

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 OSP 2283

Marilyn R. Brewington,
Petitioner,

vs.

North Carolina Agricultural & Technical
State University,
Respondent.

FINAL DECISION

The above-captioned case was heard before the Honorable Selina M. Brooks Administrative Law Judge on August 8 and 9, 2013.

APPEARANCES

For Petitioner: J. Heydt Philbeck
Bailey & Dixon
434 Fayetteville Street, Suite 2500
Raleigh, NC 27601

For Respondent: Kimberly D. Potter
Special Deputy Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602

EXHIBITS

Admitted for Respondent:

Exhibit	Description
1	Request Budgeted Salary Change to Accommodate Competency Level
2	3/5/07 letter from Alton Thompson to Vanessa Lawson, re: Request in-range salary increase for Brewington

3	2/4/11 letter from Donald McDowell to Linda McAbee, re: Request salary adjustment for Brewington
5	10/28/11 email chain between Giddings, William Randle, and Brewington, re: CEPHT Tenure Application
9	11/10/11 emails between Brewington and William Randle, re: Job description
10	11/11/11 email from Brewington to William Randle, re: Job descriptions
12	11/23/11 email from William Randle to Brewington, re: Performance, correction
14	11/29/11 email from Brewington to William Randle, re: Performance
15	11/11/11 email from William Randle to Brewington, re: employee roster
16	12/2/11 email chain between Brewington and William Randle, re: BD-119
17	12/2/11 email from Brewington to William Randle, re: BD-119
18	12/5/11 email from William Randle to Donald McDowell, Brewington, re: Office of Dean e-files and paper files
19	12/5/11 email chain between William Randle and Brewington, re: Incomplete SAES personnel roster
20	12/6/11 email chain between William Randle and Brewington, re: Incomplete SAES personnel roster
21	12/7/11 email from William Randle to Brewington, re: Continued non-performance
22	12/7/11 email from Brewington to William Randle, re: Continued non-performance
23	12/7/11 email from Louis Jackai to William Randle, re: Sent on behalf of Dr. Shahbazi
24	12/8/11 email from Brewington to Willie Ellis, re: Adjunct Faculty
25	12/8/11 email chain between William Randle and Sylvia Anderson, re: Position #8530 w/attachments

26	12/6/11 memo from Donna Holland to Marilyn Brewington, re: EEO 102 & EEO 103 for new hire Carinthia A. Cherry
27	12/12/11 Pre-Disciplinary Conference Notification Letter for Conduct to Brewington
28	12/15/11 NC A&T State University Family and Medical Leave Application for Brewington
29	12/15/11 Letter of Dismissal
30	12/20/11 Email from William Randle to Akua Matherson to various departments, re: Signature authority for William Randle
31	12/22/11 Emails between Linc Butler and Donald McDowell, re: Brewington
32	1/27/12 Statement from Star Surgeon
33	2/2/12 Interview Notes of Star Surgeon
34	Statement from Star (Graduate Student)
36	NC A&T State University - SPA Sick Leave Policy
37	NC A&T State University - Disciplinary Action Policy
39	Brewington Annual Performance Reviews
40	SPA Mediation and Grievance Policy and Procedures

Admitted for Petitioner:

1	8/07/2013	Stipulations of Parties
2	10/19/2011	Email from Brewington to William Randle re creating a position of Director, identifying funding; obtaining approval
3	11/28/2011	Email from Brewington to W. Randle re notice of leave request being returned because it was on the wrong form

4	10/28/2011	Emails: 10/17 Giddings to W. Randle Drs. Chen and Sang on tenure track; Randle to Brewington 10/27 asking her to clarify Dr. Giddings question; 10/28 Brewington to Randle stating research scientists at CEPHT are housed under Dept of Family & Consumer Sciences
5	10/28/2011	Brewington email to Randle re CEPHT tenure application - extension guidelines is a work in progress
6	Undated	Brewington statement re filing grievance with (4) points and (6) resolutions requested
7	1/13/2012	Letter from Linc Butler to Dr. McDowell regarding reporting relationships; and Ipad sent message from McDowell to Linc Butler re Gwen Robinson reporting to Dr. Randle and Brewington to McDowell
8	12/21/2011	Handwritten, notarized affidavit of Gwen Robinson
9	12/23/2011	Dr. Shirley Hyman-Parker letter to Whom It May Concern addressing a communique from Dr. Randle alleging that Hyman-Parker said word had spread about complaints about how Dr. Randle ran his office
10	12/29	Signed, notarized statement from Dr. McDowell re support for Brewington
11	1/06/2012	Letter from Dr. McDowell to Vice Chancellor McAbee re lack of compliance to SPA dismissal/termination process
13	6/16/2010	NCA&T performance management, competency assessment & validation form; performance rating 5/outstanding
14	2/17/2009	NCA&T performance management, competency assessment & validation form; performance rating 5/outstanding
15	11/14/2006	Certificate of Appreciation to Marilyn Brewington 30 years of service

WITNESSES

Called by Petitioner:

Marilyn Brewington
Dr. Shirley Hymon-Parker
Gwendolyn Robinson
Michael Antoine Bratcher
Dr. Donald Ray McDowell

Called by Respondent:

Star Thompson Surgeon
Louis T. Ellis, Jr.
Sylvia Anderson Clark
Dr. William Mason Randle, II

ISSUE

Whether North Carolina Agricultural & Technical State University (NCA&T) had just cause to discharge Petitioner?

