

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF PITT

12 OSP 12403

SHANISE MONCRIEFT,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA DEPARTMENT)
 OF PUBLIC SAFETY,)
 MAURY CORRECTIONAL,)
)
 Respondent.)

FINAL DECISION

THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Augustus B. Elkins II, on May 29, 2013 in Ayden, North Carolina. After presentation of testimony and exhibits, the record was left open for the parties' submission of materials, including but not limited to supporting briefs, further arguments and proposals after receipt of the official transcript. Mailing time was allowed for submission including the day of mailing as well as time allowed for receipt by the Administrative Law Judge. No materials were received from either party and on October 22, 2013, the Undersigned permanently closed the record. By Order of the Chief Administrative Law Judge the decision in this matter was set to be filed no later than November 29, 2013.

APPEARANCES

For Petitioner: Shanise Moncreeft, Pro Se
 580 Carson Edwards Road
 Ayden, North Carolina 28513

For Respondent: Lisa Y. Harper
 Assistant Attorney General
 N.C. Department of Justice
 P.O. Box 629
 Raleigh, NC 27602

WITNESSES

For Petitioner:

1. Fernando Harris, Corrections Officer, Eastern Correctional Institution
2. Chineta Williams, Captain, Maury Correctional Institution

For Respondent:

1. Shanise Moncrieft, Petitioner
2. Sitina Watkins, Sergeant, Maury Correctional Institution
3. Johnny Briley, Corrections Officer, Maury Correctional Institution
4. Ginger Barnes, Corrections Officer, Maury Correctional Institution
5. David Rose, Corrections Officer, Maury Correctional Institution
6. Mark Fleming, Lieutenant, Maury Correctional Institution
7. Dennis Daniels, Correctional Administrator, Maury Correctional Institution
8. Donny Safrit, Eastern Region Director, N.C. Department of Public Safety, Division of Prisons
9. Roderick Watson, Captain, Maury Correctional Institution

EXHIBITS

For Respondent:

1. Dismissal Letter, dated August 27, 2012
2. Pre-Disciplinary, Conference Notice dated July 18, 2012
3. Pre-Disciplinary, Conference Letter dated July 19, 2012
4. Internal Investigation Report, dated June 12, 2012
5. Appendix to Disciplinary Policy and Procedures, Section 6, pp. 38-41, dated October 1, 1995
6. Department of Correction Policy, Conduct of Employees, Chapter A, Section .200, pp. 1-8, dated August 16, 2010
7. Internal Investigation Report, dated June 13, 2012
8. Department of Correction Policy, Conduct of Employees, Section .400, p 10, dated May 10, 2006
9. Written Statement of Shanise Moncrieft, dated May 21, 2012
10. Written Statement of Johnny Briley, dated May 21, 2012
11. Written Statement of David Rose, dated June 6, 2012
12. Written Statement of Sitina Watkins, dated May 19 and May 21, 2012
13. Written Statement of Ginger Barnes, dated June 7, 2012
14. Written Statement of Shanise Moncrieft, dated June 8, 2012
15. Written Statement of Mark Fleming, dated June 4, 2012

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, and 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 her dismissal, Petitioner had been employed with the Department of Public Safety (DPS) for approximately six (6) years. Petitioner began working for Respondent in 2006 as a Correctional Officer at Bertie Correctional Institution. In mid-2008, Petitioner was transferred to Maury Correctional Institution, where she was employed for four (4) years as a Correctional Officer.
2. While employed by Respondent, Petitioner was at all times operating under the strictures of a chain of command. Petitioner reported to a superior at all times while employed by Respondent and was subordinate to numerous superiors she did not report to while employed by Respondent at Maury Correctional facility.
3. Petitioner was aware that workplace superiors are to be treated with a high degree of respect by all subordinates.
4. While employed by Respondent at Maury Correctional Institution, Petitioner was subject to routine searches of personal belongings upon entering the Institution as well as carrying out searches of others when assigned. The purpose of the search is to ensure that no employee or other entrant to the facility is carrying prohibited contraband. Every entrant to the facility is screened. Personal belongings are also screened.
5. On May 19, 2012 Petitioner was assigned to the morning shift for entrance/exit searches at Maury Correctional Institution. Sergeant Ellis came up to the entrance with a cup of coffee in a clear container that was about one quarter full. Petitioner told him he could no

longer bring that into the institution. Sergeant Sitina Watkins came in, went through the metal detectors and was standing next to Sergeant Ellis. Sgt. Watkins told Sgt. Ellis that he could have the coffee and upon hearing that, Petitioner stated that he could not have the coffee, telling Sgt. Watkins it was not her shift and she should not be interfering with what Petitioner was telling Sgt. Ellis. Petitioner informed Sgt. Watkins that if she had a problem with her, Sgt. Watkins should contact Petitioner's supervisor.

