

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2007 CA 1272**

**FREDERICK MARSCH**

**VERSUS**

**LSU HEALTH SCIENCES CENTER - EARL K. LONG MEDICAL  
CENTER**

**Judgment Rendered: February 8, 2008**

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**Appealed from the  
State Civil Service Commission,  
Honorable James A. Smith, Chairman;  
Burl Cain, Vice-Chairman;  
Chatham Reed, David Duplantier  
G. Lee Griffin, Rosa B. Jackson  
and John McLure  
Anne S. Soileau, Director  
Department of State Civil Service**

**Docket Number S-16074**

**\* \* \* \* \***

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Baton Rouge, LA**

**Counsel for Plaintiff/Appellant,  
Frederick Marsch**

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Baton Rouge, LA**

**Counsel for Defendant/Appellee,  
LSUHSC-Earl K. Long Medical Center**

**Robert R. Boland, Jr.  
Baton Rouge, LA**

**Counsel for Anne S. Soileau  
Director, Department of State Civil  
Service**

**BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.**

*Hughes, J., dissents with reasons.*

*WFW  
JMS*

**WHIPPLE, J.**

Frederick Marsch appeals from a decision of the State Civil Service Commission upholding his termination from employment with Louisiana State University Health Sciences Center (“LSUHSC”) for violating routine protocol and acceptable standards of behavior while interacting with patients. Finding no error in the referee’s well-reasoned decision, we affirm by summary disposition.

Marsch was employed by LSUHSC as a hospital admissions technician serving with permanent status at Earl K. Long Medical Center. By letter dated October 20, 2006, Marsch was advised by Hospital Administrator Clay Dunaway that effective immediately, he was terminated from employment as a hospital admissions technician for his continued acts that violated routine protocol and acceptable standards of behavior while interacting with patients, their families, and other hospital employees while completing the admissions function.<sup>1</sup> In support, the letter set forth seven specific charges, describing in detail and by date, the particular incidents and violations upon which Marsch’s termination was based. The letter was accompanied by an attachment, which included a list of patient names and patient ID numbers.

Marsch appealed his termination to the State Civil Service Commission, generally denying the allegations. On appeal, Marsch also contended that because the October 20, 2006 letter purportedly terminated his employment “effective immediately,” he did not receive prospective notice of his removal, which he contended was improper under Civil Service Rule 12.8.<sup>2</sup> Thus, Marsch sought

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<sup>1</sup>According to the referee’s findings of fact, on September 28, 2005, Marsch had been placed on a supervisory plan “to address issues related to professional and courteous treatment of patients and co-workers.” The plan’s term was September 28, 2005 through December 28, 2005. In Marsch’s “Application for Review” before the Commission, Marsch does not dispute that he was placed on a supervisory plan, but contends that this purported “finding,” while an admitted fact, does not amount to a charge or cause for discipline.

<sup>2</sup>Civil Service Rule 12.8(a) provides that when a permanent employee is removed or subjected to a disciplinary action, he shall be given prior written notice.

reinstatement with back pay, expungement of any references to the disciplinary action, and attorney's fees.

A public hearing was held on January 19, 2007, before a referee appointed by the Civil Service Commission. On April 5, 2007, the referee rendered a decision finding that Marsch had received proper prospective notice of his termination as he received the termination letter on October 26, 2006, but was not removed from LSUHSC's payroll until two days later on October 28, 2006.<sup>3</sup> Accordingly, the referee found that LSUHSC had not violated Civil Service Rule 12.8. The referee further found that LSUHSC had satisfied its evidentiary burden by proving three of the seven charges against Marsch, which constituted legal cause for discipline. The referee also concluded that the penalty imposed was commensurate with the offenses. On June 12, 2007, the State Civil Service Commission denied Marsch's application for review, upholding the decision of the referee.

