling out the Grievant for intense scrutiny because her claims were the only ones audited at that time, even though everyone's UTL's were high. For that reason, Ms. Bogard's statement indicated that the Grievant was being treated inequitably.

In her own case, Ms. Bogard testified that her UTL's were high (approximately 200 UTL's in July and August); however, she was not audited. She recounted the fact that during the period of high receipts, seven Adjudicators left the area between the months of May and August of 1986. She said that the problem was further aggravated by the number of mentally impaired claims. She also stated that more documentation for such claims were required after 1985.

Ms. Bogard testified that sometime during the period between May and August, 1986 she went to Mr. Elia because of so many pending claims. She stated that Mr. Elia said that everyone's pendings were high, but nothing could be done about it. She also stated that Mr. Elia remarked that her production was good. She further stated that her desk had as many as 60 cases on it.

In addressing the issue as to whether "just cause" existed for the determination of the Commission that the Grievant was neglectful in her duties, this Arbitrator must weigh all of the evidence presented in this case, including the Exhibits admitted into evidence. In addition, this Arbitrator must factor in the strength of the Grievant's allegations of disparate treatment. It is recognized that, prior to Mr. Elia's recommendation for a 5 day suspension, BBD was in receipt of a great number of claims. These receipts caused many, if not all, employees in the unit to have large numbers of UTL's. While this evidence is material to the Grievant's case, this Arbitrator must conclude that just cause exists for the imposition of disciplinary action. The Grievant was subject to previous disciplinary actions, which stemmed from the same problem. She was also the recipient of at least 3 case management plans, all of which were designed to assist her by meeting goals to keep her UTL's down and to work more effeciently. From the evidence adduced, the Grievant successfully completed all of the requirements contained in her respective case management plans. However, according to the testimony available to this Arbitrator, the

Grievant lapsed into the same problems with UTL's shortly thereafter. The Grievant cited examples of other employees who received such case management plans for longer periods of time. However, as Mr. Elia testified, the Grievant met the goals and standards of her plans in a relatively short period of time. That could not be said for the other employees who had more extended plans. Furthermore, as the Commission pointed out, the other employees, cited as examples of disparate treatment, also received disciplinary actions against them. Thus, the evidence supporting the contention of disparate treatment as it relates to the Grievant was not sufficient in this Arbitrator's view to overcome the strength of the Commission's argument that "just cause" existed. It should also be noted that, according to the uncontroverted testimony of Suzanne Smith, the Grievant did not object to her suspension; rather, she objected to the length of the suspension. This Arbitrator concludes that the Grievant was aware that she was neglectful of her duties at the time that she was advised that a recommendation for suspension would be requested by her supervisor. This Arbitrator is convinced that the Grievant's case management plans aptly provided general goals and standards to be met in almost all situations. Those plans provided for a methodology for priority handling, production, and qualitative work. The purpose of those plans were to correct the Grievant's problems with UTL's. They were guideposts to consistent performance under most circumstances.

As to the issue of the appropriateness of the remedy imposed on the Grievant, this Arbitrator must review the circumstances amid which the Grievant found herself. As previously stated, there was ample evidence that during the late spring and summer months, BBD was deluged with a great number of claims, which caused high UTL's throughout the unit. This Arbitrator is mindful of the testimony that indicates that the Grievant had even higher UTL's than the other

employees. This was known because each of the Adjudicators were required to submit slips of pendings during this period in order that their supervisor would have some understanding of the scope of the problem. It was on this basis that a desk audit was conducted in respect to the Grievant. It must be inferred that other employees were not having problems of the same degree as the Grievant. However, the Grievant's supervisor did become aware of the lack of action done on a number of claims in the possession of the Grievant.

Nevertheless, although disciplinary action by means of suspension was warranted, in this Arbitrator's view, the punishment is not commensurate with the offense, owing to the large number of receipts of claims (hence, more UTL's) for all employees in the unit. This Arbitrator determines that the disciplinary action commensurate with this offense is more appropriately a 4 day suspension rather than a 5 day suspension.

Accordingly, the grievance is DENIED, but the Grievant shall receive back pay in the amount of one (1) day's pay.

December 7, 1987
DATE

Andrew J. Love
ANDREW J. LOVE, ARBITRATOR

COUNTY OF FRANKLIN
STATE OF OHIO