

STATE OF NORTH CAROLINA  
COUNTY OF RICHMOND

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12OSP02433

<p>SANDRA KAY TILLMAN, PETITIONER,</p> <p>V.</p> <p>COUNTY OF MOORE DEPARTMENT OF SOCIAL SERVICES JOHN L BENTON DIRECTOR RESPONDENT.</p>	<p><b>FINAL DECISION</b></p>
--	------------------------------

THIS MATTER came before J. Randall May, Administrative Law Judge, presiding, on May 14, 2013 and May 15, 2013, in Carthage, North Carolina and concluded on May 22, 2013, in High Point, North Carolina.

**APPEARANCES**

For Petitioner: Evett Brown, Esq.  
Brown Law Offices, P.A.  
P.O. Box 5136  
Durham, NC 27717

For Respondent: R. Ward Medlin, Esq.  
Associate County Attorney  
County of Moore  
P.O. Box 905  
Carthage, NC 28327

**WITNESSES**

The following witnesses appeared and testified on behalf of Petitioner:

1. Dawn Spivey, Risk and Benefits Manager for Moore County
2. Frances Benymon, Daycare Unit MCDSS
3. Lynda Green, Daycare Unit MCDSS
4. Camillia Simpson, Daycare Unit MCDSS

5. Katrina Burns, Daycare Unit MCDSS
6. Sandra K. Tillman, Petitioner

The following witnesses appeared and testified on behalf of the Respondent:

1. Nelda Caudill, Income Maintenance Administrator, Petitioner's Supervisor MCDSS
2. Connie Howard, NC DHHS Subsidy Services Consultant
3. Denise Brook, Director of Moore County Human Resources
4. DeeAnn Purvis, Human Resources Administrative Officer, County of Moore
5. John Benton, Respondent, Director of Moore County Department of Social Services

### **EXHIBITS**

The following Exhibits were admitted into evidence on behalf of Petitioner:

1. (Not received into evidence, Bate stamped pages 1,2)
2. March 14, 2012 letter Director Benton, Bate stamped pages (3-10)
3. February 20, 2012 appeal letter from Sandra Tillman, Bate stamped pages (11-30)
4. February 6, 2012 Discipline Action Decision, Bate stamped pages (31-49)
5. January 24, 2012 Pre-Disciplinary Conference letter, Bate stamped pages (50-51)
6. September 8, 2011 Memo from Director Benton, Bate stamped page (52)
7. August 25, 2011 Memo from Nelda Caudill, Maintenance of Office Bate stamped page (53)
8. April 9, 2011 Memo from Nelda Caudill-Payment of Daycare Cases, Bate stamped pages (54-57)
9. April 13, 2011 Disciplinary Warning-Unacceptable personal Conduct, Bate stamped page (58)
10. April 8, 2011 response from Sandra Tillman regarding March warning, Bate stamped page (59)
11. March 8, 2011 memo from Nelda Caudill-Work Schedule Warning, Bate stamped page (60)

12. March 22, 2011 Letter from Ron Byrd, Bate stamped page (61)
13. March 12, 2011 Email from John Benton, Bate stamped page (62)
14. January 25, 2011 Memo from Director Benton-Assignment of Duties, Bate stamped page (63)
15. Job Descriptions, Bate stamped pages (64-78)
16. Moore County Department of Social Services Organization Chart, Bate stamped pages (79-80)
17. Communications relating to Ms. Tillman's health, DSS and HR, Bate stamped pages (81-84)
18. Information from Ms. Tillman's Personnel File by year, Bate stamped pages (85-254)
19. Hand-written notes from September 8, 2011 meeting, Bate stamped pages (255-264)
20. Time History for Ms. Tillman, Bate stamped pages (266-273)
21. Waitlist by County, Bate stamped page (274)
22. Medical Records: Sanford Medical Group, Bate stamped pages (277-299)
23. Medical Records: Wellness Work, Bate stamped pages (301-358)
24. Rite Aid, Bate stamped pages (360-365)
25. Instructions for Keying Monthly Reimbursement, Bate stamped pages (367-371)
26. Job Description-Accounting Clerk V DayCare, Bate stamped pages (373-383)
27. Rite Aid, Bate stamped pages (385-391)
28. Memo of 14 February 2011, Re: internal Practices, Bate stamped page (392)
29. 30 June 2011 Unit Report, Bate stamped page (393)
30. 22 July 2011, Unit Report, Bate stamped page (394)
31. 16 August 2011 Email, Re: July 2011 Actual Expenditures, Bate stamped page (395)
32. September 7-September 9, 2011 Email exchange, Re: Leave Request, Bate stamped pages (396-399)

33. 1 February 2011 Email, Re: Termination of Providers, Bate stamped page (400)
34. Work Search for ESC, Bate stamped pages (401-419)
35. NC Office of State Personnel Job Description for Social Work Supervisor, Bate stamped pages (421-426)
36. Prescriptions, Bate stamped pages (427-438)
37. Calculation Damages Sought, Bate stamped pages (439-440)
38. Emails from Sandra and Human Resources, Re: Workplace Issues, Bate stamped pages 441-442)
39. Statements taken from Day Care Unit Staff in response to PDC, Bate stamped pages (443-454)
40. Drawing of Office by Nelda Caudill

The following exhibits were admitted into evidence on behalf of Respondent:

1. 1/25/2011 Memorandum-Benton to Caudill, Tillman, Dowdy, Burns (1 page)
2. 2/14/2011 Memorandum-Day Care Unit (29 pages)
3. 3/8/2011 Work Schedule-Caudill to Tillman (1 page)
4. 3/15/2011 Written Warning-Caudill to Tillman (1 page)
5. 4/8/2011 Tillman response to WW (1 page)
6. 4/13/2011 Written Warning-Caudill to Tillman (1 page)
7. 9/8/2011 Memorandum Use of Time-Benton to Tillman (1 page)
8. 1/24/2012 Pre-Disciplinary Conference-Benton to Tillman (2 pages)
9. 2/6/2012 Decision re-PDC-Benton to Tillman (11 pages)
10. 3/14/2012 Decision re-Appeal of Disciplinary Action-Benton to Tillman (5 pages)
11. Emails from Howard to Tillman, Howard to Caudill (11/29/11-12/8/11) (2 pages)

12. Emails from Howard to Benton/Tillman, Benton to Howard/Tillman, Steel to Tillman (1/4/2012) (2 pages)

13. Email Tillman to Steel (Unit Report 12-11) dated 1/17/2012 (3 pages)

### **ISSUE**

The issue for the court's consideration is whether the disciplinary proceeding initiated by Employer and resulting termination was appropriate under the facts as alleged in the petition for contested case hearing dated April 20, 2012, as determined by the trier of facts, and whether the policies of Moore County HR and the provisions of the Office of State Personnel Act as applicable to social service employees applied appropriately.

THE FINDINGS OF FACT are made after careful consideration of the sworn testimony, whether visual and/or audio, of the witnesses presented at the hearing, and the entire record in this proceeding. In making the findings of fact, the undersigned has weighed all the evidence, or the lack thereof, 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 interests, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony and the admitted evidence, or the lack thereof, the undersigned makes the following:

### **FINDINGS OF FACT**

1. The parties acknowledged proper notice of the date, time and place of the hearing.
2. The Petitioner worked for Respondent Moore County Department of Social Services, having been originally hired in 1997 as a human services coordinator (social worker II) in the Day Care Unit and subsequently promoted to a supervisor for the Day Care Unit in 1999, a position she held until her discharge in February 2012.
3. That when the Petitioner first joined the employ of the Moore County Department of Social Services the Director was Beth Duncan and her direct supervisor was Janet Parris.
4. That in 2007 Ms. Duncan left Moore County Department as social services Director and a new Director was hired, namely John Benton.
5. That the Day Care Unit's principal responsibility was matching qualifying families, in need of subsidized Day Care, with Day Care Assistance from funding sources whether Federal Stimulus Funds, State funded sources or County Funds and optimizing services by serving as many families as possible with available resources.
6. That the Department of Social Services through the Day Care Unit is responsible in implementing State mandated programs.

7. That the Day Care Unit was responsible for accepting applications from families requesting subsidized day care services, verifying eligibility, verifying enrollment with a day care facility, collecting data as to attendance and making changes in file as information changed.
8. That once an application is received and approved a family receives a “voucher” indicating acceptance in the program and a subsidy payment made to the day care providing services to the child or children of the household, and the applications are normally processed by members of the Day Care Unit and divided among the line workers alphabetically.
9. That Sandra Tillman was counseled by her Supervisor as to concerns related to Day Care Monthly Statistics, which regularly indicated the Day Care Supervisor maintained a family case load frequently equaling or exceeding line workers, and she was encouraged to reassign the duties to the responsible line worker, hold the line worker’s responsible for completing their job tasks, and to concentrate on other responsibilities relating to supervision.
10. That the reassignment of duties to the responsible worker would free the Petitioner to engage in other needed services, including completing the Subsidized Child Care Reimbursement Report.
11. That the Moore County Day Care Unit was an extremely cohesive unit consisting of Sandra Tillman, Frances Benymon, Lynda Green, Camilla Simpson and Katrina Burns and the Unit did not favor any reassignments of duties or relocation of the unit.
12. That one of the State mandated duties of the Day Care Unit was to submit monthly and timely a Subsidized Child Care Reimbursement Report to the State of North Carolina.
13. That Katrina Burns was the Day Care Accounting Clerk from March 1997 through 2011 and described her duties as including running reports about eligibility for each child, updating birthdays for rate coding, completing attendance sheets and keying them into the reimbursement system.
14. That Katrina Burns testified that it was important that the data entry in the Subsidized Child Care Reimbursement Report was accurate and required attention to detail.
15. That Katrina Burns was physically relocated from the Day Care Unit in 2009 and placed under the supervision of an Accounting Specialist Kimmie Dowdy, and moved to a location within the Accounting section of the Moore County Department of Social Services, but continued to engage in Day Care Unit responsibilities including preparation of the Subsidized Child Care Reimbursement Report.
16. That Katrina Burns testified there were peak demands on her time and that completion of the Reimbursement Report was mandated by the fifteenth (15<sup>th</sup>) of each month to insure that Day Care Providers were timely paid, and that following the completion of the report she could sort of relax for the remainder of the month until the process started anew.