Marsch filed the instant appeal, contending that the Commission erred: (1) in finding that the letter of termination complied with Civil Service Rule 12.8(a)(1) and (a)(2); and in failing to award attorney's fees, back wages, benefits, and reinstatement.<sup>4</sup>

With respect to the Commission's decisions as to jurisdiction, procedure, and interpretation of laws and regulations, the court performs its traditional plenary functions and applies the "error of law" standard. James v. LSU Health Sciences Center Medical Center of Louisiana at New Orleans, 2001-1853 (La. App. 1<sup>st</sup> Cir. 11/8/02), 834 So. 2d 470, 472, writ denied, 2003-0214 (La. 4/21/03),

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<sup>3</sup>The referee's decision states that Marsch received notice of the October 20, 2006 letter on **March** 26, 2006, rather than **October** 26, 2006. This is clearly a typographical error. (r.14) We further note that in Marsch's application for review of the referee's decision, he states that he received the letter on October 23, 2006. (r.24)

<sup>4</sup>Thus, on appeal, Marsch does not raise any challenge to the merits of the referee's factual determinations or the penalty. Instead, he challenges the form, sufficiency, and timing of the notice in the resulting disciplinary action.

841 So. 2d 792. The disciplinary letter advising Marsch that his employment was terminated was dated October 20, 2006. The referee found that Marsch received the letter on October 26, 2006, and that he remained on the payroll and was paid by LSUHSC through October 28, 2006. The referee found that Marsch accordingly had received prospective notice of his termination, in accordance with Civil Service Rule 12.8. On review, we find no error in the referee's determination in this regard. Moreover, we note that Civil Service Rule 12.8(d) provides that written notice is considered given "on the 7th calendar day after it is mailed to the employee, with correct postage, at the most recent address he furnished in writing to his personnel office." Thus, the October 20, 2006 letter herein provided sufficient prospective notice to Marsch, given that his actual removal date from service was eight days later, on October 28, 2006.

We further reject Marsch's claims that the detailed three-page letter was vague and failed to inform him of the conduct for which the action was taken in accordance with Civil Service Rule 12.8(a)(2). As the referee correctly found, "the October 20, 2006 termination letter contains such information that fully informed Mr. Marsch of the conduct for which he was being charged and, as such, enabled him to prepare a defense."

### **CONCLUSION**

After a thorough review of the entire record of these proceedings, we find no error in the Commission's decision to affirm the referee's April 5, 2007 opinion which we adopt herein as our own and attach as "Appendix A." Accordingly, we affirm the June 12, 2007 decision of the State Civil Service Commission denying Marsch's application for review and upholding the decision

of the referee. This opinion is rendered in accordance with Uniform Rules --  
Courts of Appeal, Rule 2-16.1 B. Costs of this appeal are assessed to the  
plaintiff/appellant, Frederick Marsch.

**AFFIRMED.**

**Decision**

**Filed: April 5, 2007**

State of Louisiana

Civil Service Commission

Docket No. S-16074

Frederick R. Marsch

Versus

Louisiana State University Health Sciences Center, Earl K. Long Medical Center

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Rules: 12.2; 12.8

Topics: Dismissal; negligent performance of duties

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Appearances: Floyd J. Falcon, Jr., representing Frederick Marsch

Martha Mansfield, representing LSUHSC

**Statement of the Appeal**

Frederick R. Marsch was employed by Louisiana State University Health Sciences Center (LSUHSC) as a Hospital Admissions Technician (Admit Tech) at Earl K. Long Medical Center, and served with permanent status.

By letter dated October 20, 2006, Mr. Marsch was informed that he was being terminated from his position "effective immediately." The October 20, 2006 termination letter alleges that from June 16, 2005, to March 29, 2006, on seven occasions, Mr. Marsch violated "routine protocol and acceptable standards of behavior in the process" while interacting with patients, their families and other hospital employees.

On October 31, 2006, Mr. Marsch filed an appeal in which he denies the charges. He asserts that the disciplinary letter is vague and indefinite and does not comply with Civil Service Rule (CSR) 12.8 and that it was not delivered to him prior to the effective date of the disciplinary action. As relief, Mr. Marsch requests reinstatement to his position, expungement of his personnel records, back pay with legal interest, and attorney's fees.

