

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 OSP 05886

Sheila Beck-Jones,)
Petitioner,)
)
vs.)
)
Hoke County Department of Social Services,)
Respondent.)

DECISION

This contested case was heard before Beecher R. Gray, Administrative Law Judge presiding, on May 14, 2012, and continuing on June 5, 2012, in Fayetteville, North Carolina.

APPEARANCES

For Petitioner: Evelyn M. Savage, Esq.
Van Camp, Meacham & Newman, PLLC
P.O. Box 1389
Pinehurst, NC 28370

For Respondent: Theresa M. Sprain, Esq.
Womble, Carlyle, Sandridge & Rice, PLLC
1500 Fayetteville Street
Suite 2100
Raleigh, NC 27601

ISSUE

Whether Respondent had just cause to discharge Petitioner from her employment with the Hoke County Department of Social Services for 1) conduct unbecoming a state employee and 2) willful violation of known work rules.

Based upon consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the record filed herein, the Undersigned makes the following findings of fact:

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.

2. Since June 1, 2005, Petitioner was employed as a Child Support Supervisor II with the Hoke County Department of Social Services (“Hoke County DSS”). Prior to her employment with Hoke County DSS, Petitioner worked many years in child support services for Cumberland County Department of Social Services.
3. During Petitioner’s employment prior to being placed on administrative leave, Petitioner received excellent performance reviews. Petitioner had no warnings concerning her job performance, and no disciplinary action ever was taken against her for any reason.
4. On or about February 15, 2011, Petitioner met with her supervisor, Della Sweat, the Director of the Hoke County Department of Social Services, and one of the child support agents Petitioner supervised, Elizabeth Marshall, regarding complaints Elizabeth Marshall had made to the Human Resources office relating to Petitioner’s time-keeping. The time-keeping complaints were determined by the Human Resources Office to be unfounded. Elizabeth Marshall bypassed her supervisor, Petitioner, and the Director, Della Sweat, carrying her complaint directly to the Human Resources Office. Elizabeth Marshall had a history of making complaints against Petitioner.
5. At the conclusion of that meeting, Director Sweat instructed Petitioner to hold a meeting with the other child support agents within her unit to remind them that they first should bring any complaints they have within the unit to either Petitioner or Director Sweat before going outside the chain of command.
6. It had been reported to Director Sweat by some of Petitioner’s subordinates that Petitioner’s demeanor during the meeting, and in several subsequent meetings with individual staff members, was unprofessional and that she cursed at the staff, specifically that she used the word “pissed.”
7. On or about February 18, 2011, Director Sweat informed Petitioner that she was being put on paid administrative leave while Director Sweat investigated a number of issues that had been raised within the child support unit. Petitioner immediately was escorted from the building and allowed to retrieve only her medications from her office.
8. On or about February 21, 2011, Petitioner received a letter from Director Sweat confirming that she was being placed on administrative leave status pending an investigation of a number of allegations relating to job performance or conduct deficiencies, including that Petitioner was not handling vacation and sick leave properly for her subordinates; that Petitioner was not documenting her time sheets correctly; that Petitioner was advising staff that she had the power to fire staff; that Petitioner was cursing at staff; and that Petitioner was placing derogatory remarks and questionable information on documents within the ACTS system. The February 21, 2011, letter from Director Sweat to Petitioner listed eight (8) reasons for placing Petitioner on investigative leave with pay.
9. During her testimony under oath, Director Sweat admitted that reasons 1-5 and 7 were determined to be unfounded. Reason 6, that Petitioner allegedly told subordinates that

she could fire them, remained undetermined. As to reason 8, Director Sweat was unable to locate and demonstrate any derogatory remarks and questionable information in Respondent's Exhibit 12, a compilation of child support records from Petitioner's work unit. Following the completion of her investigation, Petitioner received a pre-dismissal conference letter from Director Sweat on or about March 16, 2011, stating that she was considering terminating Petitioner's employment for unacceptable personal conduct.