17. That Katrina Burns testified that on January 25, 2011 the Day Care Unit was advised as to the pending implementation of a new State Program for subsidized Day Care, the Subsidized Early Education for Kids program (SEEK), and that Connie Howard the State DHHS Subsidy Consultant Specialist for the District advised the changes in the program would reduce the responsibilities of, and the need for a designated Reimbursement Clerk.
18. That changes under the SEEK program would require other Day Care Unit employees to generate Action Notices and Vouchers and reduce the data collection responsibility of the Reimbursement Clerk.
19. That the SEEK program when fully implemented would operate similar to an EBT data system where parents receiving services would swipe an electronic card in a device maintained by the Day Care Center and the attendance data immediately collected.
20. That the Day Care Unit and the Reimbursement Clerk had available to them additional administrative staff to assist in label preparation, envelopes and bulk mailings.
21. That following the meeting of January 25, 2011 Katrina Burns was reassigned to the Accounting Unit to fill a vacancy within the unit, and to preserve her employment with the Moore County Department of Social Services, as SEEK phased out the need for a dedicated Reimbursement Clerk.
22. That following the meeting of January 25, 2011 and the issuance of a Memorandum by the Director John Benton (Resp. 1), the responsibility for generating the Subsidized Child Care Reimbursement Report was to be transitioned to Sandra Tillman following a period of training with Katrina Burns.
23. That Sandra Tillman, as Supervisor of the Day Care Unit, was familiar with the duties and responsibilities for the Reimbursement Report, and further had prepared the report while employed with the Richmond County Department of Social Services.
24. That Director Benton issued a Memorandum dated 1/25/2011 informing of the new Assignment of Duties including assignment of Katrina Burns to the Accounting Unit effective Friday, January 28, 2011, and providing for the transition of fiscal responsibilities of the Day Care Unit to Sandra Tillman following a period of training over the months of February, March and April with accounting duties shared with Ms. Burns and thereafter with Ms. Tillman assuming full responsibilities for the months of May and beyond with supervision from accounting. (Resp. 1).
25. That the memorandum of January 25, 2011 provided that following the May/June completion of the transition of fiscal responsibilities, that all parties will evaluate the processes and determine the most appropriate course of action with which to proceed, and there is no record of any meetings nor requests for meetings by anyone, and specifically including the Petitioner Sandra Tillman, to evaluate the reassignment of fiscal duties following the May/June reassignment of fiscal duties of the Day Care Unit to Sandra Tillman.

26. That Katrina Burns testified that during the period of training with Ms. Tillman that Ms. Tillman quickly demonstrated the ability to complete the report with minimal help, and Ms. Burns offered suggestions to Ms. Tillman including to work on the report during quiet time and without interruption to reduce errors, and that she should attempt to review a defined number of Day Care Provider Records daily. (Resp. 2, Day Care Training Log)
27. That Connie Howard, the State DHHS Subsidy Consultant Specialist testified that she was responsible for working with eleven (11) counties including Moore County in connection with Day Care Subsidy and that of the eleven (11) counties that only three (3) counties had a designated/dedicated Day Care Unit Supervisor and that four (4) of the counties have line workers preparing the Reimbursement Report.
28. That John Benton, Director of Moore County Department of Social Services, testified that his investigation as to the reassignment of duties prior to reassignment, indicated that the relative case load of each line worker in the Moore County Day Care Unit was below the State average caseload, that few counties had dedicated/designated supervisors exclusively for the a Day Care Unit and many counties utilized line workers to prepare the Reimbursement Report.
29. That John Benton testified the implementation of the SEEK program was State mandated and the responsibility of each County Department of Social Services to implement.
30. That John Benton testified that during the course of multiple meetings with Sandra Tillman to discuss the Day Care Unit and the Subsidized Child Care Reimbursement report, that Ms. Tillman never made a single suggestion or requests related to the unit other than reassigning the responsibility back to Katrina Burns, and the only request ever made by Ms. Tillman in connection with the work of the Unit was for an additional filing cabinet which Mr. Benton requested she follow-up request in writing.
31. That the Petitioner Sandra Tillman contends her disciplinary action and termination were based upon discrimination based upon race, sex, age and handicapping condition and not just cause as provided under the State Personnel Act and Chapter 126 of the North Carolina General Statutes.
32. That Ms. Nelda Caudill testified that she is an Income Maintenance Administrator (IMA) and has served in that capacity for over fifteen (15) years and her duties and responsibilities include supervising supervisors of the income maintenance programs, including food stamps, fraud, emergency assistance and additionally the supervisor of the Day Care Unit Ms. Sandra Tillman for approximately one and one-half (1 ½) years.
33. That Ms. Caudill testified that her duties also included gathering information for presentation to the Board of Directors of the Moore County Department of Social Services which was to be provided by the various unit supervisors monthly.



