

WITNESSES

For Petitioner: David Ryan Brown, Petitioner

For Respondent: David Ryan Brown, Petitioner
Jami Stohlman, Judicial District Manager, District 2, Department of Public Safety (“NCDPS”)
Cornell McGill, retired District Administrator, Division of Community Corrections, NCDPS
William Mitchell, Judicial District Manager, District 6, Division of Community Corrections, NCDPS

EXHIBITS

For Petitioner:

1. Department of Correction, Personnel Manual, Drug Testing Policy, pp. 3, 6
2. North Carolina Department of Correction, The Appraisal Process (“TAP”), Fiscal Year: 2005-2006
3. North Carolina Department of Correction, The Appraisal Process (“TAP”), Fiscal Year: 2006-2007
4. North Carolina Department of Correction, The Appraisal Process (“TAP”), Fiscal Year: 2007-2008
5. North Carolina Department of Correction, The Appraisal Process (“TAP”), Fiscal Year: 2008-2009
6. North Carolina Department of Correction, The Appraisal Process (“TAP”), Fiscal Year: 2009
7. North Carolina Department of Correction, The Appraisal Process (“TAP”), Fiscal Year: 2010
8. North Carolina Department of Correction, The Appraisal Process (“TAP”), Fiscal Year: 2010-2011
9. North Carolina Department of Correction, The Appraisal Process (“TAP”), Fiscal Year: 2011-2012

For Respondent:

1. Department of Correction, Personnel Manual, Alcohol/ Drug-Free Work Place Policy, pp. 33-34
2. Department of Correction, Personnel Manual, Appendix to Disciplinary Policy & Procedures, pp. 38-41

3. North Carolina Department of Correction, Drug/ Alcohol Free Work Place and Employee Assistance Program Statement of Understanding, signed by Petitioner, 9/23/91
4. North Carolina Department of Correction, Division of Adult Probation and Parole, Oath of Office, signed by Petitioner, 2/4/92
5. North Carolina Department of Correction, Internal Investigation Acknowledgment Form, signed by Petitioner, 4/23/12
6. Employee/ Witness Statement Form, completed by Petitioner, 4/23/12
7. Pre-Disciplinary Conference Acknowledgment Form, signed by Petitioner, 7/9/12
8. Notice of Pre-Disciplinary Conference, signed by Petitioner, 7/5/12
9. Recommendation for Disciplinary Action, signed by Petitioner, 7/9/12
10. Letter from Petitioner to Bill Mitchell
11. Recommendation for Dismissal, 9/12/12
12. Statement from James Terry Edwards, written by Jami Stohlman, 4/20/12
13. Memo: Internal Investigation - District 6/ CPPO David Brown, 4/23/12
14. Memo: Internal Investigation - District 6/ CPPO David Brown, 5/18/12
15. Email from William Mitchell to Vernon Bryant, 4/23/12
16. Employee/ Witness Statement Form, completed by William Mitchell, 5/18/12
17. Memorandum, Response to Disciplinary Conference, 7/10/12
18. Memorandum, Internal Investigation, CPPO David Brown, District 6, 5/8/12
19. Dismissal Package, CPPO David Brown, District 6, 7/17/12
20. Disciplinary Package, 7/17/12

RESPONDENT'S PREHEARING MOTION IN LIMINE

At the outset of the hearing, Respondent made a preliminary motion in limine to preclude the Petitioner from arguing that he failed to timely receive notice of his final agency decision following his internal appeal procedure. Respondent asserted that the final agency decision was postmarked and dispatched by certified mail by the agency to the Petitioner on December 11, 2012, which was 89 days following Petitioner's internal agency appeal of his termination. Respondent argued that, because North Carolina has adopted the common law "mailbox rule" regarding the dispatch of pleadings and other correspondence, the Undersigned should apply the same rule to Petitioner's case and preclude Petitioner's arguments regarding the timeliness of his notification of the final agency decision.

Petitioner responded by arguing that the agency personnel manual requires notification of the final agency decision to the employee within 90 days and that the mailbox rule should not apply to Petitioner.

