

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
11 OSP 09588

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Gerald Price, )  
Petitioner, )  
 )  
Vs. )  
 )  
N.C. Department Of Agriculture & )  
Consumer Services, Standards Division, )  
Respondent. )

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**DECISION**

On December 19, 2012, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Raleigh, North Carolina. On February 11, 2013, the parties filed their respective proposed Decisions with the Office of Administrative Hearings.

**APPEARANCES**

For Petitioner: Michael C. Byrne  
Law Office of Michael C. Byrne, PC  
150 Fayetteville Street, Ste. 1130  
Raleigh, NC 27601

For Respondent: Barry H. Bloch  
Assistant Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
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**ISSUE**

Whether Respondent had just cause to dismiss the Petitioner from employment for unacceptable personal conduct?

**APPLICABLE STATUTES**

N.C. Gen. Stat. §§ 126-5(a)(2), and 126-35  
25 NCAC 1J.0604, .0608 & .0614

**EXHIBITS ADMITTED INTO EVIDENCE**

For Petitioner: 1 – 3, 5, 11 – 13

For Respondent: 1 – 9, 11 - 16

## WITNESSES

For Petitioner: Gerald Price

For Respondent: Stephen Benjamin, Sharon Woodard

## FINDINGS OF FACT

### Procedural Background

1. Petitioner is a career status employee of the Respondent in a position subject to the State Personnel Act.

2. On June 7, 2011, Respondent dismissed Petitioner from employment for engaging in unacceptable personal conduct. In the dismissal letter, Respondent stated:

The specific conduct issue for which you are being disciplined is plagiarism. Specifically, you submitted to your supervisor and NIST your Intermediate LAP problems package which included work that was not your own. LAP problem #2 included some identical phrasing as found in Mr. Van Hyder's submission. LAP problem #3 was partially copied from Mr. Cliff Murray's submission, with all of your 'observed' environmental conditions and balance results being identical to his while using a different balance 5 years later.

(Resp Exh 4)

3. Petitioner appealed his dismissal through the Respondent's internal grievance process. On June 16, 2011, Asst. Commissioner Isley met with Petitioner. During this meeting, Petitioner admitted that he used another employee's measurements in his work in answer his LAP problems. (Respondent's Exhibit No. 5) Based on his meeting with Petitioner and the documents he received from Ms. Woodard and Mr. Benjamin, Isley concluded that Petitioner's actions constituted plagiarism, were fraudulent, and represent a serious issue of unacceptable personal conduct. (Respondent's Exhibit No. 5) Isley upheld Petitioner's dismissal.

4. The Employee Relations Committee ("ERC") upheld Mr. Benjamin's decision to dismiss Petitioner for unacceptable personal conduct. (Respondent's Exhibit No. 6) The ERC found that Petitioner admitted that he did not follow the written directions for completing the LAP problems. While there is no policy against plagiarism, Respondent's plagiarism constituted unacceptable personal conduct. (Respondent's Exhibit No. 6) The ERC found that Petitioner failed to demonstrate his ability complete the LAP problems by knowingly submitting the work of others as his own. (Respondent's Exhibit No. 6)

5. On July 19, 2011, Respondent's Secretary Steve Troxler issued a Final Agency Decision upholding Respondent's dismissal of Petitioner from employment. (Respondent's Exhibits 5, 6) Troxler advised, "The severity of your actions could have potentially jeopardized the accreditation of the Standards Lab and the integrity of the department." Petitioner "knowingly submitted to management and to NIST your intermediate LAP problems package which included work that was not your own." The LAP problems were designed to evaluate your analytical skills and not the analytical skills of your former colleagues." (Respondent's Exhibit 1)

6. On July 26, 2011, Petitioner filed a contested case petition with the Office of Administrative Hearings appealing his dismissal from employment. In his petition, Petitioner stated:

Petitioner, a career state employee, was dismissed by the employer without just cause for disciplinary reasons in violation of G.S. 126-35 on the grounds of alleged 'plagiarism' that violated neither Respondent's policy nor the law. By taking these actions, Respondent deprived Petitioner of property, and substantially prejudiced Petitioner's rights, and additionally (1) exceeded its authority or jurisdiction, (2) acted erroneously, (3) failed to use proper procedure, (4) acted in violation of constitutional provisions, (5) failed to act as required by law or rule, and/or (6) was arbitrary, and capricious and/or abused its discretion. Petitioner exhausted all administrative remedies prior to filing this petition.

