

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13OSP10629

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| <p>HELEN KAREN RADFORD PETITIONER,</p> <p>V.</p> <p>BUNCOMBE COUNTY DEPARTMENT OF HEALTH RESPONDENT.</p> | <p>FINAL DECISION</p> |
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THIS MATTER comes before J. Randall May, Administrative Law Judge on August 7, 2013 in Waynesville, North Carolina.

APPEARANCES

For Petitioner: Helen Karen Radford, *pro se*
Asheville, NC 28804

For Respondent: Curtis W. Euler, Esq.
Staff Attorney, Buncombe County
Asheville, NC 28801

EXHIBITS

The following Exhibits were admitted into evidence:

Petitioner's Exhibit 1
Petitioner's Exhibit 2

Respondent's Exhibit A – Buncombe County Job Specification – Public Health Nurse II

Respondent's Exhibit B – Petitioner's Performance Appraisal dated March 23, 2012

Respondent's Exhibit C – Written Warning issued to Petitioner on June 7, 2012

Respondent's Exhibit D – Written Warning issued to Petitioner on October 1, 2012

Respondent's Exhibit E – Pre-Disciplinary Hearing Notice issued to Petitioner on February 18, 2013

Respondent's Exhibit F – Dismissal Letter issued to Petitioner dated February 27, 2013
(including a dismissal letter dated February 20, 2013 and a copy of the Health and Human Services Grievance Procedure)

Respondent's Exhibit G – Petitioner's Grievance challenging the dismissal dated March 18, 2013

Respondent's Exhibit H – Final Agency Decision issued to Petitioner on March 27, 2013

Respondent's Exhibit J – Buncombe County Health Policy No 5052-11 for School Nurses
Respondent's Exhibit K – Section D-1 Standards of Care from the Public School Health Manual
Respondent's Exhibit L – Section VIII of the Buncombe County Personnel Ordinance

WITNESSES

Charlotte Hipps, Principal Johnston Elementary School
Alice Elio, School Health Program Manager
Amanda Stone, Assistant County Manager, Director of Health and Human Services
Helen Karen Radford, Petitioner

ISSUE

Did Respondent have just cause to terminate Petitioner from her position with the Buncombe County Health and Human Services Department?

Did Respondent discriminate against Petitioner by terminating her employment with the Buncombe County Health Department?

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. 126-35
Buncombe County Personnel Ordinances

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing 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, 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 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. From the sworn testimony of witnesses and review of the documents entered into evidence, the undersigned makes the following:

FINDINGS OF FACT

1. On January 1, 2010, Petitioner worked for the Respondent as a Public Health Nurse II also known as a school nurse.
2. While working for the County, Petitioner has received training as a school nurse and is familiar with the job specifications as set forth in Resp. Ex. A, the policy governing school nurses as set forth in Resp. Ex. J and the standards of care for a school nurse as set forth in Resp. Ex. K.
3. Petitioner's supervisor is Alice Elio.

4. Petitioner had performance issues as early as March 23, 2012 as evidenced by the performance evaluation filed by Ms. Elio on March 23, 2012, indicating that Petitioner needed improvement in “tact” and comments from her three school principals that Petitioner had poor communication skills. Resp. Ex. B. Petitioner was issued a performance improvement plan which to improve her communication skills and tact issues. *Id.*

6. On April 25, 2012, Petitioner left a training session for over 2.5 hours without receiving permission from her supervisor or contacting her supervisor explaining her absence.

7. On May 15, 2012, Petitioner went to a training seminar, picked up her packet, but failed to attend the mandatory training and did not contact her supervisor regarding her absence or the reason for her absence.

8. As a result of missing the two training sessions, on June 7, 2012, Ms. Elio issued Petitioner a written warning for failing to attend required training and leaving said training without permission. Resp. Ex. C.

9. On June 7, 2012, Petitioner was issued a corrective action plan to help Petitioner ensure supervisory approval prior to deviating from agreed upon actions. *Id.*

10. On September 2, 2012, Alice Elio received two complaints from Charlotte Hipps, Principal at Johnston Elementary School regarding the job performance of Petitioner.