ON THE BASIS of careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making these findings, the Undersigned has weighed all the evidence 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 witness; any interest, bias or prejudice the witness may have; the opportunity of the witness to see hear, know and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. At all times relevant to the present case, the Petitioner, Marilyn Brewington, was employed at NCA&T in the School of Agricultural and Environmental Sciences (SAES) as the Executive Assistant to the Dean. The Petitioner had been employed at NCA&T for 37 years, beginning in November 1974. (T. pp. 469, 471; P. Ex. 15)

2. For more than 25 years of the Petitioner's employment with NCA&T, she provided administrative support to Dr. Donald R. McDowell. As Dr. McDowell moved to various positions in the SAES, including administrative positions, the Petitioner's position would follow him. As Dr. McDowell was promoted, the Petitioner would be reassigned or promoted to provide Dr. McDowell with administrative support. (T. pp. 398, 444-445)

3. In 2002, Dr. McDowell was appointed as Associate Dean in the SAES and moved to the Office of the Dean. (T. p. 445)

4. From 2002 until 2008, the Petitioner provided administrative support to the then Dean, Dr. Alton Thompson, and the Associate Dean, Dr. McDowell. (T. pp. 402, 472-475; R. Ex. 2) Dr. McDowell completed the Petitioner's performance reviews during this time. (T. p. 402; P. Exs. 13 & 14; R. Ex. 39)

5. In an effort to obtain a pay raise for Petitioner in March 2007, Dr. Thompson sent a letter to the University's Department of Human Resources (HR) in which he listed the Petitioner's job responsibilities which included planning the SAES Homecoming event, performing preparations for the Dean for both University and non-University meetings, and working closely with the SAES Budget Officer in preparing budget requests. (T. p. 543; R. Exs. 1 & 2)

6. Dr. McDowell was appointed and served as Interim Dean from 2008-2011. After his appointment, he promoted Petitioner to a position with dual reporting to the Dean and to the Associate Dean which included a pay raise and a physical move into the Office of the Dean. (T. pp. 402, 404, 445-446)

7. The Interim Dean or Dean, the Petitioner, Gwen Robinson and Vashti Pinnix had offices physically located in the Dean's suite of offices. (T. p. 483)

8. The Petitioner was extremely helpful to Dr. McDowell and, among other things, made sure he had materials prepared for his meetings. (T. p. 23)

9. While serving as Interim Dean, Dr. McDowell tried to obtain a 14% pay raise for Petitioner in February 2011. (T. pp. 446, 544) In a letter to HR, Dr. McDowell indicated that "[a]lthough Mrs. Brewington's job title is Executive Assistant, her working title has been Special Assistant to the Dean." He further detailed her extensive job duties which included working with budget managers and serving as office manager for the Office of the Dean. He considered Petitioner to be a secondary administrator in the Office of the Dean and when he became Interim Dean, the Petitioner provided administrative support to him and to the Assistant Dean, Dr. Ray. (T. pp. 447-449; R. Ex. 3)

10. Dr. McDowell has an "open-door policy" and only closes his door when he is having a private conversation. (T. p. 408)

11. As Interim Dean, Dr. McDowell had a weekly staff meeting with verbal and written reports concerning all work in the Dean's office, approximately 30 to 40 minutes long. (T. pp. 413-415)

12. On "numerous occasions", Dr. McDowell also held closed-door discussions with the Petitioner that lasted "from 30 minutes to an hour". (T. p. 460)

13. As Interim Dean, Dr. McDowell signed a form that gave the Petitioner, Ms.

Robinson, and Ms. Pinnix “complete control in terms of signing my signature when things came into the office.” (T. p. 415) The Petitioner had suggested that Dr. McDowell sign the form. (T. p. 416)

14. Dr. McDowell testified that he signed a waiver for the Petitioner and Ms. Robinson to sign his name to documents, and that issues only arose when there were changes in personnel in other areas on campus because some personnel are “sticklers to the rules and policies on campus.” (T. pp. 416-417)

15. When the position for Dean was posted, Dr. McDowell applied for it but was not selected. He believed that he should have been appointed Dean. In his opinion, he was demoted when he returned to a faculty position which also meant a decrease in pay as well as removal of administrative duties and reporting to a Department Head. (T. pp. 451-453)

16. Dr. William Randle was selected as Dean in the summer of 2011 and officially began in his new position in the SAES in September 2011. (T. p. 207)

