

STATE OF NORTH CAROLINA
COUNTY OF DUPLIN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DHR 02688

Erica Floyd Petitioner, v. Department of Health and Human Services, Division of Health Service Regulation Respondent.	FINAL DECISION
---	-----------------------

BACKGROUND

This matter was heard before the Honorable Samuel K. Morris, Administrative Law Judge, on December 12, 2022, in the Office of Administrative Hearings in Bolivia, North Carolina.

APPEARANCES

For Petitioner: Erica Floyd (Pro Se)

For Respondent: Eric Richard Hunt¹
Special Deputy Attorney General
North Carolina Department of Justice

APPLICABLE STATUTES AND RULES

N.C.G.S. § 131E-256, §150B-1, *et seq.*, 10A N.C.A.C. 130 .0101(1), and 42 C.F.R. § 488.301.

ISSUE

Whether Respondent deprived Petitioner of property or otherwise substantially prejudiced Petitioner's rights *and* exceeded its authority or jurisdiction,

¹ Eric Richard Hunt entered his appearance and substituted for trial counsel, William Foster Maddrey, on January 18, 2023.

acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when it substantiated an allegation that, on or about June 9, 2022, that Petitioner abused and neglected a resident at Dayspring of Wallace in Wallace, North Carolina, when she willfully hit the resident's head and spoke to the resident in a derogatory manner resulting in mental anguish.

EXHIBITS ADMITTED INTO EVIDENCE

Respondent's Exhibits A, C, D, F, G, H, and I were admitted into evidence. Petitioner did not admit any exhibits into evidence.

WITNESSES

For Petitioner: Petitioner

For Respondent: Shaneequa Reed
 Meghan Jackson

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge ("ALJ") makes the following Findings of Fact. In making these Findings of Fact, the ALJ has weighed the evidence presented and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case.

Parties/Witnesses

1. Respondent, the Division of Health Service Regulation ("Agency" or "Division"), is a division of the North Carolina Department of Health and Human Services and an administrative agency of North Carolina state government operating under the laws of North Carolina. The Agency is statutorily required to maintain the health care personnel registry ("Registry" or "HCPR"), which contains "the names of all health care personnel working in health care facilities in North Carolina" against whom the Agency has substantiated neglect, abuse, misappropriation, diversion of

drugs, or fraud. N.C.G.S. § 131E-256(a)(1).

2. Petitioner, at all times relevant to this matter, was employed as a Personal Care Aide (“PCA”) at Dayspring of Wallace (the “facility”), an Adult Care Home in Wallace, North Carolina that was subject to the provisions of N.C.G.S. § 131E-256. *See* N.C.G.S. § 131E-256(b).

3. At all times relevant to this matter, Meghan Jackson was a Nurse Consultant for Respondent and performed health care personnel investigations for the State.

4. At all times relevant to this matter, Shaneequa Reed was employed as a Med Aide/Supervisor in Charge at Dayspring of Wallace.

Background and Incident Involving Petitioner and Resident W.W.

5. Petitioner was hired by the facility as a personal care aide in March of 2022. (Resp’t Ex. A)

6. Petitioner received training from the facility on both abuse and neglect. (Resp’t Ex. I)

7. Petitioner signed the facility policy on resident’s rights on March 24, 2022, acknowledging her receipt of the policy. (Resp’t Ex. I)

8. Petitioner signed the facility policy on abuse, neglect, and exploitation on March 24, 2022, acknowledging her receipt of the policy. (Resp’t Ex. I)

9. On June 9, 2022, an incident involving Petitioner and another PCA Madison Beddard was reported to the facility. (Resp’t Ex. C)

10. It was alleged that while providing care to resident W.W., Petitioner struck W.W. in the head twice with a disposable diaper and told W.W. to “shut the f**k up.” (Resp’t Ex. C)

11. The alleged incident was reported to the facility by Ms. Beddard. (Resp’t Ex. C)

12. Ms. Beddard was the only purported witness to the alleged incident, other than Petitioner and W.W.

13. The facility investigated the incident and submitted an initial allegation report and investigation summary report to Respondent. (Resp't Ex C; Resp't Ex. D)

14. At the conclusion of its investigation the facility substantiated the allegation and fired Petitioner. (Resp't Ex. C)

Registry Investigation

15. After reviewing investigation documents submitted by the facility, Respondent screened the allegation of abuse against Petitioner for investigation. (Resp't Ex. A)

16. As part of her investigation, Ms. Jackson interviewed Petitioner and the staff members of the facility. Ms. Baxter also reviewed Petitioner's personnel file, resident W.W.'s medical records, and the facility investigation documentation. (Resp't Ex. A)

17. Ms. Jackson interviewed Petitioner as part of her investigation. (Resp't Ex. G)

18. In her interview with Petitioner, Ms. Baxter confronted Petitioner about the allegations against her. (Resp't Ex. G)

19. Petitioner informed Ms. Jackson that she was familiar with Resident W.W. She stated she worked with W.W. on a daily basis. (Resp't Ex. G)

20. Petitioner stated she was aware that W.W. had a history of behaviors and would be irritable. (Resp't Ex. G)

21. Petitioner admitted that she worked on June 9, 2022, and stated that she was on the second shift. (Resp't Ex. G).

22. Petitioner stated that on June 9, 2022, she was providing care to W.W. and asked "a young girl," a staff member, to help her. It is undisputed that during the incident W.W. used racial slurs and derogatory remarks towards Petitioner. (Resp't Ex. G) Petitioner stated that she informed W.W. that such language was "not nice." (Resp't Ex. G)

