

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 OSP 02578

COUNTY OF ONSLOW

DONNETTE J AMARO)
PETITIONER,)
)
V.)
)
ONSLOW COUNTY DEPARTMENT)
OF SOCIAL SERVICES)
RESPONDENT.)

DECISION

This contested matter was heard on September 14, 2012, in Surf City, NC, before Senior Administrative Law Judge Fred G. Morrison Jr.

APPEARANCES

For Petitioner: Donnette J Amaro, Pro Se
101 Old Stone
Jacksonville, NC 28546

For Respondent: James W Joyner
Attorney for Onslow County Department of Social Services
PO Box 1379
Jacksonville, NC 28540

ISSUE

Whether the Respondent had just cause to discharge the Petitioner from her employment with Onslow County Department of Social Services.

WITNESSES

For Petitioner:

Prentis Campbell	Member, National Association of Black Veterans
Eleanora Watkins	Former employee, Onslow County Department of Social Services
Donnette J Amaro	Petitioner

For Respondent:

Babee Thompson	Supervisor, Onslow County Department of Social Services
Heidi Baur	Director, Onslow County Department of Social Services

EXHIBITS

For Petitioner:

None

For Respondent:

- Exhibit 1: Letter dated February 28, 2012
- Exhibit 2: Letter dated February 29, 2012
- Exhibit 3: Letter dated March 2, 2012
- Exhibit 4: Onslow County Employee Personnel Policies, Article VII- Disciplinary Actions
- Exhibit 5: Performance Improvement Plan dated July 8, 2011
- Exhibit 6: Written warning dated November 9, 2011
- Exhibit 7: Written warning dated December 6, 2004
- Exhibit 8: Letter dated March 22, 2012

FINDINGS OF FACT

Based upon consideration of the sworn testimony of the witnesses, the documents and exhibits admitted into evidence, and the record, the undersigned Administrative Law Judge makes the following findings of fact:

1. The parties received proper notice of this hearing, and had ample time to fully prepare for this hearing.
2. The Petitioner was employed with Onslow County Department of Social Services from June 8, 1992, until March 2, 2012. Petitioner became a full time permanent employee on March 22, 1993. At the time of her discharge, she was subject to the State Personnel Act.
3. The Petitioner was terminated from her employment with Onslow County Department of Social Services on March 2, 2012. At the time of her discharge, Petitioner was employed as an Income Maintenance Worker II (IMC II) assigned to the Childcare Subsidy Unit.
4. At the time of Petitioner's discharge on March 2, 2012, Babeee Thompson was and had been her supervisor for approximately seven years. The Petitioner's previous supervisor was Annette Johnson.
5. On December 6, 2004, the Petitioner received a written warning from her then supervisor, Annette Johnson. The warning concerned unsatisfactory personal conduct for refusal to accept reasonable and proper assignment or instructions from her supervisor. The warning included corrective action to follow all assignments and instructions given to her by her supervisor that were within the scope of the duties of her position.

6. On July 8, 2011, the Petitioner was placed on a Performance Improvement Plan (PIP) by her supervisor, Babee Thompson. The PIP concerned problems with job performance. Among the expectations listed for the Petitioner was to receive instructive and /or corrective direction from supervisor without becoming argumentative or controversial.
7. On November 9, 2011, the Petitioner received a written warning from her supervisor, Babee Thompson. The warning concerned unsatisfactory job performance and conduct while performing duties as an Income Maintenance Caseworker II. It was noted that in addition to uncooperative attitude toward corrective action by her supervisor, the Petitioner had repeatedly refused to comply with supervisor requests that were in line with her Income Maintenance Caseworker II job description. This behavior was considered insubordination and the warning included corrective action that the insubordination was to cease immediately.
8. On February 27, 2012, the Petitioner refused to complete a recertification requested by her supervisor, Babee Thompson. Recertifications were part of the Petitioner's job duties as an Income Maintenance Caseworker II. Pursuant to a plan put in place by her supervisor, the Petitioner was assigned to perform recertifications for clients with last names beginning from A to C. This plan was put in place to address a backlog in the Childcare Subsidy Unit. Seven other IMC's of the Unit were assigned similar duties to help alleviate the backlog within the Unit, and these workers complied with the requested assignments. At the time of the incident, the Unit was fully staffed. This request was a reasonable and proper assignment within the scope of the Petitioner's duties as an Income Maintenance Caseworker II.
9. On February 27, 2012, another worker within the Childcare Subsidy Unit had approached the Petitioner and gave her a client file and advised her that the supervisor had requested she complete the necessary recertification. The Petitioner stated that the request was unfair and refused to carry it out. The supervisor then approached the Petitioner and requested her to complete the assignment. The Petitioner, in a raised voice, once again refused to perform the requested work. This conversation was overheard by several co-workers.
10. Recertifications are necessary for a client to receive a subsidy for childcare services. If the recertification is not completed within a specified time frame, the client will lose access to such needed services. The applicable childcare provider will also lose financial assistance. Recertifications are performed by sending out notices to clients advising them of the need to recertify and requesting an appointment be made. If the client arrives with the requested documentation, the recertification can be completed within a short amount of time.
11. In a letter dated February 28, 2012, supervisor Babee Thompson advised the Petitioner that she considered the Petitioner's actions on February 27, 2012, to be insubordination within the definition of Personnel Manual Section 9 and was subject to disciplinary action.