The Undersigned, having considered the arguments of both parties, determined that the mailbox rule should apply to Petitioner's notification, which would deem the final agency decision timely given to Petitioner. The Undersigned further found that, if there were any delay in notification to Petitioner, such an error was harmless. The Undersigned then granted Respondent's motion in limine.

ISSUE

Whether just cause existed to dismiss Petitioner for unacceptable personal conduct.

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 Administrative Law Judge (ALJ) makes the following Findings of Fact. 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, the Undersigned makes the following findings of fact.

FINDINGS OF FACT

1. Before his dismissal, Petitioner had been an employee with the Department of Public Safety (DPS) for approximately twenty-one (21) years. Petitioner served as a Probation/Parole Officer (PPO). As an employee of DPS, Petitioner was given a copy of the North Carolina Department of Correction Drug/Alcohol Free Work Place Policy.
2. Petitioner began working for Respondent in 1991 as a Probation Officer in Hertford County.
3. In early 1995, Petitioner was promoted and transferred to Gates County, where he was employed for approximately 15 years. During the period of his employment in Gates County, Petitioner did not have an onsite direct supervisor.
4. While employed by Respondent in Gates County, Petitioner also held a political position as a county commissioner in Gates County.
5. Petitioner's office was located in the Gates County Courthouse. While employed in Gates County, Petitioner worked in the same building as Mrs. Ashley Edwards. Petitioner established a friendship with Mrs. Edwards while he was employed in Gates County.
6. Petitioner's work schedule would require some night shift work and would also require him to be on call for the electronic house arrest program.

7. Petitioner would also receive work-related phone calls during off hours which would require Petitioner to provide information in his official capacity as a Probation Officer.
8. Petitioner testified that he was knowledgeable of Respondent's policies and procedures during the period of his employment, including Respondent's Alcohol/ Drug-Free Work Place Policy and Disciplinary Policy & Procedure. Petitioner also testified that he had a duty to be knowledgeable of Respondent's policies and procedures as Respondent's employee.
9. Respondent's Alcohol/ Drug-Free Work Place Policy states: "Possession of an illegal substance in any situation, at work or away from the work site shall be cause for discipline... Violations will result in discipline up to and including dismissal based on personal misconduct." (R. Ex. 1).
10. Petitioner acknowledged that he signed and received Respondent's Exhibit 3, the North Carolina Department of Correction, Drug/ Alcohol Free Work Place and Employee Assistance Program Statement of Understanding, on or about 9/23/91. Petitioner testified that, according to the form, he read and understood Respondent's Alcohol/ Drug-Free Work Place Policy and received a copy of that policy.
11. Petitioner, while employed by the Respondent, became involved in an intimate relationship with Ashley Edwards, who worked for the Gates County Sheriff's Department. From approximately February 2006 to December 2009, while still employed in Gates County, Petitioner and Mrs. Edwards engaged in a sexual relationship that consisted of oral sex. Petitioner admitted to receiving oral sex from Edwards on four or five occasions during this period. Petitioner testified, that throughout his relationship with Edwards, both he and Edwards were married to other people.
12. According to the Petitioner, one of the sexual encounters with Mrs. Edwards occurred in Petitioner's office, located within Respondent's offices, in the Gates County Courthouse. Petitioner testified that he could have been on duty with his employment responsibilities for Respondent at the time the encounter in his office occurred. Petitioner also testified that he recalled another sexual encounter with Edwards which occurred in a vehicle and could have been his state-issued vehicle, which was issued to him by Respondent for his employment duties.
13. Mrs. Edwards also supplied Petitioner with small amounts of marijuana during this time. Petitioner estimated that Mrs. Edwards had supplied him with marijuana on four or five occasions. Mrs. Edwards would leave the marijuana at a pre-determined location. Petitioner would then pick up the marijuana at the location. Petitioner admitted to using the marijuana on each occasion that Edwards provided it to him.
14. Petitioner did not possess marijuana in the Probation office, the Courthouse, or in a state owned vehicle. Mrs. Edwards supplied Petitioner with marijuana when Petitioner would