I held a public hearing on January 19, 2007, in Baton Rouge, Louisiana. Based upon the evidence presented and pursuant to the provisions of Article X, Section 12(A) of the Louisiana Constitution of 1974, as amended, I make the following findings.

#### **Preliminary Matters**

At the outset of the hearing, counsel for Mr. Marsch made a motion for summary disposition arguing that the disciplinary letter is defective under Civil Service Rule 12.8 because it failed to give Mr. Marsch prior written notice of the termination, and that it did not state the effective date and time of the disciplinary action. The disciplinary letter is dated October 20, 2006, and states that Mr. Marsch's employment is terminated "effective immediately."

In this case, Mr. Marsch received the termination letter on March 26, 2006, and was not removed from LSUHSC's payroll until two days later, October 28, 2006. Therefore, he received prospective notice of his termination and LSUHSC did not violate CSR 12.8(a). I denied Mr. Marsch's motion for summary disposition. I hereby confirm that ruling.

Also, I find that the October 20, 2006 termination letter contains such information that fully informed Mr. Marsch of the conduct for which he was being charged and, as such, enabled him to prepare a defense. Thus, the letter did not violate CSR 12.8(a)(2).

### **Findings of Fact**

1. Frederick R. Marsch was employed by LSUHSC as a Admit Tech at Earl K. Long Medical Center (EKL), on June 21, 2004, and served with permanent status.
2. The duties of an Admit Tech include interviewing patients that are to be admitted to EKL and obtaining their financial, demographic and insurance information, and entering the information into the hospital computer system. The information becomes part of the patients' medical charts. The information is necessary to provide medical care to the patients, as well as for billing and administrative purposes. The Admit Techs are also responsible for verifying the identity of the person providing the information before obtaining the patients' signatures on hospital admissions paperwork, including consent to treatment forms.
3. On September 28, 2005, Mr. Marsch was placed on a supervisory plan to address issues related to professional and courteous treatment of patients and co-workers. The plan's term was September 28, 2005, through December 28, 2005, and it was not extended.

#### **June 16, 2005 incident<sup>1</sup>**

4. On June 16, 2005, Mr. Marsch was assigned to Bed Control in the Admissions area. His duty was to greet patients, assign beds, and distribute and process trauma cards.
5. A trauma card is a green card used to expedite medical treatment when trauma patients cannot be identified or if the patient must be treated immediately prior to admission. A trauma patient's real identity is irrelevant until he is either admitted to the hospital or discharged from the

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<sup>1</sup> This is Charge 2 in the October 20, 2006 termination letter.



Emergency Room. The most important thing is to provide immediate medical treatment to a trauma patient.

6. Trauma cards are made each day in advance of a shift beginning and are kept at the Bed Control workstation. The trauma card contains a patient number, the date (which functions as a fictitious date of birth for the patient) and a parish or city name (randomly chosen; functions as a fictitious name for the patient). With each trauma card is a patient chart. The information on the chart corresponds to the trauma card and is also kept at the Bed Control workstation.

7. Orders for X-rays, laboratory work, medications and other vital services necessary to treat a trauma patient cannot be carried out until a trauma card is issued and the information from the chart associated with it is inputted in the hospital computer by the Bed Control Admit Tech. Because the information obtained from the trauma card is minimal, it takes little time for the Admit Tech to enter the information into the computer system insuring that the trauma patient receives prompt care.

8. The normal procedure when a trauma patient requires a trauma card for treatment is that a nurse or other staff requests a trauma card from the Admit Tech assigned to Bed Control. The Admit Tech gives the requesting party the trauma card, which goes with the patient to the Emergency Room. The Admit Tech keeps the chart associated with the trauma card and immediately enters the trauma card information from the chart into the hospital computer. All Admit Techs, including Mr. Marsch, receive training in the use of trauma cards and the importance of immediately inputting the information connected with them into the hospital computer.

9. At approximately 3:30 p.m. on June 16, 2005, an unidentified trauma patient with a gunshot wound was received in the Emergency Room.