11. Ms. Hipps testified that she complained to Ms. Elio that on September 2, 2012, Petitioner scared a second grade child who had cut his finger with scissors by telling the child that he probably needed stitches or glue and that it would probably hurt. Ms. Hipps also complained that Petitioner did not provide assessment to the child as requested by Ms. Hipps.

12. Ms. Hipps testified she also complained that on September 2, 2012, Petitioner was slow in responding to a request for care of a student who coughed until vomited and when Petitioner arrived, she failed to assess the student per Ms. Hipps’ request. Petitioner’s explanation was that she had to shut down her computer before attending to this request.

13. Upon receiving the complaint, Ms. Elio testified that she investigated the allegations by interviewing with each witness and discussing the matter with the Petitioner.

14. Based on Ms. Elio’s investigation, on October 1, 2012, Ms. Elio issued a written warning to Petitioner for unsatisfactory job performance. Ms. Elio testified that Petitioner’s performance was unsatisfactory because she communicated with a child in a way to set the child up for being fearful when getting medical attention and Ms. Radford did not communicate effectively with the child, the principal, or the parent. Ms. Elio also testified that Petitioner’s performance was unsatisfactory regarding the second incident because Petitioner failed to follow the proper standard of care by not assessing the child. Ms. Elio also testified that Ms. Radford should have sought supervisory help should she have had concerns regarding the directives of Ms. Hipps. See Resp. Ex. D.

15. The written warning also stated, “As such, the RN is expected to assist with the health needs of students, i.e. “Provides assessment, intervention, referral and follow-up for students with significant health concerns.” *Id.*

16. Ms. Elio also testified that she put Petitioner on a corrective action plan as outlined in the October 1, 2012 written warning.

17. Petitioner was placed on notice that any further performance issues may result in discipline up to and including termination. *Id.*

18. Sometime after February 8, 2013, Ms. Hipps complained that Petitioner was not doing her job properly. Ms. Hipps complained to Ms. Elio the following complaints:

- a. Incident 1. Based on concerns raised in a CHAPS meeting, Petitioner was instructed to contact the parent of a student with chronic health conditions who was falling asleep in class. It was alleged that Petitioner contacted the parent and asked what the parent was doing to prevent the child from sleeping. Ms. Hipps also alleged that Petitioner told the parent that the school intended to file a Department of Social Service report as reported by the school secretary (mother of the child’s parent).
- b. Incident 2. Petitioner was asked to follow up with a student who had alleged bed bug bites on her arms and see if the bites were healing. Petitioner responded, “I don’t know what you want me to do about it. I cannot go out to the house and wrap her mattress in plastic.” Petitioner partially assessed the student by looking at her arm only after being asked a second time.
- c. Incident 3. Petitioner was asked to assess a high risk student who had a burn on her thigh to see if it was improving. Petitioner refused to look at the burn and only asked the student if the mother was washing and putting on the medicine.
- d. Incident 4. Petitioner was called to care for a student with a bloody nose. When Petitioner arrived she witnessed a student teacher assisting the child and the student teacher was not wearing any gloves. Petitioner did not step in to care for the child or provide any guidance to the child or student teacher regarding proper protection and clean up. Ms. Hipps testified that Petitioner did not intervene until Ms. Hipps instructed the student teacher to leave the area and wash her hands.

19. Based on these allegations Ms. Elio conducted her own investigation by speaking with the witnesses to the events as well as discussing the allegations with Petitioner.

20. Ms. Elio substantiated the complaints and determined that Petitioner continued to engage in unsatisfactory job performance by not assessing the immediate needs of students and by not assessing the needs of students within a holistic framework that is part of standard nursing practice, and communicating poorly with students, parents and school staff. Regarding Incident

1, Ms. Elio testified that based on her conversation with the parent, Petitioner's conversation with the parent implied a threat to report to DSS as opposed to a direct threat. Ms. Elio also testified that in none of these incidents, did Ms. Radford seek supervisory support on the proper course of action when she refused to follow the principal's directive.