(Petition)

#### Adjudicated Facts

7. At the time of his dismissal from employment, Petitioner was employed as a "Metrologist I" in Respondent's Standards laboratory under Sharon Woodard's management.

8. Respondent's Standard's Division (hereinafter the "Division") is a regulatory agency responsible for enforcing the NC Weights and Measures Act (N.C. Gen. Stat. Ch. 81A), the Gasoline and Oil Inspection Law (N.C. Gen. Stat. Ch. 119), and the LP-Gas Inspection Law (N.C. Gen. Stat. § 119, Art. 5).

9. The Division's Standards Laboratory provides measurement standards for various operations of the Respondent around the state. The Standards Laboratory "performs mass, length, volume, and temperature measurement calibrations that are traceable to national standards." The National Voluntary Laboratory Accreditation Program (NVLAP), a program administered by the National Institute of Standards and Technology (NIST) of the U.S. Department of Commerce, accredited the Standards Laboratory. (Respondent's Exhibit 2)

10. The Standards Laboratory employs metrologists to certify and calibrate weight and measurement instruments that the Division's field staff uses to determine whether private equipment used in commerce, such as scales and gasoline pumps, are accurate and comply with the NC Weights and Measures Act, and the Gasoline and Oil Inspection Law. The Standards Laboratory also tests and calibrates measurement equipment of private businesses to enable those businesses to operate scales and measurement equipment that is traceable to the NIST's industry standards.

11. Proper calibration of the Division's equipment is important, because the Division's Director is authorized to either issue civil penalties for violations of the NC Weights and Measures Act, and the Gasoline and Oil Inspection Law, or refer violations of such Acts for criminal prosecution.

12. Continued NVLAP accreditation of the Standards Laboratory requires the Standards Laboratory conduct formal training to qualify its metrologists to perform mass, volume and other calibrations. Having sufficient number of qualified metrologists to perform specific calibrations is one requirement for maintaining NVLAP accreditation with NIST.

13. The Standards Laboratory manager, Sharon Woodard, is responsible for its formal training program, and reports directly to the Division's Director, Stephen Benjamin.

14. From April 16 to April 20, 2007, Petitioner attended and successfully completed training at the Southeast Measurement Assurance Program, conducted by the U.S. Department of Commerce, and NIST. (Respondent's Exhibit No. 8)

15. Part of the Southeast Measurement Assurance Program required Petitioner to demonstrate proficiency by completing a set of ten (10) Intermediate Laboratory Audit Problems ("LAP problems"). The Standards Laboratory also required Petitioner to complete these LAP problems. (Respondent's Exhibit No. 9) Petitioner did not get any additional pay for completing the LAP problems nor did he receive an enhancement of position.

16. As the laboratory manager, Woodard can assign work based on the signatory status of echelon 1, echelon 2, or echelon 3. An employee cannot be scheduled for certain assignments until he or she completes a certain echelon rating or level. A Metrologist I can have signatory status of some, but not all mass, at all weights. In 2011, there were other laboratory employees performing echelon 1 and 2 level procedures. However, Petitioner was restricted to echelon 3, or basic metrology testing.

17. On January 7, 2011, Ms. Woodard issued a written warning to Petitioner for the unacceptable job performance of failing to complete the Intermediate LAP problems by a given deadline of December 30, 2010. (Respondent's Exhibit No. 11)

18. In the particular LAP problems at issue, Petitioner (or other problem solver) would obtain measurements from a weight or weights found in the Standards Lab, and then conduct certain analyses of them.

19. However, Petitioner used measurements taken by co-workers, instead of obtaining his own measurements, and used those coworkers' measurements to complete LAP problems 2 and 3. Petitioner explained that the weights used to obtain the required measurements, were being used for another project. Petitioner felt under pressure to complete the problems.