17. Dr. Randle was the first Caucasian Dean of the SAES in the last 100 years. He was the first Dean of the SAES to be selected from outside the University in over 60 years and was previously employed at Ohio State University. (T. pp. 207-208; P. Ex. 1)

18. Louis T. Ellis, Jr., Associate Dean of the SAES, did not know whether the SAES had ever had a Caucasian Dean and was uncertain about his appointment. He was “pleasantly surprised” and has observed Dean Randle to be “a very rational manager” who “seeks feedback” and “asks very good questions and especially when he first arrived.” (T. p. 107)

19. Compared to Dr. McDowell, Associate Dean Ellis found Dean Randle’s management style to be “more open and collaborative.” (T. p. 124)

20. Prior to Dean Randle’s arrival at NCA&T, the Petitioner, Dr. McDowell, and Ms. Robinson, an accounting clerk in the SAES, had prayer sessions in the Dean’s office during work hours. (T. pp. 410-413)

21. During these prayer sessions, the Petitioner and Ms. Robinson prayed that Dean Randle would not come to NCA&T and “proclaimed” that the position of Dean was Dr. McDowell’s, and the Petitioner and Ms. Robinson would speak in tongues. These prayers could be overheard by nonparticipants. (T. pp. 42-43, 366, 380-381, 615; R. Ex. 32)

22. Ms. Robinson testified that during these prayer sessions, they would be “hollering and crying and praising the Lord” and “when Dr. McDowell comes to see what’s going on with us and then there’s three of us and it’s an explosion.” (T. p. 365)

23. During examination by the Petitioner’s counsel while describing the prayer sessions, Ms. Robinson interrupted the examination, saying, “I’m about to get happy now” with religious fervor. (T. pp. 384-386) The hearing paused for a moment to allow her to regain her composure.

24. Dr. McDowell testified that after his non-selection for the Dean's position, he met with the Chancellor and expressed his concerns that "too many Caucasians and too many females" were being hired, and his "data was to pinpoint[] discrimination against African American men". (T. pp. 453-454)

25. The Petitioner testified that she was not disappointed that Dr. McDowell was not appointed Dean because he had been rejected twice before for the position. (T. p. 618)

26. The Petitioner claimed she did not know who was selected as Dean or when the new Dean would arrive even though Dean Randle called her in August to discuss moving and reimbursement. (T. pp. 481-483)

27. The Petitioner first met Dean Randle when he arrived on September 5, 2011. (T. p. 477) He told the Petitioner that he needed a key and a parking permit. (T. pp. 407, 478)

28. The Petitioner did not assist Dean Randle in obtaining a parking permit or notify him that the Dean of the SAES had a specifically allocated parking space. As a result, for the first month of his employment at NCA&T, Dean Randle was parking without a permit. (T. p. 222)

29. When Dean Randle first started in September 2011, the Petitioner and Ms. Robinson approached him and asked if they should continue business as they had in the past. He indicated to them that they should continue as they had been doing until he got a sense of how business was done at NCA&T as he did not want to stop the business function of the SAES. (T. pp. 211-212, 341)

30. On September 8, 2011, the Petitioner started a two-week leave of absence, returning to work on September 26, 2011. On Thursday evenings during her leave, the Petitioner went to the office to process paperwork for researchers and faculty payroll, and signed Dean Randle's name to payroll forms. (T. pp. 486-487; P. Ex. 6)

31. The Petitioner testified that she told Dean Randle that she had signed his name and he accepted it. (T. p. 502)

32. The Petitioner testified that when Dean Randle arrived she knew that she could not sign his name without authorization. She perceived that Dean Randle gave verbal authorization to the Petitioner for signing his name on payroll documents, to Ms. Robinson on travel and budget documents, and to Ms. Pinnix for changes and major forms on the academic side. (T. pp. 484-85, 504)

33. In early fall 2011, forms from around campus were returned with notes indicating that Dean Randle's original signature was needed. The Petitioner and Ms. Robinson informed Dean Randle that documents that they had signed on his behalf were being returned and that they could not sign for him. (T. pp. 212, 345-347; P. Ex. 6; R. Ex. 32)

34. Thereafter, Dean Randle understood that his signature was necessary on certain documents. He did not sign any forms authorizing the Petitioner or Ms. Robinson to have signatory authority for him. (T. pp. 212-213)

35. Petitioner knew that travel authorizations were returned and in a written statement said: "The travel office requested original signatures or a statement or letter giving authority for someone to sign for you. We all knew this was a policy of travel. The same thing happened when signing Dr. McDowell's name. ... I am not familiar with a University Policy stating no one could sign for you unless the proper paperwork is filed" (P. Ex. 6)

36. When such forms were returned, the Petitioner stated to Star Surgeon, a part-time student worker, that forms were coming back and Dean Randle needs to sign these forms himself. (R. Ex. 32)

