

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

OFFICE OF
ADMINISTRATIVE HEARINGS
12-OSP-03041

KATIE F. WALKER,

Petitioner,

v.

RUTHERFORD COUNTY/DEPARTMENT OF
SOCIAL SERVICES,

Respondent.

FINAL DECISION

This matter was heard by the undersigned Administrative Law Judge in a bench trial, from December 12 through December 13, 2012, in Rutherford County. Katie Walker, the Petitioner, was represented by Geraldine Sumter of Ferguson Stein Chambers Gresham & Sumter, P.A. Rutherford County and the Department of Social Services (the "County") were represented by Jackson Price of Womble Carlyle Sandridge & Rice, LLP.

ISSUES

1. Whether the County wrongfully terminated Ms. Walker because of her race.
2. Whether Ms. Walker was subjected to a hostile work environment while working for the County.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, 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 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. Wherefore, the undersigned makes the following Findings of Fact, Conclusions of Law and Decision. In the absence of a transcript, the Undersigned has relied upon her notes and documentary record herein.

FINDINGS OF FACT

A. Ms. Walker's Employment and Termination

1. Ms. Walker was hired by the County on February 27, 2006 to work as a social worker in the Child Protective Services Division.

2. John Carroll, the Director of Social Services, promoted Ms. Walker to the position of Social Worker I/A&T on February 27, 2010. Pet. Ex. 7.

3. While working for the County, Ms. Walker received extensive training for her position as a social worker. See Pet. Ex. 1.

4. Denise Clemmer served as Ms. Walker's Social Work Supervisor from February 27, 2006 until Ms. Clemmer's tragic death in September 2011.

5. Ms. Walker had performance issues as early as 2009, as evidenced by the performance evaluation filed by Ms. Clemmer on January 14, 2010 indicating that Ms. Walker needed improvement in "customer service," "decision making," "job knowledge," and "quality of work." Resp. Ex. 8. In the January 14, 2010 performance review, Ms. Clemmer noted that Ms. Walker "ha[d] errors in her work" and that her performance was "below that of a qualified person." *Id.*

6. Nearly a year later, Ms. Walker continued to have the same performance issues. In another performance evaluation, dated December 14, 2010, Ms. Clemmer indicated that Ms. Walker still needed improvement in her "decision making," "job knowledge," and "quality of work." Resp. Ex. 9. The performance evaluation indicates that Ms. Walker received a warning related to her decision making, job knowledge, and quality of work. *Id.*

7. Following Ms. Clemmer's death, Melanie Hunt was promoted to the position of Social Work Supervisor in November 2011.

8. In November 2011, Ms. Hunt became Ms. Walker's supervisor, and remained in that capacity until Ms. Walker's termination on April 3, 2012.

9. Ms. Hunt testified that she selected those social workers who became members of her team and that she specifically requested that Ms. Walker be assigned to her team because she liked Ms. Walker and thought that they would work well together.

10. Ms. Walker and Ms. Hunt both testified that they were on good terms with each other prior to Ms. Hunt becoming her supervisor.

11. Ms. Hunt filed a performance evaluation of Ms. Walker on December 29, 2011 in which she indicated that Ms. Walker still needed improvement in her "decision making," "job knowledge," and "quality of work." Resp. Ex. 10. In this performance review Ms. Hunt noted that Ms. Walker "continue[d] to struggle with making appropriate decisions in regards to protecting children despite on going training" and that "[d]espite continued training in policy and procedure [Ms. Walker] continue[d] to make decisions that [did] not reflect utilization of the

skills she should have [had] at a SW IA&T level.” *Id.* Ms. Hunt also noted that Ms. Walker “continue[d] to struggle with producing accurate work that [was] reliable for making informed decisions about the welfare of children.” *Id.* These performance issues identified by Ms. Hunt in the December 29, 2011 performance evaluation are the same performance issues identified by Ms. Clemmer in the January 14, 2010 and December 14, 2010 performance evaluations. *See* Resp. Exs. 8, 9 & 10.