20. While Respondent has policies regarding Standards in its Standards Manual, none of these policies addresses, or prohibits, by their terms the actions for which Petitioner was dismissed. Respondent had no other underlying policy, which expressly addressed or prohibited plagiarism.

21. At hearing, Ms. Woodard explained that Metrologist I employees are expected to work on the LAP problems during regular work hours, and to use any and all equipment and reference materials available to them in the workplace to complete the problems.

22. The directions for the LAP problems state, in part, that the problems:

Have been revised to develop your interpretation of training materials and assess your ability to evaluate and integrate procedures and measurement control processes in the laboratory. Most of the problems will not have a right or wrong answer but will evaluate your thinking process in addition to your measurement skills. Provide a calibration report for each problem as appropriate: 3, 4, 5, 9.

(Respondent's Exhibit No. 9)

23. Ms. Woodard completed and submitted the LAP problems to NIST while she had been employed as a Metrologist I in the Standards Laboratory. It took her about 6 months to complete the Intermediate LAP problems.

24. The LAP problems duplicated routine calibration tasks a Metrologist I performs in the Standards Lab, except that, in an actual calibration, the employee would input his measurements and other required data values into a computer application for the calibration, and the computer application would do the calculations and report the result.

25. The LAP problems required the Metrologist employee to perform the calibration "by hand," following a standard operating procedure (SOP) comprised of taking measurements, using a calculator to perform the mathematical calculations using the measurement data and other values, and then interpreting the results according to what the metrologist employee understands about the specific calibration being performed.

26. Having the metrologist complete the LAP problems was part of a training process in which the metrologist demonstrated that he or she was capable of performing specific mass, volume, and other calibrations independently. The training program's objective was to have as many metrologist employees trained to perform as many calibrations independently as possible. Achieving that objective would allow her to assign each metrologist a greater variety of calibrations, thus leading to greater flexibility and quality in the services being provided to the Standard's Laboratory's customers.

27. If a metrologist provided an incorrect answer to a LAP problem, it would not be a reason for disciplinary action; rather, it would indicate that the metrologist needed additional training.

28. If a metrologist employee failed to complete and turn in his or her LAP problems, it could lead to successively lower grades on his or her Performance Management Work Plan, as had happened with Petitioner.

29. Woodard acknowledged that it was acceptable for the metrologists to help each other with completion of the LAP problems, as far as one employee could answer another's questions, or show his colleagues his answers to problems.

30. Sometime before she reviewed Petitioner's LAP problems, Ms. Woodard saw Petitioner's LAP problems lying on his desk when she was turning off Petitioner's computer before leaving work. She also saw another set of problems with different writing underneath Petitioner's problems. She asked another employee to verify what she saw. She advised her boss of her observation, but did not suspect plagiarism at that point.

31. On or about May 30, 2011, Petitioner completed and submitted his LAP problems to NIST, and gave Woodard a copy of such problems. Woodard reviewed Petitioner's answers to the LAP problems. After reviewing Petitioner's answers to the LAP problems, Woodard checked another employee's problems (Murray), and discovered Petitioner had copied the answers from Murray's LAP problems.

a. Mr. Murray had used a specific balance instrument in his answers, but Petitioner could not have used that instrument because the lab did not have that instrument. Petitioner was supposed to take his own measurements using a different model of balance instrument than Murray. Woodard would expect Petitioner's answers to be different because he would have used a different model of balance instrument.

b. Ms. Woodard opined that Petitioner's written explanation on page 3 of Respondent's Exhibits 12 and 13 were "virtually identical" to Murray's written explanation.. She was familiar with Murray's writing style and Petitioner's writing style. Petitioner's writing style in these specific answers were similar to Mr.

Murray's writing style in his answers.

c. On cross-examination, Woodard acknowledged that there were some differences between the sentences and measurements in Petitioner's answers and Murray's answers. She recognized that it was not a violation to show another employee your LAP problems if that employee was working on his own LAP problems.

32. At hearing, Ms. Woodard acknowledged that this was the first time when copying answers to LAP problems had become an issue with her employees. In fact, this was the first time any employee had submitted his Intermediate LAP problems to her during her job as manager.