34. That Ms. Caudill testified that the Petitioner was knowledgeable about her job; however there were concerns as to Ms. Tillman's attendance, timely arrival and following through with requests related to her job.
35. That Ms. Caudill testified that the Petitioner was habitually late which impacted her ability to complete her job and to be available to supervise her unit, and that Ms. Tillman was allowed to work under a Flex schedule which required her to work ten (10) hours daily for four days and be off or flex on the fifth day.
36. That Ms. Caudill testified that the Petitioner's flex schedule required her to report to work by 7:00 AM and work until 5:30 PM Monday through Thursday and Flex on Fridays, and that on March 8, 2011 she drafted a Memorandum advising Ms. Tillman that for the preceding two months and beginning January 1, 2011 that she failed to arrive timely even a single day, and that in February she had arrived late and requested changes to her work schedule for 13 of 20 days. (Resp. 3)
37. That Ms. Caudill reminded Ms. Tillman of the importance of the supervisors leading by example in meeting demands of their job and honoring their work schedules.
38. That Ms. Caudill changed Ms. Tillman's work schedule to a standard work schedule of Monday through Friday and working 8:00 AM until 5:00 PM with one hour for lunch and the schedule was effective March 14, 2011. (Resp. 3)
39. That Ms. Caudill testified that Ms. Tillman was late on March 14, 2011 arriving at 8:14 AM and again March 15, 2011 arriving at 8:08 AM and on neither date communicated with Ms. Caudill or offered explanation of her tardiness. (Resp. 4)
40. That in consequence of Ms. Tillman's failure to comply with the instructions of March 8, 2011, Ms. Tillman received a written warning dated March 15, 2011 for unsatisfactory job performance. (March 15, 2011 Written Warning Resp. 4) The specific job performance issue was "work related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan or as directed by management to of the work unit or department" (Moore County Personnel Policy Manual, Page 43, Section 2.A, paragraph 1). Section 2.A.7 states "Habitual pattern of failure to report for duty at the assigned time and place".
41. The written warning further advised that the "Failure to adhere to these instructions or any other infractions will result in further disciplinary up to and including dismissal".(Resp. 4)
42. That Ms. Tillman had a pattern of being habitual tardy dating back to 2001 as reflected in her Performance Evaluation completed by Janet Paris, in which it was noted Ms. Tillman arrived late 15% of the time for the entire fiscal year. (Pet. 18, page 178)
43. That the concern as to Ms. Tillman's failure to report to work on time was again addressed in her Performance Evaluations of September 23, 2008 (Pet. 18, Page 115), and September 21, 2006 (Pet. 18, page 131).

44. That Ms. Tillman had a history of maintaining low sick leave and vacation leave dating back to 2000. (Pet. 18, page 181, Page 178, Page 144) That the pattern of maintaining minimal sick balances continued throughout her employ with Moore County Department of Social Services.
45. That Ms. Tillman acknowledged in her testimony that for the entirety of calendar year 2010, the year preceding any request for Family Medical Leave or report of any medical condition, that she only worked two complete pay periods without some leave or absence.
46. That Ms. Tillman in reply to the written warning of March 15, 2011 filed a response dated April 8, 2011, the reply was confirming approval of a requested change in her work schedule to a schedule of Monday through Friday from 8:30 AM until 5:00 PM effective March 16, 2011, and advised Ms. Caudill that the late arrivals on March 14, 2011 and March 15, 2011 were in consequence of adjusting to new schedule and her failure to take into consideration school bus traffic. (Resp. 5) Ms. Tillman further references her increase workload and new work task as overwhelming in theory and principle.(Resp. 5)
47. That as of March and April 2011 Ms. Tillman continued in her training and full responsibility for the Subsidized Child Care Reimbursement Report had yet to occur, and further her written reply to first written warning makes no request for assistance, nor does she offer any suggestions as to how to improve the process. (Resp. 5 and Resp. 1)
48. That Ms. Tillman never requested any training needed for preparation of the Subsidized Child Care Reimbursement report beyond that scheduled with Ms. Burns, nor did she ever request any accommodation or additional assist.
49. That on April 13, 2011, Ms. Tillman received a Second Written Warning for unacceptable personal conduct that stated “A meeting was held with you on March 23, 2011, to discuss a reallocation of funding that was being sent from the Division of Child Development (DCD). Immediately after discussing the reallocation, the director also reviewed with you the importance of Day Care staff keeping abreast of pertinent, relative issues and that you will hold a structured meeting with the unit on April 6, 2011, at 9:30 A.M. Prior to the meeting you were to forward an agenda of the items to be discussed. To date, you have not complied with this directive.” (Resp. 6)
50. That on March 23, 2011 Nelda Caudill, supervisor of the Petitioner Sandra Tillman, directed and instructed Ms. Tillman to hold a meeting with her unit to discuss reallocation of funding on April 6, 2011 at 9:30 AM and to provide a written Agenda prior to the date of meeting.
51. That the request was a reasonable request and the Petitioner failed to comply with the request and was accordingly insubordinate to her supervisor.
52. That according to Moore County Personnel Policy, Page 48, Section 3.A.9, insubordination is “the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is considered unacceptable personal conduct for which any level of

discipline, including dismissal may be imposed without prior warning”. (See also 25 N.C.A.C. 01J .0614(7)).

53. The written warning further advised that “Corrective action must be taken immediately. Failure to adhere to these instructions or any other infractions will result in further disciplinary up to and including dismissal”.(Resp. 6)
54. That Ms. Tillman did not file any response or written reply to the second written warning of April 13, 2011, and now contends and testified in Court that she was sick over the time period in which the meeting was to occur, and that she attempted to forward the Agenda to Ms. Caudill, however the Moore County email server was down.
55. That Ms. Tillman never produced any copy of any prepared paper agenda and when asked about copies of the Agenda during her testimony she stated her computer crashed and she could not retrieve emails.
56. That Ms. Tillman further contends that upon her return to work and following her illness she provided Ms. Caudill with a copy of the Agenda and conducted the meeting.
57. That all four members of Ms. Tillman’s Day Care Unit testified, and Ms. Tillman did not elicit from any of the workers testimony corroborating the meeting, nor did anyone testify as to any meeting being held in April to discuss the directive of the Director relating to the DCD reallocation of funding to be sent to Moore County.
58. That Nelda Caudill expressly denies ever receiving any Agenda from Ms. Tillman, moreover, the failure to provide the agenda and hold the meeting was the basis for the second written warning dated April 14, 2011 and the incident of insubordination.
59. That Nelda Caudill denies any conversations with Ms. Tillman as to the Moore County email server being down, and the Court finds that testimony persuasive and credible and the testimony of Ms. Tillman as to preparing and presenting an Agenda to Ms. Caudill as well as conducting a Unit meeting, and her testimony as to her computer crash making the agenda document or emails unavailable as not credible and rejects same.
60. That Ms. Caudill testified she had no animus toward Ms. Tillman and in fact Ms. Tillman testified that Ms. Caudill was always playful and cut-up with her and her Unit.
61. That Ms. Caudill testified that Ms. Tillman was more than capable of performing her job, was extremely knowledgeable as to her job but was not performing her job functions and never requested any accommodation to assist or aid in completing her job functions.
62. That Ms. Caudill testified that she was familiar with what is necessary to complete the Subsidized Child Care Reimbursement Report and that Ms. Tillman was more than capable of completing the report, that the report was data entry and the numbers had to be accurate to avoid owing money to either the State or County.