21. Ms. Elio made the recommendation to her supervisor that Petitioner should be dismissed from her job based on repeated unsatisfactory job performance.

22. On February 18, 2013, Amanda Stone, Director of Health and Human Services, issued Petitioner a pre-disciplinary hearing notice based on four separate instances of unsatisfactory job performance as outlined in Resp. Ex. E.

23. Ms. Stone testified that on February 19, 2013, a pre-disciplinary hearing was held. Present at the hearing were Ms. Gibbie Harris, Health Director, Ms. Stone, and Petitioner. At the hearing, Petitioner was given an opportunity to respond to the allegations as set forth in the Pre-Disciplinary Notice.

24. After listening to Petitioner's responses and conducting her own investigation. Ms. Stone testified that she followed up on Ms. Radford's concerns. In addition, Ms. Stone sought information to ensure that Ms. Radford was on a level playing field with all other school nurses; investigating factors such as her training, caseload, experience, and supervisory oversight and support. Ms. Stone issued her decision of the Pre-disciplinary conference as set forth in a letter dated February 20, 2013. See Resp. Ex. F.

25. Ms. Stone arranged a meeting on February 25, 2013 with Petitioner to go over Ms. Stone's decision. Ms. Stone testified at the meeting, Petitioner raised medical concerns regarding possible termination. Ms. Stone halted the hearing and instructed Petitioner to discuss her medical concerns with Lisa Eby, Health and Human Services HR Director and Melanie Mathis, Buncombe County Benefit Specialists.

26. After receiving a report that there were no medical issues related to Petitioner's disciplinary action, including the Petitioner denying that she had any disability issues that affected her ability to do her job, Ms. Stone issued a letter upholding the decision to terminate Petitioner's employment with the County. *Id.*

27. Ms. Stone testified that on February 27, 2013 she held a meeting with Petitioner informing her of the County's decision to terminate her employment. Ms. Stone gave Petitioner a letter containing a letter dated February 27, 2013, a letter dated February 20, 2013 and a copy of the Health and Human Services Department of Health's grievance procedure. *Id.* Ms. Stone testified that the February 20, 2013 document contained her rationale for upholding the decision to terminate Petitioner's employment.

28. On March 18, 2013, Petitioner grieved Ms. Stone's decision dated February 27, 2013. Petitioner delivered to Ms. Stone a packet contain her written grievance and corresponding statutory authority to support Petitioner's position. See Resp. Ex. G.

29. Ms. Stone testified that on March 20, 2013, she held a grievance hearing where she heard from the Petitioner. Also present at the hearing were Lisa Eby, HR representative, and

Nelle Gregory, program director. Ms. Stone testified that Petitioner did not present any new evidence in her written grievance or at the hearing that would have justified reversing her February 27, 2013 decision.

30. On March 27, 2013, Ms. Stone sent Petitioner a letter outlining her reasons for denying Petitioner's grievance. See Resp. Ex. H. Ms. Stone testified that the March 27, 2013 constituted the County's final agency decision in regards to the termination of Petitioner's employment.

31. Petitioner did not present any evidence that she suffered from a disability or from any alleged discrimination for such purported disability.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes.

2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.

3. Petitioner's termination was justified as a dismissal for unsatisfactory performance of duties because she received two written warnings prior to receiving her pre-disciplinary 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.

4. The County met all procedural requirements for terminating Petitioner.

5. There is sufficient evidence on the record to demonstrate that Petitioner engaged in unsatisfactory job performance.

6. Petitioner has presented no evidence to show that Petitioner suffered from a disability.

7. Petitioner presented no evidence showing that she was discriminated against because of a disability.

FINAL DECISION

BASED UPON THE FOREGOING Findings of Fact and Conclusions of Law, the undersigned finds that Respondent's termination of Petitioner's employment should be UPHeld and that Petitioner's discrimination claim be dismissed.

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 03.0102, 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 27th day of September, 2013.

J. Randall May
Administrative Law Judge