- be going out of town on vacation. Petitioner did not transport the marijuana across state lines.
15. Petitioner testified that possession of marijuana is illegal in the state of North Carolina and that he has possessed marijuana. Petitioner further testified that he was employed by Respondent at the time that he possessed marijuana and that his possession and use of marijuana while employed by Respondent was inconsistent with his oath of office and Respondent's policies and procedures prohibiting such activity.
 16. Petitioner testified that he signed and swore to the North Carolina Department of Correction, Division of Adult Probation and Parole, an Oath of Office in 1992. Petitioner testified that, in swearing to his oath of office, he swore to uphold the laws of the State of North Carolina.
 17. In October of 2010, Petitioner left his job in Gates County in order to accept a promotion as Chief PPO in Hertford County.
 18. Petitioner stated that, in 2012, Edwards' husband learned of Petitioner's relationship with his wife and confronted Petitioner over the relationship. Following his confrontation with Mrs. Edwards' husband, Terry James Edwards, Petitioner notified his supervisor of the interaction with Mr. Edwards.
 19. In February of 2012, Petitioner spoke with his supervisor, William F. Mitchell regarding the incident that had recently occurred at Petitioner's home between Petitioner and Mr. Terry Edwards. Petitioner informed Mr. Mitchell that Petitioner had engaged in an extra-marital relationship with Ms. Edwards while employed in Gates County. However, details regarding the relationship and Petitioner's marijuana use were not discussed at this time.
 20. Immediately after speaking with Petitioner, Mr. Mitchell contacted his supervisor, Ms. Carla Bass.
 21. On April 3, 2012, Mr. Edwards filed a complaint with Division Administrator Cornell McGill. Mr. Edwards alleged that Petitioner and Mrs. Edwards had engaged in a sexual relationship, which, according to Mr. Edwards, occurred in the State Probation Office as well as in a State owned vehicle. Mr. Edwards also alleged that Mrs. Edwards was purchasing marijuana and delivering it to Petitioner.
 22. Shortly thereafter, an internal investigation was ordered by the DCC Administration to investigate the allegations made by Mr. Edwards. As part of the investigation, Jami Stohlman, Second Judicial District Manager, and Vernon Bryant, DCC Investigator, conducted interviews with James Yount, a Surveillance Officer with Gates County, as well as with the Petitioner and Mr. Edwards. Mrs. Edwards was not interviewed as part of the investigation.

23. Jami Stohlman testified that she has been employed by Respondent since 1989. According to Ms. Stohlman, she conducts investigations as part of her responsibilities as a Judicial District Manager. According to Stohlman, generally when there is an internal investigation of a Chief Probation Officer, the position that Petitioner was employed in, an outside district manager would usually conduct the investigation rather than the CPPO's direct supervising district manager.
24. Petitioner agreed to cooperate in the investigation and provided a written statement to Respondent during the investigation. In his written statements, Petitioner admitted to the sexual relationship with Edwards and to the illegal use of marijuana while employed by Respondent. Petitioner was not drug tested. Mitchell testified that he could not explain why Petitioner was not drug tested, but that he would estimate that it was because Petitioner had only admitted to drug use in 2010 not any conduct in 2012. According to Mitchell, Petitioner would have had to have used marijuana within 30 days to test positive and the alleged conduct had occurred long prior to 30 days.
25. Petitioner admitted to receiving marijuana from Mrs. Edwards during this time period. Petitioner admitted to receiving oral sex from Mrs. Edwards. Petitioner admitted to one act occurring in the probation office after work hours, and one act occurring in a car. Petitioner could not remember if the act occurred in a state owned vehicle, or a privately owned vehicle. Petitioner could not recall where any of the other acts occurred.
26. Pursuant to the investigation, Ms. Stohlman published an investigation report to Ms. Bass on April 23, 2012. Ms. Stohlman concluded that one act of oral sex occurred in the probation office, and that "it is unclear whether or not this occurred during [Petitioner's] scheduled work hours." (Resp. Ex. 13). Ms. Stohlman also concluded that one act of oral sex occurred in a vehicle, but that "it is unclear whether or not" the act occurred in Petitioner's state assigned vehicle. As it pertained to Petitioner's marijuana usage, Ms. Stohlman concluded that Mrs. Edwards did supply Petitioner with marijuana for Petitioner's personal use. The investigation report states that Petitioner did not pay Mrs. Edwards for the marijuana, and that there is no evidence "to imply any drug involvement utilizing a state vehicle, state office or use of drugs during employee work hours." According to Ms. Stohlman, Petitioner's admissions allowed her to make conclusions regarding Petitioner's unacceptable personal conduct. Ms. Stohlman testified that she gave Petitioner's admissions more credit than the allegations of Mr. Edwards.
27. On July 2, 2012, Mr. Mitchell mailed Petitioner a letter outlining some facts of the investigation. The letter informed Petitioner that the recommendation for disciplinary action was up to and including dismissal. Petitioner admitted that he was given notice of the disciplinary process as well as an opportunity to participate in and respond to the disciplinary process. The letter also informed Petitioner that "any and all information offered by [Petitioner] during the Pre-Disciplinary Conference will be give [sic] full consideration in determining the final action to be recommended." (Resp. Ex. 9).