63. That both the Director John Benton and Nelda Caudill testified that Ms. Tillman, following the reassignment of duties to Ms. Tillman for responsibility of the Subsidized Child Care Reimbursement report, never made any request for accommodation or request for change; other than to assert it was too much and she would do the best she could.
64. That Ms. Tillman testified that during the time she had responsibilities for completing the Subsidized Child Care Reimbursement Report for Richmond County she would turn her phone off for the first fifteen days of the month, and there is no record or testimony that she ever made any similar request for accommodation from Moore County Department of Social Services through Director Benton or Supervisor Nelda Caudill.
65. That Ms. Tillman acknowledged during her testimony that the Moore County Department of Social Services telephone system was tied into the computer system and could accept and store messages for later review.
66. Ms. Tillman testified she would frequently ignore emails as she worked on the Reimbursement report.
67. That on September 8, 2011 the Director, John Benton, submitted a memo to Ms. Tillman again addressing Agency concerns as to her time off and absences from work, and requested appropriate medical information in support of her claim for Family Medical Leave. (Resp. 7)
68. That Connie Howard and Nelda Caudill testified as to email correspondence from Ms. Howard to Ms. Tillman beginning November 29, 2011 requesting a reply no later than December 5, 2011, and the follow-up emails to Ms. Tillman requesting a reply and finally to Ms. Caudill the supervisor of Ms. Tillman when Ms. Tillman failed to reply, up to and including December 8, 2011, three days beyond the original deadline as requested in the November 29, 2011 email. (Resp. 7)
69. That the requested information was only submitted after Ms. Caudill interceded and three days beyond the original deadline as notified in the original email of November 29, 2011.
70. That Ms. Tillman acknowledged that she only forwarded the information after Ms. Caudill spoke with her on December 8, 2011, but asserts she does not know when she first saw the email from Ms. Howard.
71. Connie Howard testified that receiving information from Ms. Tillman was not always a problem but had become a greater problem and concern.
72. That Connie Howard testified that the workload of the Day Care Unit Supervisor in Moore County was average or less than that of supervisors in some counties.
73. That the Director submitted an email to Ms. Tillman dated January 4, 2012 congratulating Ms. Tillman on her Unit's compliance score and requested she provide to him a written action plan addressing the Day Care spending coefficient/waiting list as a result of the

Technical Assistance Report received by DHHS Subsidy Services Consultant Connie Howard no later than 11:00 AM on January 11, 2012. (Resp. 12)

74. That Ms. Tillman never provided the written action plan as requested, nor did she ever request an extension of time in which to comply or any assistance with complying.
75. That Ms. Tillman failed to submit requested documents in a timely manner including failures to produce monthly unit reports for the Moore County Board of Directors and frequently had to be reminded to submit documents and often late and not usable. (Resp. 13)
76. That Ms. Tillman had a pattern and history of not submitting timely information, and only following multiple requests and reminders would the information be provided, dating back to her annual performance evaluation of September 20, 2005. (Pet 18, page 148)
77. On February 3, 2012 the Petitioner Ms. Tillman was directed to the Board Room of the Moore County Department of Social Services where she received a Pre-disciplinary Conference letter dated January 24, 2012 advising that a pre-disciplinary conference was scheduled for February 3, 2012 in the Board Room of the Moore County Department of Social Services Building at 9:00 AM and Ms. Tillman notified at approximately 8:28 AM. (Resp.8, Pet. 3, page 27)
78. That in the Board Room the Director read the Pre-disciplinary Conference Letter and thereafter asked Ms. Tillman to exit the building and return at the appointed time.
79. The pre-disciplinary conference letter informed the Petitioner of the instances of conduct the Director considered to be unacceptable personal conduct constituting insubordination and unacceptable job performance.
80. The pre-disciplinary conference was attended by the Director John Benton, the Petitioner Sandra Tillman, Joy Dalrymple who took notes of the proceeding, Nelda Caudill the Supervisor of Ms. Tillman and DeeAnn Purvis as the County Human Resources representative.
81. That during the conference the only parties participating were the Director and Sandra Tillman, and Ms. Tillman was given an opportunity to respond to each cited instance and failed to offer any suitable explanation for failing to follow directives of the Director or her Supervisor or perform her job. That Ms. Tillman requested additional time to respond prior to the conference and that request was denied.
82. That during the pre-disciplinary conference the specific instances of unacceptable person conduct and unsatisfactory job performance referenced in the two written warnings were addressed in addition to other events on unsatisfactory job performance, including the repeated failures to produce reports for the Board of Directors in a timely manner, failures to reply to emails from Connie Howard in a timely manner and failure to reply to request of the Director for written action plans.(Resp.9)