37. When the Petitioner returned to work, she was informed by Ms. Robinson that she needed written authorization to sign Dean Randle's name for a check request and another time was informed that she needed his authorization to sign his name for travel documents. (T. pp. 502-503; P. Ex. 6)

38. The Petitioner testified that she knew written authorization was required because she had followed the same procedure to obtain authorization to sign for Dr. McDowell. (T. p. 502-503)

39. The Petitioner did not like the fact that Dean Randle did not hold a staff meeting. (T. p. 505)

40. The Petitioner told Associate Dean Ellis that he should tell Dean Randle to talk to her and that she was "not going to bite him." (T. p. 510)

41. The Petitioner did not like the fact that Dean Randle communicated with her primarily via email rather than face-to-face. (T. p. 550) Her personal style is to meet in someone's office and she wanted more face-to-face interaction with Dean Randle. (T. p. 551) Dean Randle would send emails after hours making requests rather than speaking to her directly during office hours. (T. p. 568)

42. The Petitioner testified that Dean Randle gave her authority to approve budgets in October 2011. (T. pp. 546-547) No documentary evidence supporting this claim was admitted or offered into evidence.

43. On November 2, 2011, the Petitioner was given authority to sign for Dean Randle but this authority was limited to Banner funds for purchases on Aggie Mart. (T. pp. 625-628; P. Ex. 6)

44. Before Dean Randle arrived, when people would call and inquire about the new Dean, Ms. Surgeon overheard the Petitioner state that she would not do "shit" that Dean Randle asked her to do. (T. p. 45-46, Resp. Ex. 32)

45. After Dean Randle began work at NCA&T in the fall 2011, the Petitioner was generally unhelpful and disrespectful towards Dean Randle. (T. pp. 23, 211)

46. The Petitioner testified that she did “[e]verything that he asked me to do” and the emails admitted into evidence demonstrate that she did assist Dean Randle. (T. pp. 536-540, 605; Exs. 2, 3, 4 & 5)

47. Contrary to the Petitioner’s testimony, examples of Petitioner’s nonresponsiveness and discourteous attitude are shown in her email correspondence with Dean Randle. (P. Ex. 5; R. Exs. 5, 9, 10, 14, 16, 19, 20 & 22)

48. The Petitioner informed Ms. Surgeon that “a white man couldn’t run the school and you couldn’t trust white people.” (T. pp. 46-47, R. Ex. 32)

49. The Petitioner told Surgeon that she was “SPA” (meaning “State Personnel Act” or career state personnel) and that Dean Randle could not fire her. (T. pp. 47, 49; R. Ex. 32)

50. The Petitioner testified that she assisted with hiring Ms. Surgeon and that she always treated her nice. (T. p. 612)

51. In October 2011, the Petitioner sent emails advising that she was taking leave to attend funerals and submitted forms for Dean Randle to sign. (T. p. 560)

52. At NCA&T, Homecoming is an important event for students and alumni. Each year the SAES hosts a Homecoming event prior to the football game which is open to alumni and students. (T. pp. 23-24, 107-108; R. Ex. 32)

53. In 2006, the Petitioner planned a “Southern Taste” cookout and a wine and cheese reception for the SAES Homecoming events, as well as performing as the campaign leader and coordinator to the SAES Capital Campaign which was launched during Homecoming. (R. Ex. 2)

54. After Dean Randle began as Dean in fall 2011, the Petitioner did not inform Dean Randle regarding Homecoming at NCA&T and its significance to the University community. Dean Randle only became aware of Homecoming when he attended meetings of the University’s Dean’s Council and other deans described the upcoming events scheduled for their schools and colleges. Thereafter, Dean Randle started inquiring about the events scheduled for Homecoming for the SAES and learned that no events were planned. (T. pp. 213-214)

55. At that point, there was less than two weeks before the University’s Homecoming. Associate Dean Ellis advised Dean Randle that it would be negatively perceived by the SAES and alumni if Dean Randle, as the new Caucasian Dean of the SAES, did not host a Homecoming event. (T. pp. 108-110, 215-216)

56. Without the knowledge or approval of Dean Randle, the Petitioner and Ms. Robinson had cancelled the tent and water bottles which had been previously ordered for the fall

2011 SAES Homecoming event. (T. pp. 48-49, R. Ex. 32)

57. Dr. McDowell testified that the first week after Dean Randle's arrival, he met with Dean Randle and informed him of the importance of Homecoming, the need to plan for the event and claimed that Dean Randle told him there would not be a Homecoming alumni tent for the SAES. (T. p. 418-420)

58. Dean Randle requested that Associate Dean Ellis inquire with Ms. Robinson what funds were available for the SAES to host a Homecoming event. (T. pp. 110-111, 214)