33. Woodard acknowledged that Petitioner performed his routine duties well, and there were no issues with him completing work assignments. There were no disagreements with Petitioner over work or implementing lab policies, and he got along fine with her and coworkers.

34. In issuing Petitioner's April 2010-2011 performance management plan, Woodard rated Petitioner as "unsatisfactory," because he had not completed his LAP problems. She did not have the discretion to give Petitioner a higher rating.

35. After Petitioner copied answers to the LAP problems, Woodard was not comfortable trusting Petitioner's work.

36. On June 2, 2011, Division Director Stephen Benjamin issued a letter to Petitioner, directing him to attend a pre-disciplinary conference on June 3, 2011 to discuss a recommendation of disciplinary action due to Petitioner's unacceptable personal conduct (Respondent's Exhibit No. 3). The June 2, 2011 letter informed Petitioner that:

The specific conduct issue giving rise to this conference is that:

You submitted to your supervisor and NIST your Intermediate LAP problems package which included work that was not your own. LAP problem # 2 included some identical phrasing as found in Mr. Van Hyder's LAP submission. LAP problem # 3 was partially copied from Mr. Cliff Murray's LAP submission, with all of your "observed" environmental conditions and balance results being identical to his [Cliff Murray's answer], while using a different balance 5 years later.

(Respondent's Exhibit 3)

37. During the pre-disciplinary conference, Petitioner admitted that copying his fellow employees' work from their LAP problems was wrong, and being under pressure did not make it right for him to have done so.

38. On June 7, 2011, Benjamin notified Petitioner by letter that, effective that date, he was dismissing Petitioner from employment due to Petitioner's unacceptable personal conduct. In such letter, Benjamin recounted what took place during the pre-disciplinary conference. Benjamin also summarized Petitioner's admission that he had used other employees' LAP problem answers, because he was under the impression that there was a deadline for completion of his LAP problems and he had gotten near the end of the time he had to complete them. (Respondent's Exhibit No. 4) Director Benjamin also stated that, by copying other employees' work to his own LAP problem answers, Petitioner had claimed another's work as his own, and falsified a document for personal gain, which was unacceptable personal conduct.

39. At hearing, Director Benjamin opined that the reliability and traceability of the Standards Laboratory's calibrations of Department equipment used in law enforcement was a critical piece of the Division's ability to enforce the NC Weights and Measures Act, and the Gasoline and Oil Inspection Law, since such cases were based primarily on the Division's field inspectors' measurements using instruments that had been calibrated by the metrologists in the Standards Laboratory.

40. The LAP problems make sure employees understand the background, the process, and the basis for their work, so they can catch errors if the calculations from the computer program do not look right. Metrologists should have the capability to do work if the computers are down. They expect a Metrologist 1 to be able to finish the LAP problems during normal working hours, not weekends. There is no right answer to the LAP problems.

41. Director Benjamin acknowledged that it was okay for a metrologist to get help with the LAP problems, but it was not okay to copy someone else's work. It was also okay for the laboratory manager to teach a Metrologist I how to complete the LAP problems.

42. Benjamin noted that during the pre-disciplinary conference, Petitioner admitted he partially copied the answer to LAP problem no. 2, and copied the entire answer to LAP problem no. 3, from another coworker. Benjamin opined that the decision came down to a matter of trust and integrity. Customers must be able to trust the work that the Laboratory Section performs. You should not copy any of the LAP problems.

43. While Benjamin considered implementing a disciplinary action less than dismissal, such as suspension, against Petitioner, he did not feel comfortable with Petitioner working in the lab, and was not comfortable with Petitioner's work since he copied someone else's work.

44. Before deciding what disciplinary action to take against Petitioner, Benjamin talked with Ben Harwood, Director of Respondent's Human Resources Division. Harwood advised Benjamin that he could not support dismissal of Petitioner solely based on plagiarism without a prior record or prior work plan. Mr. Harwood sent



a suspension letter and a dismissal letter to Benjamin to review. (Petitioner's Exhibit No. 12) Harwood was comfortable with either disciplinary action, as he noted in his email to Benjamin that "I can see merit in each decision." (Petitioner's Exhibit No. 12)

45. Benjamin opined that Petitioner's actions could potentially jeopardize the accreditation of the Standards Lab. However, no evidence was submitted that Petitioner's copy of LAP problem answers actually jeopardized the Laboratory's accreditation, or that any accrediting authority considered any adverse action against the Standards Lab because of Petitioner's actions.