83. That prior to the issuance of the pre-disciplinary conference letter the Director testified he consulted with the Office of the County Attorney, the Director of Moore County Human Resources and his consultant at the Office of State Personnel for advice and direction.
84. On February 6, 2012 Ms. Tillman attended a meeting at the Moore County Department of Social Services where the Director's decision was read to her in its entirety and during which she was provided a copy of the Decision Letter outlining the instances of unsatisfactory job performance and unacceptable personal conduct and the Director's decision to terminate her employment with Moore County Department of Social Services effective February 6, 2012. A copy of the Petitioner's rights to appeal was attached to the letter. (Resp. 9)
85. That the Petitioner Ms. Tillman appealed her discharge as provided under the Human Resources Policy by letter dated February 20, 2012, and in detail responded to the matters addressed in the pre-disciplinary conference. (Pet. 3, pages 11-29)
86. That on March 14, 2012, following a review of materials submitted in Petitioner's appeal letter of February 20, 2012 and review of the instances of unacceptable personal conduct and unsatisfactory job performance, including the two prior written warning and other instances of unsatisfactory job performance the Director forwarded his letter upholding the original decision to terminate. (Resp. 10)
87. On April 11, 2012 and within the time provided by statute the Petitioner Sandra Tillman appealed alleging that the Respondent did not have just cause to terminate her employment and that her termination was based upon discrimination including Race, Sex, Age and Handicapping Condition.
88. That the Petitioner is an African American female and alleges her discharge may have been racially motivated. (Pet. 3, page 29)
89. Ms. Tillman did not complain to the Director as to any alleged discriminatory practices of her supervisor Nelda Caudill until after she was terminated.
90. Ms. Tillman did not complain to Human Resources or the Office of State Personnel, as to any alleged discriminatory practices of her Director John Benton, either before or after she was terminated.
91. Ms. Tillman did not complain of any discrimination as to race, age, sex or handicapping condition until after she was terminated.
92. That the Petitioner inquired of the Director John Benton and her supervisor Nelda Caudill as to preferential treatment of Caucasian employees and there were no incidents identified, and Petitioner offered no competent evidence to support any differences in treatment.
93. That the Director testified that during his tenure as Director he had terminated four (4) employees during their probationary status, two (2) African American Females, one (1) Caucasian female and one (1) African American Male, and that had terminated five (5)

permanent employees for Disciplinary Separation including three (3) Caucasian Females, One (1) Caucasian Male and One (1) African American Female; the Petitioner Sandra Tillman.

94. That the Director testified there was a single Caucasian female who was demoted for unacceptable job performance, the job performance was failing to provide accurate information to her supervisor, and that the employee was demoted and retained as there was an opening to which the employee could be demoted.
95. That there is no supporting evidence that the Caucasian female demoted was treated preferentially to the discharged African American Female, the Petitioner herein, and the evidence supports that their circumstances were entirely different.
96. That the Director testified that all available disciplinary options under the Moore County Human Relations Personnel Policy and those available under the State Personnel Act were considered prior to terminating Ms. Tillman, and demotion was not considered as there was no opening to which to demote.
97. That the Director testified that he presently has one hundred one (101) employee positions and that following Ms. Tillman's termination the supervisor's position in the Day Care Unit was lost, and Ms. Tillman's position was not filled and the County no longer funded the position.
98. That Ms. Tillman contended that her termination was based upon sex discrimination and offered in support her contention that since the Notification letter of February 6, 2012 (Resp. 9) referred to her as "Mrs. Tillman" as opposed to "Ms. Tillman", that the incorrect title indicated animus toward single mothers when her marital status was well known based upon entries in her personnel file.
99. That addressing a female by the title Mrs., even if incorrect, carries no inherent animus or discriminatory meaning and a reasonable person would not conclude otherwise.
100. That a review of her personnel file and documentation as introduced into evidence by the Petitioner Sandra Tillman (Pet. 28, pages 233-254) and covering the years of 1997 through 2012 there is but a single designation of her marital status for the year of 2005 advising as single, which predates the employment of John Benton as Director, and accordingly was not widely known and a reasonable person would not infer any sexual discrimination from the letter addressing the Petitioner as "Mrs. Tillman" as opposed to "Ms. Tillman".
101. That Ms. Tillman has failed to offer any corroborative evidence as to any discriminatory basis for termination and the record reflects positive statements and emails from her supervisor Nelda Caudill and the Director John Benton, such that no discriminatory basis is supported or animus supported.
102. That the Petitioner Sandra Tillman offered nonspecific testimony as to some medical condition for which she applied for Family Medical Leave Act time-off but failed to offer

any competent evidence to show she ever made any request for accommodation, or that the condition and need for accommodation was obvious, or that any accommodation was denied, nor has she offered evidence supporting any discriminatory discharge due handicapping condition.