59. While Associate Dean Ellis was talking with Ms. Robinson about funds for Homecoming, the Petitioner came into Ms. Robinson's office, interrupted the conversation, was upset with Associate Dean Ellis, raised her voice at him, and demanded to know why he was helping Dean Randle when he never assisted Dr. McDowell. (T. pp. 24, 31, 110-111)

60. The Petitioner then stated loudly, such that others overheard, that Associate Dean Ellis was "nothing but a house nigger." (T. p. 31; R. Ex. 32)

61. The Petitioner testified that Associate Dean Ellis had been "demoted" and "didn't have a job" and she was "upset with him, not because he was doing work for Dean Randle, but because he just preferred to do the work and not include us." (T. p. 511)

62. Ultimately, based on the hard work of several individuals, including the Petitioner, the SAES hosted a Homecoming cookout for alumni and students. (T. pp. 215-216)

63. The Petitioner testified that she helped Dean Randle when she told him to wear an NCA&T shirt during Homecoming. (T. pp. 512-13)

64. Dean Randle expected his executive assistant to make sure he understood the significance of Homecoming at NCA&T. (T. p. 217)

65. On November 10, 2012, Dean Randle met with the Petitioner to inform her that he did not appreciate her hostility and to express his dissatisfaction with her job performance. He detailed his expectations for the Petitioner which included preparing his materials for various meetings, including the Dean's Council, and notifying him of her absences. The Petitioner responded that it was not her job to prepare Dean Randle's material for the Dean's Council meetings even though she was copied on the emails with the attached documents for the meetings. (T. p. 225) The Petitioner told him that she reports to Dr. McDowell. (T. p. 618; R. Ex. 12)

66. Dean Randle informed Petitioner that she would need to submit requests for leave to him as opposed to Dr. McDowell. Specifically, Dean Randle informed the Petitioner that he expected her to follow the leave policy which requires prior approval of leave and not simply notification. (R. Ex. 12)

67. Dean Randle also requested during the November 10, 2011 meeting, as he had on

other occasions, for the Petitioner to provide him with a list of SAES personnel. The Petitioner's response to that date had been that the information exists at the departmental level but did nothing to obtain the information. (T. pp. 225-226; R. Ex. 12 & 15)

68. In order to understand the Petitioner's position and job responsibilities, Dean Randle asked the Petitioner to provide him with her job description. In response, the Petitioner informed him that she did not have a job description or a contract, but created a list which detailed her duties as she viewed them as "Office manager." (T. p. 509, 550; R. Ex. 9) The Petitioner also directed Dean Randle to the Office of State Personnel's website where she informed him that he could find her job description. (T. pp. 219-221, 549-550; R. Ex. 10)

69. As Dean Randle went through his list of issues and future expectations, the Petitioner became angry, started to "yell" at Dean Randle, and told him that he was arrogant. (T. p. 223) The Petitioner further informed Dean Randle that she and Dr. McDowell were a "package deal", her allegiance was to Dr. McDowell, and she viewed Dr. McDowell as her supervisor, not Dean Randle. (T. p. 224; R. Ex. 12) The Petitioner told him that she reports to Dr. McDowell. (T. pp. 560, 618)

70. The Petitioner testified that she did not print documents for Dean Randle because "nobody printed a bunch of documents" and if he had asked then she would have had a student print them out for him. She testified that she did not prepare Dean Randle for meetings with the Provost but she would print documents for him for Dr. McDowell's meeting or for the Dean's office if requested. (T. pp. 520-523)

71. The Petitioner testified that she did not provide him with copies because "he did not talk to her." (T. pp. 623-624)

72. The Petitioner denies that Dean Randle discussed leave requests with her. (T. pp. 552, 554)

73. The Petitioner testified that Dean Randle told her "what people were saying that I was saying about him" and she responded that "the same people that's telling you that I'm talking about you ask them what they're saying about you because they're talking about you, too." The Petitioner testified that she told Dean Randle he "was arrogant". (T. pp. 507, 618)

74. On November 18, 2011, the Petitioner sent an email informing others that she was taking annual leave on November 22 and 23, 2011 because that was past practice for requesting leave. (T. pp. 551-552) She claims Dean Randle never told her to submit an annual leave request or discussed this with her on November 10, 2011. (T. p. 551; R. Ex. 12)

75. On November 23, 2011, Dean Randle sent to the Petitioner an email regarding her "early open hostility towards me and your lack of workplace responsiveness to the position of Dean in the SAES" in which he summarized the issues discussed during the November 10, 2011 meeting and detailed his future expectations regarding her duties and performance. He warned her that her continued level of performance was not acceptable. He further clarified that Petitioner reported to him as Executive Assistant to the Dean and that she did not report to Dr.

McDowell. Any requests for excused leave required Dean Randle's approval and leave policy must be followed which requires prior approval and not just notification. She was required to prepare and provide documents for any meetings he attends. Dean Randle again noted that Petitioner had not provided him with documents for the council meeting he attended on November 22, 2011. Failure to provide requested documents is a failure to perform a basic job function. (R. Ex. 12)

76. The Petitioner testified that when she read this email, she understood that Dean Randle directed her that he would approve any leave and that he was her supervisor. (T. pp. 619-623)

77. The Petitioner testified that when she read this email, she was confused because both Dean Randle and Dr. McDowell claimed to be her supervisor. (T. pp. 619-623).