46. There was no evidence offered that the measurements used by Petitioner were unreliable or invalid; rather, the testimony showed that had Petitioner taken the measurements in LAP problems 2 and 3 at the time of the other employees, he would have obtained the same information.

47. Benjamin conceded that the Respondent's Quality Manual (Respondent's Exhibit No. 7) does not address plagiarism specifically, or address disciplinary actions if an employee fails to do what is required in the Manual.

48. Director Benjamin explained that he never told Petitioner he could not receive help from outside sources on LAP problems. Benjamin was made aware that employees had helped other employees in answering LAP problems. He was not aware employees used their own problems to help employees. You can help and assist employees with, or show them how to do problems, but you cannot copy problems. He elaborated that there is no restriction how employee obtained answers to the LAP problems, and there are no specific answers to the LAP problems. It is understanding the process that is important.

49. Director Benjamin acknowledged that the process of obtaining measurements required in the LAP problem are not what Petitioner typically does in his daily work. Employees do not take manual measurements in performing their duties, but rather obtain the measurements from data on a computer program. That is, laboratory employees use all the calculations performed from a computer program that another metrologist entered into the computer program. Employees do not perform calculations themselves by hand. Even if the Respondent's computers were broken down or disabled, Benjamin agreed that the process of obtaining manual measurements was too slow and/or cumbersome to be of practical use.

50. Director Benjamin explained that the continued employment of a metrologist employee who claimed another employee's work to be his own, and falsified a training document for personal gain, could not be tolerated, because it would indicate the metrologist was capable of similar acts in performing his routine calibration work. Yet, there was no evidence presented at hearing that Petitioner had engaged in conduct similar to the actions described in this case, or considered by Respondent to be dishonest, unethical, at any time in performing his job.

51. Respondent never instructed Petitioner that he was barred from obtaining assistance or help from co-workers in completing the LAP problems, particularly with respect to obtaining the base measurements needed to conduct the analysis. (Petitioner's Exhibit 1, Interrogatory No. 7)

52. Benjamin admitted that Respondent has not fired anyone for failing to complete his or her LAP problems. Petitioner was the only employee who had taken intermediate training since Benjamin has been the Division Director.

53. At hearing, Petitioner indicated that coworkers in the lab shared the LAP problems freely. Respondent's witnesses did not dispute this testimony. Other coworkers such as Mr. Anderson, Mr. Murray, and Mr. Hyder gave Petitioner their LAP problems.

54. After receiving the written warning on January 7, 2011, Petitioner was unable to use weights needed to complete his LAP problems, because the weights were being used in the robot on another project. He used some of his own data and analysis, but also used some of coworker Hyder's analysis in LAP problem no. 2. Petitioner's LAP problem no. 2 was the same problem as Hyder's, and involved the same evaluation.

55. Petitioner contended that he knows how to do the work required in the LAP problems, even though he copied the problems' answers. He also followed the standard operating procedure in completing the LAP problems. He enters data into the computer program at work daily, and the computer performs the calculation. He was not told that plagiarism would subject him to dismissal, and Ms. Woodard did not offer any active help with the LAP problems.

### **CONCLUSIONS OF LAW**

1. The parties are properly before the Office of Administrative Hearings and the Office of Administrative Hearings has jurisdiction. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. At the time of his dismissal, Petitioner was a career State employee entitled to the protections of the North Carolina State Personnel Act, specifically the just cause provision of N.C. Gen. Stat. § 126-35. N.C. Gen. Stat. § 126-1 *et. seq.* See, *Bulloch v. NC Dept. of Crime Control and Public Safety, NC Highway Patrol*, 732 S.E. 2d 373 (N.C. App. 2012); *Beatty v. Jones*, 721 S.E.2d 765 (N.C. App. 2012); *Warren v. N.C. Depart. of Crime Control, Highway Patrol*, 726 S.E.2d 920 (N.C. App. 2012).