6. Petitioner next spoke to Sgt. Watkins in a very loud tone while waiving her hands, moving her neck and pointing her index finger. Sgt. Watkins testified that Petitioner also used profanity towards her. Specifically, Petitioner stated to Sgt. Watkins, "I don't know who the fuck you think you is." (Tr. 44). Petitioner denied using profanity and no other witness specifically heard the words used by Petitioner during the exchange.
7. Correctional Officer Johnny Briley witnessed the exchange between Petitioner and Sgt. Watkins and testified that Petitioner seemed hostile and that her tone was very derogatory.
8. Sergeant Sitina Watkins is in a superior position to that of Petitioner. Petitioner's confrontation with Sergeant Watkins was disrespectful and argumentative.
9. The morning exchange between Petitioner and Sergeant Watkins ended when Respondent's employee, Lieutenant Williams, entered the area and ordered that the controversy cease. Lt. Williams did not hear any verbal communication but saw non-verbal communication between Petitioner and Sgt. Watkins and told Petitioner to stop.
10. On the evening of May 19, 2012 there was a second altercation in the gatehouse between Sgt. Watkins and Petitioner. At this point, Sgt. Watkins was assisting the gatehouse lobby officer with entrance/exit screening and Petitioner was entering the facility.
11. Petitioner was sensitive to other persons touching her belongings. Petitioner objected to Sgt. Watkins removing items from Petitioner's purse or physically touching her personal belongings for any reason. When Petitioner came into the gatehouse, she put some items in a bin but placed her bag on a desk.
12. The altercation escalated, and Petitioner physically snatched Petitioner's purse out of the hands of Sgt. Watkins, and stated that Sgt. Watkins would not be searching her bag. Petitioner told Sgt. Watkins that she was not going to deal with her and wanted to contact Lt. Williams. Petitioner commented to Sgt. Watkins, a superior officer, "you sitting here showing your teeth, being unprofessional." (Tr. 25) Petitioner also made verbal derogatory and insulting comments regarding Sgt. Watkins's oral hygiene during this time. Petitioner stated to Sgt. Watkins, "You think you somebody with your rotten teeth. You need to go get them fixed." (Tr. 48).
13. Correctional Officer Ginger Barnes witnessed the exchange between Petitioner and Sgt. Watkins and testified that she observed Petitioner's body movements and saw her pull

her bag away, and could tell that she was being disrespectful to Sgt. Watkins. Correctional Officer David Rose also witnessed the exchange between Petitioner and Sgt. Watkins and testified that he observed Petitioner tell Sgt. Watkins in a high pitched argumentative voice that she did not need to be touching her bag.