103. That the only medical record presented as to a physical condition refers to a diagnosis of sciatica, which may require physical therapy; and Ms. Tillman testified she never received physical therapy.
104. That the Petitioner Sandra Tillman has offered some evidence that she took certain medications but has offered no evidence as to any handicapping condition that precluded her completing her job assignments or requiring any accommodation.
105. That the record does not disclose that the request of Ms. Tillman to complete the Subsidized Child Care Reimbursement was so taxing or overwhelming that Ms. Tillman could not perform her job, or that the task was outside her job description or duties.
106. That Nelda Caudill testified that she is familiar with all aspects of Income Maintenance and the time demanded for completing a service, whether taking an application or collecting and doing data entry to complete the Subsidized Child Care Reimbursement report, and that the employee presently responsible for the Subsidized Child Care Reimbursement report by day sheet presently allocates 40-43% of her time on the report, which correlates to a time demand of 16 to 17.2 hours of a 40 hour work week.
107. That Nelda Caudill testified the Subsidized Child Care Reimbursement Report was data collection and data entry and well within the capabilities of Sandra Tillman.
108. That Denise Brook, Director of Moore County Human Resources, testified the Moore County HR policy tracks the State Personnel Act and that Director Benton communicated with HR throughout the disciplinary process, differing only as to time for appeal internally and to whom the appeal is directed.
109. That Denise Brook testified that HR had received no complaints as to discriminatory practices from any employee of the Moore County Department of Social Services, including the Petitioner Sandra Tillman, while under the leadership of Director Benton.
110. That Denise Brook acknowledged that the Petitioner sent an email advising she wished to schedule an appointment to discuss concerns and workplace issues with the Moore County Department of Social Services; however, she cancelled the appointment and never provided any specific information. (Pet. 441-442)
111. That Denise Brook testified the purpose of a written warning is to encourage an employee to address employment concerns in order to maintain their employment and to insure corrective actions that allow the employee to better serve the citizens of Moore County.



112. That DeeAnn Purvis, the Human Resources Administrative Officer for Moore County, testified that her duties included new hires and exit interviews when employees leave employment.
113. That DeeAnn Purvis testified she met with the Petitioner Sandra Tillman as part of the exit interview and that Ms. Tillman did not allege harassment or violation of any Human Resource's policy.
114. That DeeAnn Purvis testified she is trained to be sensitive to any manner of workplace discrimination and harassment, and if there is any suggestion of such behaviors she immediately forwards a memo to the Director of Human Resources, and that no such memo was prepared following Ms. Tillman's exit interview.
115. That DeeAnn Purvis based upon the exit interview and attendance at the pre-disciplinary conference testified she has no reason to believe any provision of the Moore County Human Resources policy was violated.
116. That the Court finds the testimony of Nelda Caudill, Denise Brook, DeeAnn Purvis, Connie Howard and John Benton credible and believable and adopts same as and in support of findings of fact herein.
117. That the Petitioner Sandra Tillman failed to establish prima facie, by a preponderance of the evidence that the employer intentionally discriminated against the Petitioner.
118. Based upon the Court's evaluation of the documentary evidence, and the testimony and demeanor of Respondent's witnesses versus that of Petitioner, the Court finds that the Petitioner engaged in unsatisfactory job performance by failing to complete job assignments and submit documentation as requested and engaged in unacceptable personal conduct, including insubordination, by failing to prepare the Agenda and hold a structured meeting as directed by her Supervisor Caudill.

### **CONCLUSIONS OF LAW**

1. Petitioner was a career State employee subject to the provisions of the State Personnel Act, N.C.G.S. 126-1 et seq. at the time of discharge.
2. Because Petitioner alleged lack of just cause for her discharge as well as discrimination and retaliation, the Office of Administrative Hearings had jurisdiction in this matter. N.C. Gen. Stat. §§126-35, 126-37 and 150B-23.
3. N.C. Gen. Stat. §126-34.1(a)(1) allows a permanent Local Government employee subject to the State Personnel Act to contest termination if the employee believes the employer did not have just cause for its action in violation of N.C. Gen. Stat. §126-35.
4. N.C. Gen. Stat. §126-34.1(a)(2) allows a Local Government employee subject to the State Personnel Act to contest termination if the employee believes the action was

motivated by alleged discrimination because of the employee's specific age, sex, race or handicapping condition in violation of N.C. Gen. Stat. §126-36.

5. An employee alleging discrimination carries the ultimate burden of proving, prima facie, by a preponderance of the evidence, that the employer intentionally discriminated against the employee pursuant to *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 36 L. Ed. 2d 668 (1973). *Dept. of Correction v. Gibson*, 308 N.C. 131, 136-137, 301 S.E.2d 78, 82-83 (1983).
6. Sensitivity must be given to the misuse of courtesy titles and discrimination may occur by its abuse. Petitioner's allegation that Respondent incorrectly addressed her as "Mrs. Tillman" rather than "Ms. Tillman" does not support the *prima facie* showing of discrimination posited by Petitioner. Discrimination by demonstrating insensitivity of title, or the failure to recognize such, was previously successfully challenged by Mary Hamilton in a famous civil rights case rising out of Alabama. *Hamilton v. Alabama*, 376 U.S. 650, 84 S. Ct. 982, 11 L.Ed.2d 979 (1964). In this case "Miss Hamilton", an African-American refused to answer courtroom questions until she was properly addressed, not as "Mary", but in the same fashion as whites. The Judge refused to honor her request and held her in contempt imposing a jail sentence and fine. The Alabama Supreme Court upheld this finding which was ultimately reversed in a *per curiam* opinion by the Supreme Court. The showing proffered *sub judice*; however, is not sufficient to shift the burden.
7. The State Personnel Act only permits disciplinary action against career state employees for "just cause." N.C.G.S. 126-35. Although "just cause" is not defined in the statute, the words are accorded their ordinary meaning. *Amanini v. Dept'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).
8. Respondent has the burden of proof to show that it had just cause to dismiss Petitioner in accordance with N.C.G.S. 126-35. *Teague v. N.C. Dep't of transportation*, 177 N.C. 215, 628 S.E.2d 395, disc. Rev. denied, 360 N.C. 581 (2006).
9. Administrative regulations provide two grounds for discipline or dismissal based on just cause: unsatisfactory job performance and unacceptable personal conduct. 25 NCAC 1J.0604 (b). Unacceptable personal conduct includes, inter alia, "conduct for which no reasonable person should expect to receive prior warning;" "the willful violation of known or written work rules;" and "insubordination" 25 NCAC 01J .0614(8) (a), (8) (d), and (7).
10. A single act of unacceptable personal conduct can constitute just cause for any discipline, up to and including dismissal. *Hilliard v. N.C. Dep't of Correction*, 173 N.C. App. at 597, 620 S.E.2d 17 (2005).
11. In accordance with 25 N.C.A.C. 1I.2308(4)(b), Respondent conducted a pre-disciplinary conference with Petitioner on February 3, 2012. She was given notice of the specific