12. In a letter dated February 29, 2012, supervisor Babee Thompson advised the Petitioner that a pre-disciplinary conference with the Director of Social Services was scheduled for March 1, 2012. The Petitioner was advised that the purpose of the conference was to discuss her alleged unacceptable personal conduct, and to allow Petitioner to present any information and argument concerning the February 27, 2012, incident.
13. On March 1, 2012, a pre-disciplinary conference was conducted. Present at the conference were the Petitioner, Supervisor Babee Thompson, Director Heidi Baur, and Assistant Director Gloria Osborne. The conference lasted approximately one hour and the Petitioner was allowed to present her side of the February 27, 2012, incident.
14. In a letter dated March 2, 2012, the Director of Onslow County Department of Social Services, Heidi Baur, advised the Petitioner that her employment was terminated effective March 2, 2012. The justification for the termination was insubordination (unacceptable personal conduct) in her refusal to carry out a reasonable order from an authorized supervisor. The Petitioner was advised that insubordination was defined in the Personnel Manual Section 9 for which any level of discipline, including dismissal, may be imposed without prior warning. A copy of the Petitioner's appeal rights (Article IX. Grievance Process) was attached to the March 2, 2012, letter which was delivered to the Petitioner.
15. The Petitioner admitted that she was wrong to refuse the recertification request on February 27, 2012.
16. The Petitioner was diagnosed with Post Traumatic Stress Disorder in 2009 while on duty with the United States Naval Reserve. Petitioner never requested accommodation for this diagnosis, although she was afforded medical leave at various times throughout her employment. The Petitioner provided no documentation that she ever advised the Respondent that she was disabled.
17. While the Petitioner was employed with the Respondent, Onslow County Employee Personnel Policies were in effect of which the Petitioner was aware. Under Article VII – Disciplinary Actions, just cause for disciplinary action is authorized for unacceptable personal conduct. Under Section 4 employees may be dismissed for unacceptable personal conduct. Unacceptable personal conduct includes insubordination. Insubordination is defined as the willful failure or refusal to carry out a reasonable order from an authorized supervisor.
18. In dismissal of the Petitioner, the Respondent followed the procedures required by Onslow County Employee Personnel Policies.
19. Following her notice of termination on March 2, 2012, the Petitioner appealed to Director Heidi Baur for reconsideration. On March 22, 2012, Heidi Baur mailed to the Petitioner her decision not to change the decision to terminate the Petitioner's employment.
20. On April 20, 2012, the Petitioner filed a Petition for a Contested Case Hearing and alleged discharge without just cause.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact and upon a preponderance of the evidence, the undersigned Administrative Law Judge concludes as follows:

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this action. The parties received proper notice of the hearing in this matter.
2. At the time of Petitioner's discharge, she was subject to and entitled to the protections of the State Personnel Act in accord with North Carolina General Statute Section 126-5(a) and all applicable regulations.
3. The two bases for "just cause" for dismissal as set forth in 25 NCAC 011.2301 are (1) discipline or dismissal imposed on the basis of unsatisfactory job performance, including grossly inefficient job performance, and (2) discipline or dismissal imposed on the basis of unacceptable personal conduct.
4. NCGS Section 126-35(d) states that in contested cases pursuant to Chapter 150B the burden is on the respondent employer to show the career employee was discharged for just cause.
5. 25 NCAC 011.2304 (a) allows employees to be dismissed for a current incident of unacceptable personal conduct. Section (b) defines unacceptable personal conduct as (8) insubordination which 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.
6. The Petitioner was afforded a pre-dismissal conference pursuant to 25 NCAC 011.2304 and 011.2308. The Petitioner was notified in writing of the dismissal and given specific reasons for the dismissal, the effective date of the dismissal, and notification of the Petitioner's appeal rights.
7. The Petitioner had a history of insubordination for which she was given two prior written warnings and placed on a Performance Improvement Plan. The current incident of insubordination occurred on February 27, 2012, wherein the Petitioner refused to carry out a reasonable order from her authorized supervisor. The Petitioner was ordered to complete a client recertification which was within her job duties as an Income Maintenance Caseworker II. She refused to do so, even though the task could have been completed within a minimal amount of time. Respondent has carried its burden of showing just cause for terminating Petitioner's employment.

DECISION

Respondent decision to terminate Petitioner's employment is hereby 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.

IT IS SO ORDERED.

This the 21st day of November, 2012.

Fred G. Morrison
Senior Administrative Law Judge

CERTIFICATE OF SERVICE

This is to certify that I have this day served the Petitioner and Office of Administrative Hearings with the aforesaid proposed Decision by depositing a copy hereof, postage prepaid, in the United States Mail, addressed as follows:

Donnette J Amaro

101 Old Stone

Jacksonville, North Carolina 28546

Office of Administrative Hearings

6714 Mail Service Center

Raleigh, NC 27699-6714

This the 24th day of October, 2012.

JAMES W JOYNER

Attorney for Onslow County Department of Social Services