10. The pre-dismissal letter was based on three specific charges: 1) conduct unbecoming a state employee for Petitioner's behavior during the meeting(s) conducted on February 15, 2011; 2) a willful violation of the methods established for entering information into a state-wide data base ("ACTS") for interstate child support matters; and 3) a willful violation of the Hoke County computer use policy.
11. On February 15, 2011, Petitioner conducted a meeting with the staff she supervised as directed by Director Sweat. Testimony was received from Sharon Daugherty and Demetrius Love, two of the child support agents Petitioner supervised, that Petitioner was angry during this meeting and that she used inappropriate language, although neither witness could testify as to exactly what was said. Petitioner admitted to using the word "pissed" in describing Director Sweat's demeanor during her meeting with Director Sweat that preceded Petitioner's meeting with her subordinate staff, but denied cursing at staff or being angry or unprofessional.
12. The February 15, 2011, meeting conducted by Petitioner with her subordinate staff was a function of her supervisory duties; her actions during that meeting--including the use of any inappropriate language-- related to her job performance as a supervisor and not as a function of personal conduct.
13. Petitioner never received any warnings relating to her job performance prior to her dismissal. Although Director Sweat met with Petitioner in 2010 and talked to her about Petitioner's use of her cell phone, use of the computer, and treatment of other employees, no written warning or other document was generated to memorialize that consultation.
14. Petitioner was accused of inputting false information into the ACTS system on interstate child support orders to pad Hoke County's paternity establishment numbers in order to increase incentive money received by Hoke County from the federal government, even though Petitioner would get no personal benefit from doing so. Item 8 in the February 21, 2011, letter from Director Sweat to Petitioner placing her on investigation with pay status alleged that Petitioner had placed derogatory remarks and questionable information on documents in the ACTS system.
15. Sally McDonald appeared as a witness for Respondent, testifying principally regarding the alleged derogatory comments and questionable information claims about Petitioner's entries in the ACTS system, as investigated by Respondent. Sally McDonald is Hoke County's assigned Regional Program Representative for the North Carolina Department of Health and Human Services, Child Support Section.

16. Program Representative McDonald visited Respondent's facility on April 12, 2011, to meet with Director Sweat about and to investigate Petitioner, who no longer was employed by Respondent. Having completed her investigation regarding Petitioner's work with Respondent, Program Representative McDonald made the following observations and statements--among others--during her testimony:
 1. Paternity is one of 5 incentive categories used in performance-based evaluation by the Federal Government for distribution of funds to the State, as determined on a performance basis by county;
 2. On April 12, 2011, Director Sweat showed Program Representative McDonald 1,185 paternity cases done by Petitioner, and Program Representative McDonald found it unusual for a supervisor to have done that much case work;
 3. Representative McDonald found 374 of the 1,185 records to be false (incorrect) and further that:
 - a. 93 records say paternity established but not accurate;
 - b. Some cases where the non-custodial parent was dead or unknown;
 - c. 20 cases were errors;
 - d. 33 cases where the non-custodial parent was not the mother, so paternity was not in issue;
 - e. Some cases documented more than once; and
 - f. Some cases where paternity already had been determined by another state;
 4. Program Representative McDonald asserted that these errors were intentional on the part of Petitioner. Program Representative McDonald based her belief about Petitioner's intentional errors on the fact that she believed that Petitioner would have known better. No other evidence was offered by Respondent on the issue of intentionally false or incorrect entries made by Petitioner into the ACTS system. Program Representative McDonald never interviewed Petitioner in connection with her investigation into Petitioner's performance in Respondent's department. She testified that, even with what she categorized as 374 error cases out of 1,185 cases sampled, Hoke County has excellent scores in its paternity cases.
17. Petitioner was trained to ensure that the electronic ACTS system reflected all of the information contained in the hard case file, including all information relating to how and when paternity was established.
18. Petitioner was trained on the ACTS system in 1997 and received no further formal training on ACTS after that time.
19. Petitioner entered information into the ACTS system the same way since her initial training. She trained other agents to enter the information the same way she had been trained.