3. Because Petitioner alleged that Respondent lacked just cause to dismiss him from employment, the Office of Administrative Hearings has jurisdiction to hear his appeal.

4. N.C. Gen. Stat. § 126-35(a) provides, in pertinent part, that “No career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.” Although N.C. Gen. Stat. § 126-35 does not define “just cause,” the words are to be accorded their ordinary meaning. *Amanini v. Dep’t of Human Resources*, 114 N.C. App. 668, 443 S.E.2d 114 (1994) (defining “just cause” as, among other things, good or adequate reason).

5. Pursuant to N.C. Gen. Stat. § 126-35(d), in an appeal of a disciplinary action, the employer bears the burden of proving that “just cause” existed for the disciplinary action.

6. In *NC Dep’t. of Env’t & Natural Res. v. Carroll*, 358 N.C. 649, 599 S.E.2d 888 (2004), the Supreme Court explained that the fundamental question in a case brought under N.C.G.S. § 126-35 is whether:

[T]he disciplinary action taken was ‘just.’ Inevitably, this inquiry requires an irreducible act of judgment that cannot always be satisfied by the mechanical application of rules and regulations.

‘Just cause,’ like justice itself, is not susceptible of precise definition. . . . It is a ‘flexible concept, embodying notions of equity and fairness,’ that can only be determined upon an examination of the facts and circumstances of each individual case. . . . Thus, not every violation of law gives rise to ‘just cause’ for employee discipline.

358 N.C. at 669-669. E.g., *Kelly v. NC Dept. of Env’t & Natural Res*, 664 S.E.2d (N.C. App. 2008)

8. In *Carroll*, the NC Supreme Court also stated that:

Determining whether a public employee had just cause to discipline its employee requires two separate inquiries: First, whether the employee engaged in the conduct the employer alleges, and second, whether that conduct constitutes just cause for the disciplinary action taken.

358 N.C. at 649,665.

9. In 2012, our Supreme Court amended the determination espoused in *Carroll* regarding whether a State agency had just cause to discipline an employee under N.C. Gen. Stat. § 126-35. That Court stated that:

[T]he proper analytical approach to determine whether ‘just cause’ exists is to first determine whether the employee engaged in conduct the employer alleges; the second inquiry is whether the employee’s conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code; if the employee’s act qualifies as a

type of unacceptable conduct, the tribunal proceeds to the third inquiry: whether that misconduct amounted to just cause for the disciplinary action taken, and must base its determination upon an examination of the facts and circumstances of each individual case.

*Warren v. N.C. Dep't of Crime Control & Pub. Safety*, \_\_\_ N.C. App. \_\_\_, 726 S.E.2d 920, 925 (2012).

10. Both *Carroll* and *Warren* require that just cause be determined based upon an examination of the facts and circumstances of each individual case." *Carroll* at 669, 599 S.E.2d at 900; *Warren*, 726 S.E.2d at 925.

11. Pursuant to 25 NCAC J.0604 (b) and (c), an employer may discipline or dismiss a career State Employee for just cause based upon unsatisfactory job performance and/or unacceptable personal conduct. 25 NCAC 01J.0604 defines "unacceptable personal conduct" to include:

- (a) Conduct for which no reasonable person should expect to receive prior warning; ...
- (d) The willful violation of known or written work rules;
- (e) Conduct unbecoming a state employee that is detrimental to state service.

12. One act of unacceptable personal conduct presents "just cause" for any discipline, up to and including dismissal. 25 N.C.A.C. 1J.0604(a), 1J.0608(a), 1J.0612(a)(3), and 1J.0614(i)(2003). No showing of actual harm is required to satisfy 25 NCAC 1J .0614(e), only a potential detrimental impact (whether conduct like the employee's could potentially adversely affect the mission or legitimate interests of the State employer). *Eury v. Employment Sec. Comm'n*, 115 N.C. App. 590, 610-11, 446 S.E.2d 383,395-96, *disc. review denied*, 338 N.C. 309, 451 S.E.2d 635 (1994), *Hilliard v. N.C. Dep't of Corr.*, 173 N.C. App. 594, 620 S.E.2d 14 (2005).