78. On November 29, 2011, the Petitioner responded to the email of November 23, 2011. In her response, the Petitioner admitted that she did tell Dean Randle during the November 10, 2011 meeting that he was "arrogant." She also stated that she did not report to Dean Randle but instead reported to Dr. McDowell "because it had always been that way." (T. pp. 624-625; R. Ex. 14)

79. As to Dean Randle's request for Petitioner to prepare materials for him for specific meetings, the Petitioner responded that even though she received copies of the emails with the relevant attachments prior to Dean Randle's meetings, it was not her job to print them and prepare the materials for Dean Randle's study and preparation. The Petitioner informed Dean Randle that "[t]he emails are not sent to me for me to prepare the materials for your study and preparation. The emails are sent to you for your study and preparation." (T. pp. 624-625; R. Ex. 14)

80. Despite the meeting of November 10, 2011 and the email of November 23, 2011 in which Dean Randle set out his expectations for the Petitioner's performance, the Petitioner continued to perform in the same manner.

81. In particular, the Petitioner never provided Dean Randle a list of the current personnel in SAES even though tracking of funding for positions within the SAES had been a responsibility that Petitioner had assumed for prior Deans. (T. pp. 231-236; R. Exs. 15-20)

82. Despite repeated communication and requests via emails, Petitioner did not provide Dean Randle the basic information regarding the personnel employed by the SAES or provide him sufficient explanation as to why she could not provide the information. (R. Exs. 5, 15-20)

83. The Petitioner claims she assisted Dean Randle by obtaining a roster. (T. pp. 563-567; R. Exs. 16 & 17)

84. Ms. Surgeon testified that when she was collecting money for the Christmas party in the Dean's office, the Petitioner referred to Dean Randle as a "white devil." (T. p. 48)

85. On December 5, 2011, Dean Randle sent an email to both Dr. McDowell and the Petitioner asking them to provide all files related to the Dean's Office to him. (R. Ex. 18)

86. The Petitioner testified that if Dean Randle wanted files "all he had to do was ask me." (T. 570)

87. On December 7, 2011, Dean Randle sent an email to the Petitioner warning her about continued instances of her "non-performance." Specifically, Petitioner had not provided him documents for the December Administrative Council meeting held on December 6, 2011 even though Dean Randle had reminded her of this responsibility in his email dated November 23, 2011. (R. Ex. 21)

88. The Petitioner responded via email stating that "I am not sent copies of emails to make copies for you" and complains that he communicates with her via email. (R. Ex. 22)

89. The Petitioner testified that "he had never asked me to prepare documents for meetings. He mentions it in the first – in another email and then he mentions it here, but he never said it to me." (T. p. 576)

90. The Petitioner testified that if Dean Randle wanted copies then he should have asked her and she would have had a student make the copies. (T. p. 581)

91. The Petitioner testified that "everything" stated in Dean Randle's email dated December 7, 2011 "did not take place". (T. 578; R. Ex. 21)

92. The Petitioner forwarded Dean Randle's emails concerning her job performance to other staff members in the Dean's office. (R. Ex. 32)

93. The Petitioner complained that Dean Randle had asked Associate Dean Ellis to look into release funds for hiring of adjunct faculty, an area within her knowledge and job responsibilities. (T. pp. 114, 580; R. Ex. 22)

94. Dean Randle had not authorized Petitioner to arrange for the use of release funds for the hiring of adjuncts. His only instruction was to Associate Dean Ellis to investigate sources of funding to pay for the cost of hiring adjuncts. The decision whether to move money from one source to another was one to be made by senior administration. Dean Randle's only instruction to Petitioner was to assist Associate Dean Ellis. (T. pp. 244-247)

95. The Petitioner was not responsive to requests from Associate Dean Ellis about funds for adjunct faculty. He then attempted to go outside the SAES to seek help from members of the University salary administration department to determine if there were available funds. (T. pp. 115-117)

96. Upon learning of the Petitioner's refusal to provide assistance to Associate Dean Ellis, Dean Randle then approached the Petitioner and informed her that Associate Dean Ellis

had come to her at his direction. Dean Randle specifically instructed the Petitioner to provide Associate Dean Ellis the requested information regarding the availability of funds to cover the hiring of adjuncts. (T. pp. 244-245)

97. In her testimony, the Petitioner denied that Dean Randle “instructed” her to assist Associate Dean Ellis but stated that he told her to work with him. (T. p. 617)

98. Dean Randle had not given Associate Dean Ellis any authority to move money to cover the adjunct faculty salaries but simply to investigate sources of money to cover adjunct salaries. (T. p. 118)