reasons for the proposed dismissal pursuant to 25 N.C.A.C. 1I.2304(e). A letter of Dismissal was issued to Petitioner giving her details about how to appeal the decision in accordance with the internal grievance procedures and the provisions of 25 N.C.A.C. 1I.2308(4)(f).

12. In this case, a preponderance of the evidence showed that Respondent complied with the procedural requirements for dismissing Petitioner from employment for unacceptable personal conduct in accordance with 25 NCAC 01J .0608 and .0613.
13. In this case, a preponderance of the evidence showed that Respondent complied with the procedural requirements related to issuing written warnings in attempt to correct the events of unsatisfactory job performance in accordance with 25 NCAC 01I .2305.
14. In this case, a preponderance of the evidence showed that Respondent complied with the procedural requirements related to dismissal for unsatisfactory job performance of duties in accordance with 25 NCAC 01I .2302 and showed that Respondent complied with the procedural requirements related to dismissal for unacceptable personal conduct in accordance with 25 NCAC 01I .2304.
15. In this case, a preponderance of the evidence showed that Respondent complied with the procedural requirements related to dismissal for unacceptable personal conduct in accordance with 25 NCAC 01I .2304.
16. A preponderance of the evidence established that Petitioner willfully and knowingly failed to carry out a reasonable order from an authorized supervisor. Insubordination is unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning. Petitioner's failure to follow reasonable requests of a supervisor was not the sort of conduct for which Petitioner would have expected to receive a prior warning before being dismissed. 25 NCAC 01J .0614 (7).
17. Ms. Tillman's failure to comply with the repeated directives of her supervisor constitutes a willful failure to follow directives and insubordination, and constitutes just cause for her termination without reference to any other disciplinary actions. 25 N.C.A.C. 1I.2304.
18. Ms. Tillman's termination was also justified as a dismissal for unsatisfactory performance of duties because she received two written warnings prior to receiving her pre-disciplinary conference letter both of those previous written warnings notified her that future disciplinary actions could result in her termination. 25 N.C.A.C. 1I.2302.
19. The County met all procedural requirements in terminating Ms. Tillman. *See* 25 N.C.A.C. 1I.2301 – 1I.2304.
20. Ms. Tillman has not proven by a preponderance of the evidence that the Moore County Department of Social Service's justification for her termination was "merely a pretext" for discrimination.

21. Ms. Tillman cannot overcome Respondent's articulated legitimate reasons for termination with a statement that she simply believes she was fired because she was female, she was of a particular age, she was African American or she had some ill-defined handicapping condition. *Autry v. North Carolina Dept't of Human Resources*, 820 F.2d 1384, 1386 (4<sup>th</sup> Cir. 1987). Her personal opinion is simply not enough.
22. Because Director Benton and Supervisor Caudill complimented and credited Ms. Tillman with positive accolades as to her Unit and its performance when merited, because Director Benton and Supervisor Caudill attempted to work with Ms. Tillman and responded positively to work related request in accommodating her work schedule changes and attempted to remediate perceived job deficiencies through the issuance of prior written warnings in 2011 and subsequently terminated in 2012, the Moore County Department of Social Services is entitled to a strong inference that discrimination was not a factor in Ms. Tillman's termination. *See Bartee v. Morris*, 1998 U.S. App. Lexis 9717, \*10 (4<sup>th</sup> Cir. 1998).
23. Ms. Tillman has failed to rebut the strong inference that discrimination was not a factor in her termination.
24. Ms. Tillman has failed to identify any similarly situated Caucasian employees who were disciplined less severely for comparable conduct.
25. Ms. Tillman has failed to prove that she was subjected to severe or pervasive harassment sufficient to support her claim of discrimination or hostile work environment. *Cobb v. Porter*, 2006 WL 2457812 (W.D.N.C. 2006).
26. Ms. Tillman was not subjected to a hostile work environment because of her race, age, sex or any handicapping condition.
27. That Ms. Tillman was terminated from her employment with the Moore County Department of Social Services for just cause.

### **ACKNOWLEDGMENT**

It is acknowledged that whenever, in this document, reference is made to the Undersigned, the undersigned Judge, or the Court, reference is being made to the undersigned Administrative Law Judge.

### **FINAL DECISION**

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned AFFIRMS Respondent's dismissal of Petitioner because Respondent had just cause for this disciplinary action per N.C.G.S. § 126-35. The undersigned is satisfied that Respondent has successfully carried its burden of proof in justifying Petitioner's dismissal.

## 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 29<sup>th</sup> day of July, 2013.

---

J. Randall May  
Administrative Law Judge