20. Petitioner participated in inter-county work-groups and discussed how she was entering the information into the ACTS system within those sessions.
21. Petitioner never tried to hide what information she was putting into the ACTS system.
22. Prior to her dismissal, no one from Hoke County, any other county, or the State ever suggested to or told Petitioner that she was entering information incorrectly.
23. Respondent failed to offer evidence proving that Petitioner intentionally was entering false or incorrect information into the ACTS system.
24. The Hoke County computer use policy allows staff to use their computers for personal use during breaks and during their lunch period. However, the policy prohibits the use of the computers “to transmit offensive materials, hate mail, discriminatory remarks, obtain or transmit pornographic materials, communicate racial or ethnic slurs or anything that may be construed as harassment of others based on their race, national origin, sex, sexual orientation, age, disability, or religious or political beliefs.”
25. Respondent presented a print-out of Petitioner’s alleged “favorites” list suggesting that in 2006/2007 Petitioner added the following websites to her favorites list: lovingyou.com; secretloveletters.com; and “Nawty Things Adult Toys T-Shirts Gifts Novelties X-Rated Fun.” However, other than presenting this list, Respondent was unable to provide any evidence of when and how many times these sites were allegedly accessed, if at all, by Petitioner or that the websites were pornographic. Director Sweat did not attempt to connect to any of these web sites to determine whether they were pornographic in nature.
26. Petitioner had no specific recollection of visiting any of the specific sites listed in the pre-dismissal letter, but did recall visiting one adult website based on a tip from Respondent’s social worker Wally Sirengo that a non-custodial parent was working on the website. Petitioner also sent e-cards to her husband while he was deployed to Kuwait.
27. Respondent offered no evidence to rebut Petitioner’s testimony.
28. A pre-dismissal conference was held on March 25, 2011.
29. On or about March 29, 2011, Petitioner received a letter from Director Sweat stating that Petitioner’s employment was being terminated.
30. Petitioner appealed to Director Sweat for reconsideration.
31. On April 13, 2011, Director Sweat sent Petitioner a letter affirming her decision to terminate Petitioner’s employment.
32. On or about May 12, 2011, Petitioner filed a Petition for a Contested Case Hearing alleging a lack of just cause for her dismissal and seeking reinstatement, back pay, and attorneys’ fees.

33. N.C. Gen. Stat. § 126-35(a) states that “no career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.”

Based upon the foregoing findings of fact, and upon the preponderance or the greater weight of the evidence, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this action.
2. At the time of Petitioner’s termination, she was subject to and entitled to the protections of the State Personnel Act in accord with North Carolina General Statute § 126-5(a).
3. Two bases for “just cause” for dismissal are set forth in 25 N.C.A.C. 11.2301 as: 1) unsatisfactory job performance, including grossly inefficient job performance; and 2) unacceptable personal conduct.
4. In this matter, the burden of showing Petitioner was discharged for just cause rests with the department or agency employer. N.C. Gen. Stat. § 126-35(d).
5. Petitioner held the February 15, 2011, meeting(s) as part of her supervisory duties, and her actions during said meeting(s) related to her job performance, not personal conduct. Petitioner never received any warnings prior to her dismissal relating to her job performance. Respondent has failed to demonstrate that Petitioner’s conduct during the meeting(s), even if less than appropriate, rises to the level of unsatisfactory or grossly inefficient job performance.
6. Conflicting evidence was presented as to the proper method for entering data into the state ACTS system; however, to the extent Petitioner was entering the data incorrectly, she did not do so falsely or intentionally. Respondent has failed to demonstrate that Petitioner engaged in unacceptable personal conduct in that regard.
7. Petitioner also was accused of willfully violating the Hoke County computer use policy. Insufficient evidence was presented to conclude that Petitioner actually violated said policy. No evidence was presented to rebut Petitioner’s testimony as to sending e-cards to her husband stationed in Kuwait or as to searching for the mother of a Department client based upon a tip from a fellow social worker. Respondent failed to demonstrate that Petitioner engaged in unacceptable personal conduct as it relates to excess personal or improper computer usage.
8. For the foregoing reasons, Respondent has failed to demonstrate just cause to discharge Petitioner from its employment.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's decision to terminate Petitioner's employment because of job performance and unacceptable personal conduct is not supported by the evidence and is REVERSED. Petitioner is entitled to reinstatement, back pay, and attorney's fees, and to all benefits to which she would have become entitled but for her discharge from Respondent's employment.

ORDER AND NOTICE

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

The State Personnel Commission will issue an advisory opinion to the Director of the Hoke County Department of Social Services. G.S. 150B-23(a). The Director of the Hoke County Department of Social Services will make the final decision in this contested case.

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision and to present written arguments to those in the agency who will make the final decision.

This the 3rd day of July, 2012.

Beecher R. Gray
Administrative Law Judge