14. The Department of Correction Personnel Manual, Section 6, states, "All employees of the Department of Correction shall maintain personal conduct of an acceptable standard as an employee and member of the community. Violations of this policy may result in disciplinary action including dismissal without prior warning."
15. In an event unrelated to the gatehouse confrontations with Sgt. Watkins, on May 26, 2012 at 4:00 a.m., Petitioner was operating a motor vehicle when she was pulled over by a N.C. State Trooper after the trooper observed Petitioner's vehicle making erratic movements (swerving).
16. Petitioner was confronted and arrested, and eventually charged with driving with an expired license tag and driving while intoxicated (DWI). The legal blood alcohol content (BAC) limit for driving a motor vehicle in North Carolina is .08. Petitioner's BAC was .12 at the time of arrest. Petitioner affirmatively stated to the officer that she had consumed alcohol prior to operating the vehicle.
17. Petitioner reported the charge of driving with expired tags to the Officer in Charge (OIC), Lieutenant Mark Fleming, at approximately 9:00 a.m. on May 26, 2012. Petitioner asserted she also told him of the driving while intoxicated charge.
18. Fernando Harris testified for Petitioner stating he picked Petitioner up at her cousin's house following Petitioner's DWI arrest. Mr. Harris stated while in the car Petitioner called who she identified to him as Lieutenant Fleming and was told he was busy. Mr. Harris testified that he heard Petitioner relay over the phone that she "received a citation and that she had a DWI." (Tr. 224) Mr. Harris stated he was fearful to come forward and did not do so during the initial investigation at Maury Correctional as he testified he had been unjustly dismissed and Maury had been required to hire him back.
19. Lt. Fleming stated that Petitioner called to tell that she had received a citation for driving with expired tags but he positively affirmed that Petitioner did not inform him that she had also been charged with a DWI. Had she done so he would have required her to bring a copy of her citation and provide a statement that day, and would not have advised her to wait until she returned to work upon her shift as would be the case with only expired tags.
20. The preponderance of all of the evidence supports a finding that Petitioner failed to adequately report the arrest and DWI charge on May 26 and did not fully, clearly and completely do so until May 28, 2012.
21. The Maury Correctional Institution Standard Operating Procedures (SOP) Section .0400, Conduct of Employees, p. 10, states, "All criminal charges and/or traffic violations

imposed upon an employee shall be reported in writing within twenty-four (24) hours of receiving notice.”

22. By letter dated July 18, 2012 signed by Dennis Daniels, Maury Correctional Institution Administrator, and received by Petitioner on that same day, Petitioner was notified of a Pre-Disciplinary Conference scheduled for July 19, 2012 regarding Respondent’s intention to recommend disciplinary action up to and including dismissal for unacceptable personal conduct. A Pre-Disciplinary Conference was conducted and Petitioner was given the opportunity to respond to the allegations against her.
23. In response to Petitioner’s conduct on May 19, 2012 and her failure to report the DWI received on May 26, 2012 in a timely manner as well as her decision to operate a motor vehicle after consuming a sufficient amount of alcohol to register a .12, a recommendation for dismissal was approved by the Department of Public Safety effective August 27, 2012.

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 her 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 her 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.*
5. The Petitioner’s claim is that Respondent lacked just cause to dismiss her for one or more alleged acts of unacceptable personal conduct.

6. 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). "Just cause, like justice itself, is not susceptible of precise definition. It is a flexible concept, embodying notions of equity and fairness that can only be determined upon an examination of the facts and circumstances of each individual case." *N. Carolina Dep't of Env't & Natural Res. v. Carroll*, 358 N.C. 649, 669, 599 S.E.2d 888, 900 (2004).
7. 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.
8. Administrative regulations provide two grounds for discipline or dismissal based on just cause: unsatisfactory job performance and unacceptable personal conduct. 25 NCAC 1J .0604.
9. 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.
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. 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).
12. The preponderance of the evidence supports Respondent's finding that one or more of Petitioner's actions met the elements for unacceptable personal conduct which is just cause for dismissal pursuant to N.C. Gen. Stat. § 126-35.
13. Respondent's employees are charged with upholding the laws of the state of North Carolina. The importance of Petitioner refraining from drinking and driving as well as Respondent's policy mandating that employees report an arrest within 24 hours is self-evident. A preponderance of the evidence established that Petitioner violated Respondent's policy.
14. In analyzing unacceptable personal conduct, *Warren v. N.C. Dep't of Crime Control and Pub. Safety*, 726 S.E.2d 920, 924 (N.C. App. 2012) holds, "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 knowingly engaged in two occasions of verbal confrontation having the effect of disrespecting a superior officer. Each of these was disruptive to the agency. Petitioner's conduct was conduct unbecoming a state employee and was detrimental to state service.
16. In this case, the greater weight of the testimony and admitted exhibits 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.
17. Respondent complied with the procedural requirements for dismissing Petitioner from employment with the Department of Public Safety.

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. The Undersigned enters the following Final Decision based upon the preponderance of the evidence, having given due regard to the demonstrated knowledge and expertise of the Agency with respect to facts and inferences within the specialized knowledge of the Agency as required by N.C. Gen. Stat. § 150B.

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 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 8th day of November, 2013.

Augustus B. Elkins II
Administrative Law Judge