10. In connection with this patient's admission, Joanne Brandon, Hospital Admissions Technician 6, requested and received a trauma card from Mr. Marsch. Ms. Brandon has been

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with Earl K. Long Medical Center for 29 years and is the head supervisor over the Admissions department.

11. Mr. Marsch gave the trauma card to Ms. Brandon. After receiving the trauma card from Mr. Marsch, Ms. Brandon handed it to the attending nurse to go with the patient to the Emergency Room. Ms. Brandon then went to the Security Desk and talked with staff there for approximately five (5) to ten (10) minutes and returned to the Bed Control workstation.

12. Upon her return to the Bed Control workstation, Ms. Brandon noticed that the trauma chart was on a ledge off to the side and that Mr. Marsch was not inputting the information into the computer. She asked Mr. Marsch if he had inputted the information from the chart and he responded that the patient had been identified.

13. Ms. Drucilla Dalton, Hospital Admissions Technician 5 and Mr. Marsch's superior, heard the exchange between Mr. Marsch and Ms. Brandon. As Mr. Marsch had still not inputted the information as required by hospital procedure, Ms. Dalton directed him to input the information. He then did so.

#### **March 29, 2006 incident<sup>2</sup>**

14. On March 29, 2006, Mr. Marsch was on duty in the Admissions area and was assigned to conduct direct admit screenings. This duty entailed summoning the patients to the admission desk, verifying their identities, obtaining their financial, demographic, and insurance information and their signatures on admission paperwork, including medical consent forms, and otherwise facilitating their admission to the hospital.

15. Summoning the patient over the intercom and waiting for the patient to respond ensures that the person who responds to it is the patient to be admitted.

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<sup>2</sup> This is charge 1 in the disciplinary letter

16. On March 29, 2006, an OB (obstetrics) patient and a GYN (gynecology) patient were brought to the hospital at the same time and escorted to the lobby to wait for admission. By order of the nurse supervisor, Mr. Marsch was to admit the OB patient first.

17. Rather than following proper procedure and calling the OB patient from the lobby to the Admissions area with the intercom, Mr. Marsch prepared the OB patient's admission packet without her being present. He then went to the lobby to get her to sign the paperwork.

18. Mr. Marsh presented the OB patient's admission packet to the GYN patient by mistake. Mr. Marsh did not verify the identity of the patient before he had the GYN patient sign the OB patient's admission packet. The GYN patient signed her name to the documents in the admission packet. Mr. Marsh did not notice that the GYN patient's signature was not that of the OB patient.

19. After the GYN patient signed the OB patient's admission forms, Mr. Marsch escorted the GYN patient to the 3<sup>rd</sup> floor OB unit. The OB patient remained in the lobby.

20. Sometime later, the OB patient asked Margaret Ann Chapman, Hospital Admission Technician and Mr. Marsch's supervisor, where the restroom was located. Ms. Chapman then asked Mr. Marsch why the OB patient was still in the lobby. He replied that she was not the OB patient; he had brought the OB patient up to the 3<sup>rd</sup> floor after admitting her. When the OB patient came out of the restroom, Ms. Chapman asked her her name, and realized that Mr. Marsch had admitted the wrong patient to the 3<sup>rd</sup> floor and that the GYN patient had signed the OB patient's admission documents.

21. Ms. Chapman telephoned the 3<sup>rd</sup> floor to inform them that they had the wrong patient, but the nursing supervisor had already reached that conclusion, and no medical treatment had been given to the GYN patient.

22. Approximately 30-45 minutes elapsed between Mr. Marsch's admission of the wrong patient to the 3<sup>rd</sup> floor and Ms. Chapman's realization that he had done so.

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23. When Ms. Chapman asked Mr. Marsch about the incident, he replied, "Well, mistakes happen, and maybe I was sick, I'm, oh, that's right, I'm not feeling well." He also told Ms. Chapman that he had gone to the lobby and had the patient sign the papers.

24. In Mr. Marsch's April 27, 2006 response to LSUHSC's proposed disciplinary action, he stated: "The March 29<sup>th</sup> incident was clearly my fault, because I was being considered [sic] to both patients, by going to them."