12. Ms. Walker received a written warning on March 2, 2012 for unsatisfactory job performance. (“March 2 Warning Letter”) The specific job performance issue was “that after learning on November 29, 2011 that a family in your caseload had relocated to another county on November 28, 2011, you made no contact with this family nor did you request assistance from Cleveland County DSS until February 14, 2012, approximately three months after learning they had relocated. On January 20, 2012, it was reported to you that one of the children had made a statement which indicated that she could be at potential risk. You did not address this issue until February 29, 2012 when you made a home visit.” Resp. Ex. 1.

13. The March 2 Warning Letter informed Ms. Walker that any future issues of unsatisfactory job performance could result in further disciplinary action, including termination. Resp. Ex. 1.

14. On March 30, 2012, a written warning (“March 30 Warning Letter”) was sent to Ms. Walker that stated “[t]he specific job performance issue that is unsatisfactory is that on March 15, 2012, you displayed a severe lack of knowledge while testifying in court in regard [*sic*] to a child protective service case assigned to and assessed by you. ... A District Court Judge expressed serious concern over your inability to relay the facts of your case while testifying and the potential to negatively impact the findings in court.” Resp. Ex. 19.

15. The March 30 Warning Letter informed Ms. Walker that any future issues of unsatisfactory job performance could result in further disciplinary action, including termination. Resp. Ex. 19.

16. Ms. Walker received another written warning on March 30, 2012 for two instances of grossly inefficient job performance and a specific instance of unacceptable personal conduct, and scheduled a pre-dismissal conference (“Pre-Termination Letter”). Resp. Ex. 2.

17. In the first instance of grossly inefficient job performance, Ms. Walker received a report on July 15, 2011 that a young girl in her caseload had been sexually abused by her live-in stepfather, but Ms. Walker “did not address this allegation in any way.” Resp. Ex. 2. Ms. Walker’s failure to address this sexual abuse allegation put the child at risk of serious injury or death.

18. Department of Social Service policy dictates that any sexual abuse allegation be addressed immediately. Ms. Walker did not comply with this policy.

19. In the second instance of grossly inefficient job performance, in November 2011, a child in Ms. Walker’s caseload disclosed that she had become ill after her father shook her by the neck and she stated that her neck was sore as a result. For over three months, Ms. Walker failed to ensure that this child saw a physician even after Ms. Hunt gave her express written and

oral directives to do so. Resp. Ex. 2. Ms. Walker testified that she visually inspected the child and decided that the child was not injured.

20. Ms. Walker's failure to have the child seen by a physician in a timely manner put the child at risk of serious injury or death.

21. It is standard policy at the Department of Social Services that any child complaining of a neck injury should be seen by a physician, even if there is no bruising or physical manifestation of injury.

22. The Pre-Termination Letter also stated that Ms. Walker's failure to follow Ms. Hunt's repeated directives and have the child seen by a physician constituted unacceptable personal conduct. Resp. Ex. 2.

23. Ms. Walker attended a Pre-Dismissal Conference on April 2, 2012 with John Carroll and Lorie Horne. Resp. Ex. 3.

24. At the Pre-Dismissal Conference, Ms. Walker did not present any new evidence for Mr. Carroll and Ms. Horne to consider in making the termination decision.

25. Following her Pre-Dismissal Conference, Ms. Walker was terminated on April 3, 2012 due to grossly inefficient job performance and unacceptable personal conduct related to those instances identified in the Pre-Termination Letter. Resp. Ex. 3. Upon being terminated, Ms. Walker was advised of her right to appeal the termination decision. *Id.*

B. Comparative Disciplinary Actions Taken Against Other Social Workers

26. Andrea Denning is a Caucasian woman who works for the County as a social worker in the Foster Care Division of Child Protective Services.

27. Prior to May 2012, Ms. Denning had always been an exemplary employee and had never had any performance issues. Ms. Denning's annual performance reviews evidence that she was an excellent employee. Resp. Exs. 14-16.

28. In mid-May 2012, Ms. Denning was videotaped sleeping in her car while on a supervised visit between a mother and her children.

29. As a result of this performance issue, Ms. Denning was suspended without pay for ten days. Ms. Denning was also ordered to undergo an immediate medical evaluation.

30. One of the primary reasons that Mr. Carroll did not terminate Ms. Denning for her conduct was because she had not had any prior performance issues.

31. Ms. Denning's medical evaluation also indicated that she had an undiagnosed medical issue that likely contributed to her falling asleep on the job. Ms. Denning has since undergone treatment for that medical issue.