99. Subsequently, Dean Randle learned that the Petitioner was making preparations for the transfer of release funds from the Department of Natural Resources in SAES to the Department of Family and Consumer Sciences for the hiring of the adjuncts. (T. pp. 245-247, R. Exs. 23 & 24)

100. On December 8, 2011, Dean Randle received an email from Sylvia Anderson, NCA&T Director of Employee Relations and Affirmative Action, in which she copied him on a hiring form, EEO Form 102. The attached hiring form authorized the hiring of an individual into a department in SAES. The Petitioner had signed the form on behalf of Dean Randle and noted her initials after his name. (R. Exs. 25 & 26) If the form had proceeded forward through the hiring process, this person would have been hired as an employee of Cooperative Extension without Dean Randle’s knowledge or review. (T. pp. 160-161, 250)

101. The Petitioner testified that Dean Randle gave her “verbal authority to sign his name” to hiring forms and she has no written documentation to support this statement. (T. p. 629)

102. The Petitioner testified that on December 8, 2012, Dean Randle informed her that she did not have the authority to sign his name to payroll documents and that he had assigned to Associate Dean Ellis the responsibility for determining what funds would be used to pay the adjunct faculty. (T. pp. 490-491)

103. The Petitioner testified that after this conversation with Dean Randle she initiated conversations and correspondence concerning the funding of adjunct faculty positions. (T. pp. 491-494)

104. The Petitioner testified that she was cooperative with Dean Randle and Associate Dean Ellis even though she involved herself with payroll processing after she was instructed by Dean Randle that it was not her responsibility. (T. pp. 494-496)

105. The Petitioner testified that Dean Randle’s email to Ms. Anderson dated December 8, 2011 was not a fair statement. The Petitioner had continued to sign the personnel forms because after his arrival Dean Randle told them to operate as they had in the past and that “[h]e never met with us to tell us any different” even after forms were returned for unauthorized signature. (T. pp. 587-588; R. Ex. 25) “Even after Gwen had travel returned. He still didn’t

meet with us to tell us to do anything different.” (T. p. 588)

106. The Petitioner testified that she understood that she had Dean Randle’s authorization to sign personnel forms even though “I had never gone to him and told him these were being returned. So he had never told us anything different.” (T. p. 589)

107. Dean Randle responded to Ms. Anderson’s email of December 8, 2011, and informed her that he was not aware that the Petitioner had signed the form on his behalf. Dean Randle further informed Ms. Anderson that this was the first time this was brought to his attention and that he had never given Petitioner authority to sign his name for such documents. (R. Exs. 25 & 26)

108. After consultation with University Human Resources, Dean Randle provided the Petitioner a pre-disciplinary conference notice dated December 12, 2011. In the notice, Dean Randle detailed several instances of unacceptable personal conduct which included: signing a hiring form without permission; failure to provide Associate Dean Ellis the requested budgetary information for the hiring of adjunct faculty; and subsequent efforts to move release funds from one department to another department without authorization. (R. Ex. 27)

109. The Petitioner received the pre-disciplinary conference notice and attended the conference on December 13, 2011 with Dean Randle and Ms. Anderson. (T. p. 164)

110. During the conference, when the Petitioner was provided an opportunity to respond to the issues detailed in the notice, she indicated that she reported to Dr. McDowell, not Dean Randle. (T. pp. 165-166) The Petitioner denied the issues stated in the notice and stated that she “did not know how to help [him].” (T. p. 516) In Petitioner’s view, she did not “profit anything from signing his name without authority. ... I was really helping him.” (T. pp. 517) She also stated that she “had been helping [Dean Randle] all the time. He stopped, stopped speaking.” (T. pp. 593)

111. On December 14 and 15, 2011, the Petitioner did not report to work. On those dates when the Petitioner was absent, she did not contact Dean Randle by telephone or submit a written request for sick leave. Instead she called the office and informed fellow staff members that she would not be at work. (T. p. 599; R. Ex. 29)

112. The Petitioner testified that Dean Randle had not discussed sick leave policy with her, only annual leave. (T. p. 603)

113. Following the pre-disciplinary conference, Dean Randle again consulted with HR. (T. pp. 167-168) After evaluating the Petitioner’s conduct, it was determined that her conduct constituted unacceptable personal conduct justifying discharge of her employment. By letter dated December 15, 2011, Dean Randle notified Petitioner of her discharge and detailed specific instances of unacceptable personal conducts as the basis for this decision: signing a hiring form without permission; failure to provide Associate Dean Ellis the requested budgetary information for the hiring of adjunct faculty; subsequent efforts to move release funds from one department to another department without authorization; and her continued refusal to request leave as

directed. (R. Ex. 29)

114. On December 16, 2011, the Petitioner submitted an application for FMLA leave, signed by Dr. McDowell as her supervisor. (R. Ex. 28)