### Conclusions of Law

The right of a classified state employee to appeal disciplinary actions is provided for in Article X, Section 8(A) of the *Louisiana Constitution*. That section provides that "[t]he burden of proof on appeal, as to the facts, shall be on the appointing authority." The appointing authority must prove its case by a preponderance of the evidence. A preponderance of evidence means evidence that is of greater weight or more convincing than that which is offered in opposition thereto. Proof is sufficient to constitute a preponderance when, taken as a whole, it shows the fact or causation sought to be proved as more probable than not." *Wopara v. State Employees' Group Benefits Program*, 2002-2641, (La. App. 1 Cir. 7/2/03), 859 So.2d 67.

#### June 16, 2005 incident

LSUHSC charges Mr. Marsch with having failed to timely input a trauma patient's information into the hospital computer system, in violation of established admissions procedure. Mr. Marsch argues that he did not put the information into the system because the patient had been identified. A gun shot patient's real identity is irrelevant until he is either admitted to the hospital or discharged from the Emergency Room.

The evidence presented by the appointing authority indicates that Admit Techs, including Mr. Marsch, are trained to stop whatever other tasks they are doing when they issue a trauma card, and to immediately input the trauma patient's data in the computer. The need to accomplish this task swiftly is stressed to all Admit Techs due to the fact that medical orders regarding the

trauma patient's treatment cannot be processed until the information is inputted into the hospital computer system. LSUHSC proved that Mr. Marsch delayed inputting the information for 5-10, minutes rather than doing it immediately as required by hospital policy. While a delay of 5-10 minutes may at first glance appear minor, it must be remembered that seconds count when a seriously injured trauma patient, such as a gunshot victim, needs immediate medical attention. This is not relevant, I therefore find that the appointing authority has proved this charge

**March 29, 2006 incident**

In this charge the appointing authority charges Mr. Marsch with disregarding hospital procedure by failing to identify an admissions patient before having the patient sign admission paperwork.

According to Mr. Marsch's testimony, he called for the OB patient with the intercom a total of three times, and, after the third page, the GYN patient came to the Admissions desk and falsely identified herself as the OB patient. Mr. Marsch asked her for identification; she said she had none. He gave her the paperwork and once she had reviewed the forms, he asked her if they were correct. She replied that they were and signed the forms with her **correct name**. Mr. Marsch failed to notice that her signature did not match the forms on the admission packet because he did not review them after she signed. He says that he then escorted the GYN patient up to the 3<sup>rd</sup> floor, where he claims the GYN patient again falsely stated to the floor nurse that she was the OB patient. Starr Anderson, a former co-worker of Mr. Marsch at the hospital, testified at this hearing and corroborated his version of the events that occurred on March 29, 2006.

I reject Mr. Marsch's defense on this charge for several reasons. First, his testimony contradicts the explanation he provided in his response to the pre-disciplinary letter, in which he states, "The March 29<sup>th</sup> incident was clearly my fault, because I was being considered [sic] to both patients, **by going to them.**" (Emphasis supplied), meaning that he went to them in the lobby. If he had followed admissions procedure the patient would have come to him at the Admissions desk. Second, his testimony contradicts the explanation he gave to Ms. Chapman. Mr. Marsch told her that he had gone to the lobby and had given the paperwork to the patient he believed to be the

OB patient. Third, if the GYN patient lied to Mr. Marsch about her identity and then to the 3<sup>rd</sup> floor nurse as Mr. Marsch testified, I question why she would sign her **correct name** on the admissions forms.

Although Ms. Anderson corroborated Mr. Marsch's testimony about the events of March 29, 2006, I find her lacking credibility. She had been separated during her probationary period and seemed, at this hearing, to be upset with LSUHSC. Also, her version of the events contradicts Mr. Marsch's response to his pre-disciplinary letter and what he told Ms. Chapman.