32. Ms. Denning has not had any additional performance issues since May 2012.

33. Elizabeth Baxley, another Caucasian social worker, was terminated because, like Ms. Walker, she displayed a severe lack of job knowledge and had repeated performance issues.

34. Ashley McCraw, yet another Caucasian social worker, was terminated, in part, because she continued to have incomplete assessments, had serious gaps in contact with families and children, displayed a basic lack of knowledge concerning individual family situations, and, like Ms. Walker, had received three written warnings for such conduct. Resp. Ex. 17.

C. Allegations of Racial Discrimination and a Hostile Work Environment

35. Ms. Walker is African American.

36. Ms. Walker testified that Ms. Hunt called her a “spook” two times prior to becoming her supervisor. Yet Ms. Walker did not identify even in the vaguest sense when or where each incident took place, what Ms. Hunt’s exact remarks were, or the context surrounding the alleged remarks.

37. Ms. Hunt ardently denied ever calling Ms. Walker a “spook” or using that word in any context.

38. Ms. Walker also testified that Ms. Hunt called her a “spook” again during a staffing meeting on December 30, 2012 attended by Ms. Walker, Ms. Hunt, and Ms. Horne. Again, Ms. Walker could not identify Ms. Hunt’s exact remark or the context in which she made the alleged statement.

39. Both Ms. Horne and Ms. Hunt deny that Ms. Hunt ever used the word “spook” in this December 30, 2012 staffing meeting.

40. However, during the staffing meeting Ms. Hunt did quote Spanky from the Little Rascals and said, “O’tay Buckwheat, what’s next?” Immediately after the staffing meeting, Ms. Horne told Ms. Hunt that the expression “O’tay Buckwheat” could be construed as racially offensive and informed her that any future use of that expression or similar language would be considered a serious performance issue.

41. Ms. Hunt testified that she didn’t think about the statement being racially offensive because it’s a memorable line from a children’s television show that she often quotes with her husband and her own children.

42. Ms. Hunt has never used the expression “O’tay Buckwheat” in the office since December 30, 2012.

43. Ms. Walker did not complain to her supervisors about Ms. Hunt’s conduct in the December 30, 2012 staffing meeting until after she was terminated.

44. Ms. Walker never complained about any alleged discrimination until after she was terminated.

45. Tiffany Dodd is an African American social worker supervised by Ms. Hunt.

46. Ms. Dodd is a Social Worker I/A&T and works in the same capacity and with the same supervisor as Ms. Walker did while she was employed by the County.

47. Ms. Dodd has never heard Ms. Hunt use a racial slur.

48. Ms. Dodd has never felt like Ms. Hunt created a hostile workplace for African Americans.

49. Ms. Walker's caseload was no higher than that of other social workers. Indeed, some social workers for the County, including Ms. Dodd, carried even higher caseloads than Ms. Walker's caseload.

50. Ms. Walker also alleged that she was subjected to a hostile work environment due to her race when Ms. Hunt called her "stupid" at an out-of-office lunch with several of Ms. Walker's co-workers. In the alleged incident, one of Ms. Walker's co-workers asked the waitress if he could have a side of vegetables instead of the noodles that came with the dish and Ms. Hunt allegedly called Ms. Walker "stupid" when Ms. Walker suggested that the co-worker pay the waitress \$1.00 instead of the \$2.00 substitution price expressly noted on the menu. Ms. Hunt denied that she ever called Ms. Walker "stupid" and Ms. Walker did not present any corroborating witnesses despite the fact that Ms. Hunt allegedly made the comment across a large, round table in front of a number of Ms. Walker's co-workers.

CONCLUSIONS OF LAW

A. Petitioner's Claim For Wrongful Termination

1. Ms. Walker was terminated for just cause pursuant to 25 N.C.A.C. 1I.2301(a).

2. The County produced sufficient evidence that Ms. Walker was terminated for grossly inefficient job performance pursuant to 25 N.C.A.C. 1I.2303.

3. Ms. Walker's failure to address the sexual abuse allegations of a young girl for nearly nine months constitutes grossly inefficient job performance and constitutes just cause for her termination without reference to any other disciplinary actions. 25 N.C.A.C. 1I.2303.