28. In both the notification of the pre-disciplinary conference and the recommendation for discipline letter, Petitioner was notified that he had violated Respondent's policies and procedures and that discipline up to and including dismissal could occur.
29. At a meeting with Mr. Mitchell, his supervisor, Petitioner testified that he provided a letter to Mitchell regarding his disciplinary process. In the letter, Petitioner admitted to using illegal drugs, violating the laws of North Carolina, and to engaging in the sexual relationship with Mrs. Edwards while inside Petitioner's office. Petitioner admitted that the actions were wrong and personally irresponsible. Petitioner believed that the investigation that occurred as a result of his actions brought discredit upon the agency.
30. At the Hearing, Petitioner stated that his marijuana use was recreational, and that he did not have a dependency on marijuana. Petitioner stated he only used marijuana while on vacation. Petitioner stated he did not transport marijuana outside the state of North Carolina. Petitioner denied ever using marijuana while on the job. He also denied ever working while "high."
31. William Mitchell testified that he is employed as the Judicial District Manager for District 6 and was Petitioner's supervisor. Mitchell testified that he had no personal biases towards Petitioner and had a good working relationship with him.
32. Mr. Mitchell testified that he set up the appointments with the witnesses to be interviewed by Stohlman and Bryant, but did not have any other involvement in the investigation of Petitioner. This included notifying Bryant of a message from Ashley Edwards that she would not appear to be interviewed by the investigators.
33. Mr. Mitchell gave a written statement during the investigation regarding his knowledge of the allegations against Petitioner. Mr. Mitchell stated at the Hearing that Petitioner was forthright and honest with every aspect of the investigation.
34. Following his pre-disciplinary meeting with Petitioner, Mr. Mitchell drafted a memorandum to Mr. McGill informing McGill of what transpired during the conference. According to Mitchell, nothing came out of any pre-disciplinary or dismissal meeting with Petitioner that would warrant disciplinary action less than dismissal. Mitchell saw no mitigating factors regarding Petitioner's conduct in engaging in the sexual encounter in his office and admitted drug use.
35. Mr. Mitchell recommended to Mr. McGill that Petitioner be dismissed. Based upon his experience in his employment with Respondent, including approximately 15 years of supervisory positions, Mitchell testified that he knows Respondent's policies and procedures as well as what constitutes unacceptable personal conduct. In Mitchell's opinion, Petitioner's actions were unacceptable personal conduct and that Petitioner's actions brought discredit upon the agency. Mitchell further stated that Petitioner's actions warranted dismissal.