I find that LSUHSC proved this charge. Mr. Marsch's conduct resulted in a patient signing another patient's admission paperwork and being admitted to the hospital under the wrong name. Applicable admissions procedure dictated that an admissions patient be paged by name to the Admissions area with the intercom; this serves as an initial check of their identity. Mr. Marsch's bringing the paperwork to the lobby and presenting it to the wrong patient for signature in violation of admission procedures, coupled with his failure to notice that the patient's signature did not match the admissions documents, was clearly negligent.

In a hospital setting, the proper identification of patients is crucial, and is a very basic duty of admissions personnel which Mr. Marsch failed to discharge. Mr. Marsch showed a cavalier attitude toward his job responsibilities, when questioned about the incident and he responded, "mistakes happen." Ms. Chapman testified that the misidentification of a patient could result in adverse consequences for that patient, including death. I agree.

#### **Other alleged incidents**

The disciplinary letter contains five other charges that LSUHSC attempted to prove at the hearing, as follows:

*Charge #3-August 8, 2005:* In this charge Mr. Marsch is alleged to have unduly delayed calling a patient to the Admissions desk to obtain his information. This charge was based on the written

complaint of the patient's wife, who did not testify at the hearing. LSUHSC attempted to prove this charge through the testimony of Ms. Dalton. Ms. Dalton did not witness the incident.

*Charge #4-August 12, 2005:* LSUHSC alleged that Mr. Marsch was rude to an elderly patient over the use of a wheelchair. The complaint was lodged against Mr. Marsch by the patient's daughter, who did not testify at the hearing. LSUHSC attempted to prove this charge by the testimony of Ms. Dalton, who did not have personal knowledge of the exchange between Mr. Marsch and the patient.

*Charge #5-September 28, 2005:* Mr. Marsch's being placed on a supervisory plan is the essence of this charge. LSUHSC proved the truth of this assertion.

*Charge #6-November 28, 2005:* LSUHSC alleged that Mr. Marsch was rude to a patient. The patient did not testify at the hearing. Ms. Dalton testified in support of the charge, but was not present when the alleged incident occurred. In support of this charge, LSUHSC also submitted the hearsay written statement of Nicole D. Douglas, a former co-worker of Mr. Marsch who no longer works at the hospital.

*Charge #7-January 6, 2006:* LSUHSC alleged that Mr. Marsch made disparaging comments to a patient about the doctors and the quality of care provided at EKL Medical Center. The patient did not testify at the hearing. Ms. Brandon testified about the incident but was not present when the conversation between the patient and Mr. Marsch occurred.

As to Charges #3, 4, 6 and 7, the only evidence presented by the appointing authority in support of the charges is hearsay. Although the rules prohibiting the admission of hearsay are relaxed in administrative hearings, any hearsay evidence which is admitted must be corroborated by competent evidence in order to form the basis of a finding of fact. *Superior Bar & Grill v. State*, 94-CA-1879, p. 3 (La. App. 1 Cir. 5/5/95), 655 So. 2d 468, 470. I find that LSUHSC failed to prove these charges, as it failed to introduce any competent evidence to support them.

As to Charge #5, I find that LSUHSC proved that Mr. Marsch was placed on a supervisory plan.

## Conclusion

Based on the foregoing, LSUHSC has proved charges 1, 2, and 5 of the termination letter. As to the penalty, the Civil Service Commission and its Referees have a duty to decide "whether the punishment imposed is commensurate with the dereliction." *Guillory v. Department of Transp. & Development*, 475 So.2d 368, 370-371 (La. App. 1<sup>st</sup> Cir. 1985). Although, LSUHSC failed to prove all of the charges, the charges that LSUHSC proved constitute legal cause for discipline and that the penalty imposed, termination of Mr. Marsch's employment, is commensurate with the offenses.

Accordingly, I deny this appeal.

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L. Joann McAndrew

Civil Service Commission Referee



**STATE OF LOUISIANA**

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**VERSUS**

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HUGHES, J., dissenting

I respectfully dissent.

While not addressing the merits of the termination, I do not see how a letter stating that one is terminated “effectively immediately” can be considered “prior notice.” The issue is the chance to make a meaningful response, not to calculate when pay is stopped.