4. Ms. Walker's failure to ensure that a young girl, complaining of a neck injury inflicted by her abusive father, was timely seen by a physician and the three-month delay in arranging the appointment constitutes grossly inefficient job performance and constitutes just cause for her termination without reference to any other disciplinary actions. 25 N.C.A.C. 1I.2303.

5. Ms. Walker's failure to comply with the repeated directives of her supervisor and ensure that a young girl complaining of a neck injury was timely seen by a physician 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.

6. Ms. Walker's termination was also justified as a dismissal for unsatisfactory performance of duties because she received two written warnings prior to receiving her Pre-

Termination Letter and both of those previous written warnings notified her that future disciplinary actions could result in her termination. 25 N.C.A.C. 1I.2302.

7. The County met all procedural requirements in terminating Ms. Walker. *See* 25 N.C.A.C. 1I.2301 – 1I.2304.

8. Ms. Walker has not proven by a preponderance of the evidence that the County's justification for her termination was "merely a pretext" for discrimination.

9. Because Mr. Carroll both promoted Ms. Walker in 2010 and subsequently terminated her in 2012, the County is entitled to a strong inference that discrimination was not a factor in Ms. Walker's termination. *See Bartee v. Morris*, 1998 U.S. App. LEXIS 9717, *10 (4th Cir. 1998).

10. Ms. Walker has failed to rebut this strong inference that discrimination was not a factor in her termination.

11. Ms. Baxley and Ms. McCraw were terminated for substantially similar reasons as Ms. Walker.

12. The fact that Ms. Denning had never had a prior performance issue before her May 2012 disciplinary action constituted sufficient justification for imposing differential disciplinary actions on Ms. Denning and Ms. Walker.

13. Ms. Denning's performance issue in falling asleep during a supervised visit is not comparable to Ms. Walker's failure to address the sexual abuse allegation of a young girl for nearly nine months.

14. Ms. Denning's performance issue in falling asleep during a supervised visit is not comparable to Ms. Walker's failure to timely arrange for a young girl complaining of a neck injury to see a physician, a delay for over three months.

15. Ms. Denning was suspended without pay for ten days following her first performance issue while Ms. Walker merely received a written warning.

16. Ms. Walker failed to produce any evidence that Ms. Denning's performance issue justified immediate termination absent prior disciplinary actions or that it rose to the level of grossly inefficient job performance.

17. Ms. Walker has failed to identify any similarly situated Caucasian employees who were disciplined less severely for comparable conduct.

B. Petitioner's Claim for Hostile Work Environment

18. Ms. Walker has failed to produce reliable evidence from which to conclude that Ms. Hunt ever called Ms. Walker a "spook."

19. Ms. Hunt's isolated "Buckwheat" comment is a stray remark and does not imply discrimination or harassment. *See Boyd v. State Farm Ins. Co.*, 158 F. 3d 326, 329 (5th Cir. 1998) (stating that a single use of the term "Buckwheat" from the television show the Little Rascals, generally considered to be a racial slur, during an employee's five-year tenure is properly categorized as a "stray remark from which no reasonable fact-finder could infer race discrimination").

20. No racial connotation can be derived from the context in which Ms. Walker alleges that Ms. Hunt called her "stupid." *Ash v. Tyson Foods, Inc.*, 546 U.S. 454, 456 (2006).

21. Ms. Walker has failed to produce any evidence to support her claim that when Ms. Hunt allegedly called her "stupid," she did so with racial animus. *Ash*, 546 U.S. at 456.

22. Ms. Walker has produced no evidence indicating that Ms. Hunt's inflection or tone of voice in allegedly using the word "stupid" indicated racial animus. *Ash*, 546 U.S. at 456. Nor has Ms. Walker produced any evidence that local custom and historical usage of the word "stupid" indicates racial animus on the part of Ms. Hunt. *Id.*

23. Ms. Walker has failed to prove that she was subjected to severe or pervasive harassment sufficient to support her claim for a hostile work environment. *Cobb v. Potter*, 2006 WL 2457812 (W.D.N.C. 2006).

24. Ms. Walker was not subjected to a hostile work environment because of her race.

DECISION

The undersigned Administrative Law Judge hereby finds and holds that judgment shall be entered on behalf of Respondent, Rutherford County Department of Social Services.

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 14th day of March, 2013.

The Honorable Selina M. Brooks
Administrative Law Judge