36. Cornell McGill testified that he recently retired from employment with Respondent after 33 years of employment and most recently having been employed as Division Administrator with Respondent. During his employment with Respondent, McGill held many levels of employment with Respondent, beginning as a Probation Officer until his promotion to Division Administrator. According to McGill, he was Petitioner's supervisor as the districts in which Petitioner was employed fell within his supervision as Division Administrator.
37. Mr. McGill recounted that he learned of the allegations against Petitioner from Terry Edwards. McGill stated that he reported the information from Mr. Edwards to his supervisor in Raleigh because he felt that the conduct which Petitioner was being accused could bring discredit upon the agency.
38. Mr. McGill requested and received authorization from his supervisors to initiate an internal investigation of Petitioner. McGill followed standard procedure to have an independent investigator conduct the investigation of Petitioner. McGill requested that Vernon Bryant, a retired district manager of Respondent, and Jami Stohlman, a current district manager with Respondent, conduct the investigation of Petitioner.
39. Following Stohlman and Bryant's investigation, Mr. McGill received memorandums regarding the investigation from Stohlman. Once McGill received Stohlman's memorandums regarding the investigation of Petitioner, he reviewed the investigation simultaneously with Carla Bass, his Assistant Division Administrator. McGill drafted a memorandum to his supervisor, Diane Issacs, recommending that Petitioner be dismissed from employment with Respondent.
40. Following the pre-disciplinary conference between Mr. Mitchell and Petitioner, Mr. McGill again reviewed the investigation of Petitioner and the conference materials. After the pre-disciplinary meeting, McGill's recommendation remained that Petitioner should be dismissed. McGill documented this recommendation in memorandums which were signed "Approved" by the Director of the Division of Community Corrections, David Guice.
41. McGill testified that Petitioner's conduct was unacceptable personal conduct, brought discredit upon the agency, and was conduct unbecoming of a Probation Officer. McGill added that Probation Officers are expected to abide by the laws of the State of North Carolina, and maintain good character and standing in their positions, both of which Petitioner failed to do.
42. Petitioner introduced previous performance reviews of his time as a PPO in Gates County. Petitioner received a "Very Good" overall review on all the performance reviews introduced, except for one, where Petitioner received a performance review of "Good." Petitioner's performance evaluations do not reflect any prior negative performance reviews.

BASED UPON the foregoing findings of fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this action. Petitioner timely filed his petition for contested case hearing pursuant to N.C. Gen. Stat. § 150B-23. The parties received proper notice of the hearing in the matter.
2. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law.
3. A court need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993).
4. At the time of the termination of his employment, Petitioner was subject to the State Personnel Act in accord with N.C. Gen. Stat. § 126-5. The Petitioner was a "career state employee" as defined by N.C. Gen. Stat. § 126-1.1 and is subject to and governed by the provisions of the State Personnel Act, codified at N.C. Gen. Stat. § 126-1 *et seq.* The Petitioner's claim is that Respondent lacked just cause to dismiss him for one or more alleged acts of unacceptable personal conduct.
5. N.C. Gen. Stat. § 126-35 only permits disciplinary action against career state employees for "just cause.". Although "just cause" is not defined in the statute, the words are to be accorded their ordinary meaning. *Amanini v. Dep't of Human Resources*, 114 N.C. App. 668, 443 S.E.2d 114 (1994) (defining "just cause" as, among other things, good or adequate reason).
6. N.C. Gen. Stat. §126-35 states that in contested cases pursuant to Chapter 150B of the General Statutes, the burden of showing that a career employee subject to the State Personnel Act was discharged, suspended, or demoted for just cause rests with the department or agency employer.
7. Administrative regulations provide two grounds for discipline or dismissal based on just cause: unsatisfactory job performance and unacceptable personal conduct. 25 NCAC 1J .0604. 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 "conduct unbecoming a state employee that is detrimental to state service." 25 NCAC 01J .0614.

8. Respondent's Disciplinary Policy & Procedure and appendix thereto gives further examples of unacceptable personal conduct which include: "1. Actions which could result in a conviction of a felony, misdemeanor, or alcohol/drug related offense"; and, "4. Participating in any action that would in any way seriously disrupt or disturb the normal operation of the agency, or any sub-unit of the Department of Correction or State government"; and, "17. Commission of public acts of personal or financial irresponsibility that would bring discredit upon the Department of Correction"; and, "30. Violations of law." (R. Ex. 2).
9. 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).
10. In determining whether a public employer has just cause to discipline its employees requires two separate inquiries: first, whether the employee engaged in the conduct the employer alleges, and second, whether that conduct constitutes just cause for the disciplinary action taken. See *Early v. County of Durham Dept. of Social Services*, 172 N.C. App. 344, 616 S.E.2d 553 (2005) (quoting *N.C. Dep't of Env't & Natural Res v. Carroll*, 358 N.C. 649, 599 S.E.2d 888 (2004)).
11. Case law in North Carolina suggests there are two approaches Courts must take when deciding whether employee discipline due to "unacceptable personal conduct" was just. The determining factor of which approach to follow is whether the alleged "unacceptable personal conduct" in which the employee engaged was criminal or non-criminal. See *In Warren v. N.C. Dep't of Crime Control & Pub. Safety*, 726 S.E.2d 920, 924 (N.C. App. 2012).
12. In *Eury v. N.C. Employment Sec. Comm'n*, 115 N.C. App. 590, 611, 446 S.E.2d 383, 395-96 (1994), the North Carolina Court of Appeals adopted a "rational nexus" approach when a state employee has been disciplined for engaging in off-duty criminal conduct. The Court stated:

[W]here an employee has engaged in off-duty criminal conduct, the agency need not show actual harm to its interests to demonstrate just cause for an employee's dismissal. However, it is well established that administrative agencies may not engage in arbitrary and capricious conduct. Accordingly, we hold that in cases in which an employee has been dismissed based upon an act of off-duty criminal conduct, the agency must demonstrate that the dismissal is supported by the existence of a rational nexus between the type of criminal conduct committed and with the potential adverse impact on the employee's future ability to perform for the agency.
13. The importance of Respondent's policy prohibiting employees from the use of illegal substances on-duty or off-duty is self-evident. Respondent's employees are charged with protecting the public and upholding the laws of the state of North Carolina. Failure of

Respondent's employees to abide by these policies and engage in illegal conduct could have serious consequences for Petitioner's interactions with the public as well as with other employees of the Respondent. A preponderance of the evidence established that Petitioner knowingly violated Respondent's policies by the possession and use of marijuana in 2010.

14. In cases in which a state employee is disciplined for "unacceptable personal conduct" that does not involve criminal conduct, the North Carolina Court of Appeals interpreted the North Carolina Supreme Court's decision in *Carroll* as adopting a "commensurate discipline" approach. See *Warren v. N.C. Dep't of Crime Control and Pub. Safety*, 726 S.E.2d 920, 924 (N.C. App. 2012). According to *Warren*, "the proper analytical approach is to first determine whether the employee engaged in the conduct the employer alleges. The second inquiry is whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. Unacceptable personal conduct does not necessarily establish just cause for all types of discipline. If the employee's act qualifies as a type of unacceptable conduct, the tribunal proceeds to the third inquiry: whether that misconduct amounted to just cause for the disciplinary action taken."
15. Petitioner willfully and knowingly engaged in conduct, an extra-marital sexual relationship, which was disruptive to and brought discredit upon the agency, in violation of Respondent's policies and procedures. The disruption is no more evident than the actions that occurred upon Mrs. Edwards' husband discovering the relationship. Petitioner's conduct constituted unacceptable personal conduct, as Petitioner's conduct was conduct unbecoming a state employee, was detrimental to state service, and was not the sort of conduct for which Petitioner would have expected to receive a prior warning before being dismissed.
16. Respondent complied with the procedural requirements for dismissing Petitioner from employment for unacceptable personal conduct.
17. Petitioner is to be commended for his cooperation with the investigation, his interaction with Respondent's upper management, and for his forthright testimony during this hearing. Though certainly admirable, they cannot, unfortunately, change the reality that in this case, a preponderance of the evidence supports the conclusion that Respondent met its burden of proof and established by a preponderance of the evidence in the record that it had just cause to terminate its employment of Petitioner for unacceptable personal conduct.

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

FINAL DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above.

Based on those conclusions and the facts in this case, the Undersigned holds that the Respondent has carried its burden of proof by a greater weight of the evidence that the Petitioner's dismissal from employment with Respondent based on unacceptable personal conduct was not erroneous, was not arbitrary or capricious, and was in accordance with the applicable laws, rules and State standards.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, 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. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties.

In conformity with the Office of Administrative Hearings' Rules, 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.

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 is the 3rd day of October, 2013.

Augustus B. Elkins II
Administrative Law Judge