14. Under 25 N.C.A.C. 1J.0614(d), an employer's work rules may be written or "known," and a willful violation occurs when the employee willfully takes action which violates the rule, and does not require that the employee intend his conduct to violate the work rule. *Hilliard v. N.C. Dep't of Corr.*, 173 N.C. App. 594, 620 S.E.2d 14 (2005).

15. In this case, Respondent dismissed Petitioner from employment for the unacceptable personal conduct of plagiarism. The preponderance of evidence proved that Petitioner engaged in the conduct Respondent alleged, the first prong of a just cause determination. Petitioner, by his own admissions, copied measurements and written analysis for two of his ten LAP problem answers from the LAP problem answers submitted by two of his co-workers. Respondent established that Petitioner knew that it was wrong for him to copy co-workers' measurement data and analysis into his LAP problem answers, and submit those answers as his own work.

16. Respondent established that the LAP problems were a part of Respondent's formal training program for its metrologists. Its training program serves to train and qualify its metrologists to perform mass and volume calibrations, and is a requirement for its Standards Laboratory's accreditation under NVLAP by NIST.

17. As to the second prong of a just cause determination, there is no evidence that Petitioner's actions violated any known or written work rules of the Respondent. Respondent had no policy defining, prohibiting, or even addressing "plagiarism" in the workplace. There was no policy prohibiting or addressing the use of measurements obtained by others in completing the LAP problems. Sharon Woodard advised that Petitioner's submittal of an incorrect answer to a LAP problem would result in Petitioner receiving additional training, and would have delayed his qualification for specific calibration.

18. The preponderance of evidence established that employees shared their work on their LAP problems with each other without complaint or restriction from Respondent. Petitioner explained how his coworkers freely gave him their LAP problems to Petitioner to assist him with his LAP problems. Both Ms. Woodard and Director Benjamin were aware of the employees assisting each other with their LAP problems.

19. Given the absence of any known or written work rule by Respondent addressing plagiarism, and the freely given assistance among staff in completing the LAP problems, Respondent failed to clearly define what constituted acceptable conduct by employees who were completing their LAP problems.

20. Nonetheless, without any policy addressing, prohibiting or defining plagiarism in Respondent's workplace, we must use and apply the common, ordinary meaning of such word to this case to determine whether Respondent showed that Petitioner violated 25 NCAC 01J.0604(a) and (e). Oxford Dictionaries (2013 Online Ed.) define plagiarism as, "the practice of taking someone else's work or ideas and passing them off as one's own."

21. Applying the ordinary definition of "plagiarism" to this case, Petitioner plagiarized or copied two coworkers' answers to LAP problems, and presented such work as his own. Petitioner's plagiarism of two LAP problem answers frustrated the purpose of doing the problems, and the purpose of Respondent's training, and gave Petitioner's supervisors reason to doubt his integrity in his work.

22. Honesty, trust, and integrity are attributes any reasonable person, such as Petitioner, should possess. Plagiarizing a coworker's work, regardless of the importance of such work, violates these basic principles of honesty, trust, and integrity. Petitioner's plagiarism was fraudulent, and constituted the unacceptable personal conduct of "conduct for which no reasonable person should expect to receive prior warning" and "conduct unbecoming a state employee that is detrimental to state service" under 25 N.C.A.C. 1J .0614(a) and (e).

23. Respondent proved by a preponderance of the evidence that it had just cause to dismiss from employment under *Carroll* and *Warren*.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned determines that Respondent's decision to dismiss Petitioner from employment for unacceptable personal conduct, should be **AFFIRMED**.

### **NOTICE AND ORDER**

The North Carolina State Personnel Commission will make the Final Decision in this contested case. N.C. Gen. Stat. § 150B-36(b), (b1), (b2), and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it 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. N.C. Gen. Stat. 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

The final decision maker shall serve a copy of the Final Decision on all parties and on the Office of Administrative Hearings in Raleigh in accordance with N.C.G.S. § 150B-36.

This the 27th day of February, 2013.

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Melissa Owens Lassiter  
Administrative Law Judge