

CIVIL SERVICE COMMISSION

STATE OF SOUTH DAKOTA

IN THE MATTER OF THE GRIEVANCE OF:)
Lowell Schmitz)
v.) NOTICE OF HEARING
Department of Game, Fish and Parks)

I.

Please be advised that the hearing in the above entitled matter will be held on March 21 and 22, at 8:30 a.m., CST, or as soon thereafter as the case may be heard, in Room 412, Fourth Floor, State Capitol, Pierre, South Dakota, and that this will be an adversary hearing to determine whether the Department of Game, Fish and Parks had just cause to terminate Mr. Schmitz's employment.

II.

This hearing is held pursuant to the authority and jurisdiction granted to the Civil Service Commission by SDCL 3-6D-15 and ARSD Ch. 55:10:08.

III.

The hearing involved the following statutes and rules: SDCL Ch. 3-6D and ARSD Art. 55:10.

IV.

The issue to be determined at the hearing is as follows:

Whether the Department of Game, Fish and Parks had just cause to terminate Mr. Schmitz's employment.

V.

In accordance with SDCL 3-6D-14, the Civil Service Commission shall determine and decide whether the Department of Game, Fish and Parks had just cause to terminate Mr. Schmitz's employment. In resolving grievances involving the discipline of an employee, the Civil Service Commission shall determine and decide whether the action was made for good cause. If the commission finds that the action was made for good cause, the commission shall enter an order upholding the decision of the appointing authority disciplining the employee. If, however, the commission finds that the action was

made without good cause, the commission shall enter an order reversing the decision of the appointing authority.

In resolving a grievance, the commission may reinstate an employee who has been disciplined without good cause. If reinstatement is ordered by the commission, the order shall include one or more of the following forms of relief: an award of back pay, an award of back benefits, placement in the same position and location that the employee held before the discipline, or placement in a comparable position and location that the employee held before the discipline. Any award of back pay and benefits shall include the employer's contribution pursuant to § 3-12-71. Any award of back pay and benefits which adversely affects an agency's budget shall be considered advisory and submitted by the affected agency to the committee created by chapter 4-8A or the next session of the Legislature.

The South Dakota Supreme Court has held that the Commission's function is to conduct a hearing comporting with due process requirements to determine if good cause existed for any disciplinary action. Upon determining that good cause existed, the Commission cannot supplement its judgment on the form of the discipline chosen.

Pursuant to SDCL 3-6D-15, the Civil Service Commission shall have the power and it shall be its duty to act as grievance review board for civil service employees. If a grievance remains unresolved after exhaustion of a departmental grievance procedure an employee may demand a hearing before the civil service commission as provided for in contested cases in chapter 1-26 and proceedings shall be held as provided therein.

The Commission may take any action authorized by law as a result of a decision made at hearing.

VI.

This hearing is a contested case as that term is defined in SDCL 1-26-1(2). As such, this hearing is an adversary proceeding at which the grievant and respondent have the right to be present and to be represented by legal counsel or other representative, to introduce evidence and present testimony on their behalf, to call witnesses to testify, to cross-examine all witnesses present, and to submit written argument. These and other due process rights will be forfeited if they are not exercised at this hearing.

VII.

If the amount in controversy exceeds two thousand five hundred dollars or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of this Notice of Hearing.

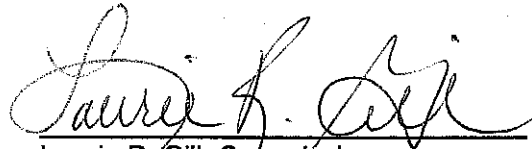
VIII.

The decision based on the hearing may be appealed to the circuit court and the state Supreme Court as provided by law.

IX.

The Commission requests that the parties arrive at least fifteen minutes early and that the parties bring nine collated copies of each exhibit.

Dated this 13th day of February, 2017



Laurie R. Gill, Commissioner
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