23. Petitioner stated that the staff member who was helping her “laughed” during the incident and ultimately “stormed out of the room” for reasons unknown to Petitioner. (Resp’t Ex. G) Petitioner likewise stated that “[she] guess the girl got mad at me and lied on me” and that she was walked out of the facility by other staff members at the end of the day. (Resp’t Ex. G)

24. Petitioner expressly denied hitting W.W. on the head with a disposable diaper or making any motion that could have been misinterpreted as such. (Resp’t Ex. G)

25. Petitioner stated that five days after the incident she was called by the manager, and she was told she was fired. (Resp’t Ex. G)

26. As part of her investigation, Ms. Jackson also spoke with Shaneequa Reed. (Resp’t Ex. H)

27. Ms. Reed was the supervisor in charge and Petitioner’s supervisor on the day of the incident. (Resp’t Ex. H)

28. In her interview, Ms. Reed stated that she remembered the incident on June 9, 2022, but did not witness it. Ms. Reed stated that Ms. Beddard reported the incident to her, and she reported the incident to the facility. (Resp’t Ex. H)

29. The incident as alleged to Ms. Reed was that Petitioner hit Resident W.W. and was “talking hateful to him.” (Resp’t Ex. H)

30. Abuse is the “willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain, or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology. Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.” 10A N.C.A.C. 130.0101(1), 42 CFR § 488.301. (Resp’t Ex. A)

31. In reaching her conclusion, Ms. Jackson determined that Petitioner's actions met the statutory definition of abuse and neglect. (Testimony of Ms. Jackson 52:00-45)

32. On October 3, 2022, Respondent closed its investigation and substantiated the allegation against Petitioner. (Resp't Ex. A)

Contested Case Proceedings and Hearing Testimony

33. On June 15, 2022, Petitioner filed a Petition for a Contested Case Hearing, challenging Respondent's substantiation of abuse.

34. At the hearing, Petitioner again expressly denied the allegations made against her.

35. Ms. Beddard, the only witness other than W.W. to the alleged incident, did not appear at the hearing. As a result, Ms. Beddard's out-of-court statements were not received by the tribunal.

36. Ms. Reed testified at trial and testified that it would not shock her if W.W. used a racial slur but that would not be grounds for hitting a resident. (Testimony of Ms. Reed 28:00-56)

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to chapters 131E and 150B of the North Carolina General Statutes.

2. All parties have been designated correctly, and there is no question as to misjoinder or nonjoinder.

3. The North Carolina Department of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry Section is required by N.C.G.S. § 131E-256 to maintain a Registry that contains the names of all health care personnel and nurse aides working in health care facilities who are subject to a finding by the Department that he or she abused a resident in a health care facility.

4. As health care personnel working in a health care facility, Petitioner is subject to the provisions of N.C.G.S. § 131E-256.

5. Dayspring of Wallace is a health care facility as defined in N.C.G.S. § 131E-256(b).

6. “Neglect is the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.” 10A N.C.A.C. 130 .0101(10); 42 CFR § 488.301.

7. “Abuse is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain, or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology. Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.” 10A N.C.A.C. 130.0101(1), 42 CFR § 488.301.

8. In this case, the only witness to the alleged neglect or abuse is Petitioner, who credibly testified in this contested hearing, subject to cross-examination, denying the allegations against her.

9. The conundrum presented by the evidence, or lack thereof, is that this case originated and was, in pertinent part, based on Ms. Beddard’s report alleging neglect or abuse against W.W. Respondent’s entire investigation was based on these allegations. Respondent took great efforts to properly and thoroughly investigate this case. However, in keeping with the Respondent’s notice of an alleged substantiated finding of the complained conduct, Petitioner was given notice of her right to appeal this finding before an impartial administrative law judge.

10. Petitioner elected to exercise her right to such an appeal and to challenge the case that Respondent had made against her. The right to such a fair and impartial hearing, with the right to test Respondent’s witnesses through the crucible of cross-examination, is afforded to petitioners to enable them to hear and contest the evidence against them. N.C.G.S. 150B-40(a). Herein lies the missing link to Respondent’s case; for without the credible testimony of a witness with personal

knowledge as to the abuse or neglect which allegedly occurred, the case simply cannot be bootstrapped upon hearsay to prove the heart of the allegation. Parties cannot control the appearance or the testimony of their witnesses; however, without the required proof of the abuse or neglect, Respondent's case must fail. *See Andrea D. Pritchett v. NC DHHS Health Care Personnel Registry Section*, 11 DHR 14885 (N.C.O.A.H., May 10, 2013).

11. Respondent was unable to prove that it did not act capriciously, substantially prejudicing the rights of Petitioner, as there was insufficient admissible evidence to support Respondent's conclusion that Petitioner committed neglect or abuse at Dayspring of Wallace.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby determines that Respondent's decision to place a finding of abuse and neglect next to Petitioner's name on the Health Care Personnel Registry should be **REVERSED**.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 20th day of February, 2023.

S

Samuel K Morris
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

Erica monique Floyd
Daysprings of Wallace
emfloyd1988@gmail.com
Petitioner

Eric Richard Hunt
NCDOJ
ehunt@ncdoj.gov
Attorney For Respondent

This the 20th day of February, 2023.



Daniel Chunko
Law Clerk
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 984-236-1850