115. Dr. McDowell testified that at the time of the Petitioner's termination, he believed that she reported to him. (T. pp. 404, 439-440) Via email dated December 22, 2011, Dr. McDowell asked HR to clarify who was Petitioner's supervisor because she "has been under my supervision since we came to the Dean's office in 2000, as such, should she remain under my supervision[?]" (R. Ex. 31; P. Ex. 7; T. pp. 403-404)

116. In a letter dated December 29, 2011, Dr. McDowell makes several hearsay statements concerning Dean Randle's performance, complains that Dean Randle has not held a staff meeting or met personally with him, and that Dean Randle demanded "his files and emails as it relate[s] to my tenure as interim dean" and refused to give them to Dean Randle. (P. Ex.10)

117. Dr. McDowell testified that Dean Randle "very seldom spoke to me" and when he called an Executive Committee meeting in January 2012, Dean Randle "fuss[ed]" at him and directed that Dr. McDowell give him everything from his computer. (T. pp. 431-432, 463-464)

118. Dr. McDowell testified that he did not give Dean Randle any paper or electronic files because Dean Randle did not request them. (T. p. 467) He thought that email was "disrespectful" and copied to the Provost and the HR "like I had done something wrong." (T. p. 467; R. Ex. 18)

119. Dr. McDowell wrote a letter, dated January 6, 2012, in support of Petitioner alleging that personnel policies were not followed. (P. Ex. 11; T. pp. 435-436)

120. Dean Randle terminated Dr. McDowell's employment as an at-will employee at the end of January 2012. (T. pp. 432-433)

121. Based upon the Undersigned's observation of the demeanor of the witnesses as well as consideration of the testimony and all other admissible evidence, the Undersigned finds the testimony of Dean Randle, Associate Dean Ellis, Sylvia Anderson and Star Surgeon to be credible.

122. The Undersigned finds as fact that the testimony of the Petitioner, Dr. McDowell and Gwen Robinson does not negate a finding that the Petitioner engaged in unacceptable personal conduct.

123. NCA&T established just cause to discharge Petitioner for unacceptable personal conduct.

CONCLUSIONS OF LAW

Based upon the sworn testimony of witnesses, including assessment of the witnesses' credibility, demeanor, interest, bias, and prejudice; assessment of the reasonableness and consistency of each witness's testimony; consideration of the documents admitted into evidence; and the entire record in this proceeding; the Undersigned makes the following conclusions of law, as follows:

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over the just cause issue in this contested case pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes.

2. N.C. Gen. Stat. § 126-35(a) provides that “[n]o career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.” “‘Just cause’ is a legal basis, set forth by statute, for the termination of a State employee . . . “ *Skinner v. N.C. Dept. of Correction*, 154 N.C. App. 270, 280, 572 S.E.2d 184, 191 (2002).

3. To demonstrate just cause, a State employer may show "unacceptable personal conduct." 25 N.C.A.C. 1J.0604(b)(2). Unacceptable personal conduct includes "insubordination," "conduct for which no reasonable person should expect to receive prior warning"; and "the willful violation of known or written work rules." 15 NCAC 1J.0614(7); 25 N.C.A.C. 1J.0614(8)(a) & (d).

4. The State employer may discharge an employee for unacceptable personal conduct without any prior warning or disciplinary action. 25 N.C.A.C. 1J.0608(a).

5. The State Personnel Manual provides that before an employee can be discharged for unacceptable personal conduct the employee must have a current unresolved incident of unsatisfactory job performance and a pre-disciplinary conference. A sole instance of unacceptable personal conduct, by itself, constitutes just cause for discharge. *Hilliard v. N.C. Dep't of Corr.*, 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005).

6. Respondent demonstrated with credible and substantial evidence that Petitioner's conduct was conduct for which no reasonable person should expect to receive a prior warning, that it willfully violated known or written work rules, and that it constituted insubordination.

7. Petitioner received notification of a pre-disciplinary conference by letter dated December 12, 2011.

8. Petitioner attended the pre-disciplinary conference and was allowed an opportunity to respond.

9. Ultimately, Dean Randle determined that Petitioner's conduct as detailed in the notice of pre-disciplinary conference and her continued failure to request leave as directed by him following the pre-disciplinary conference constituted unacceptable personal conduct.

10. For the reasons stated in the pre-disciplinary conference notice and the discharge letter, NCA&T had just cause for discharging Petitioner for unacceptable personal conduct.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Undersigned issues the following:

FINAL DECISION

It is hereby ordered that Respondent has proved by a preponderance of the evidenced that it had just cause to discharge Petitioner based on her unacceptable personal conduct, and NC A&T University's decision to discharge Petitioner is **AFFIRMED**.

NOTICE

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 Wake County or in the Superior Court of the county in which the party resides. **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 03.012, and the Rules of Civil Procedure, N.C. General Statute §1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on 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.

This the 2nd day of January, 2014.

Selina M. Brooks
Administrative Law Judge