

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 OSP 12712

FINAL DECISION

APPEARANCES

ISSUE

- ## APPLICABLE STATUTES AND RULES

1

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1 and 2
For Respondent: 1, 2A, 2B, 2C, 2D, 3, 4

WITNESSES

For Petitioner: Larry Joel Williams
For Respondent: Carlton Paylor, Carole Thomas, and Angie Warren

FINDINGS OF FACT

Procedural Background

1. On March 25, 2013, Respondent dismissed Petitioner from employment for engaging in “unacceptable personal conduct by failing to perform critical job duties [which] resulted in children [being] left in life-threatening situations” in four cases in which Petitioner was the case manager. (Respondent’s Exhibit 1)
2. Petitioner appealed his termination through Respondent’s internal grievance process.
3. On April 12, 2013, Respondent’s Interim Director upheld Respondent’s decision to terminate Petitioner from employment. (Respondent’s Exhibit 1)
4. On May 15, 2013, Petitioner appealed his dismissal from employment by filing a petition for a contested case hearing with the Office of Administrative Hearings.

Adjudicated Facts

5. On January 6, 2012, Respondent issued Petitioner a written warning for failing to complete work within the time frames established in work standards by untimely filing his “day sheets” or “green sheets” with Respondent.
6. Green sheets are the monthly records that each employee must complete to document the work that employee performs daily. Respondent sends the employees’ monthly green sheets to the appropriate agency to justify their time and receive reimbursement for their work. If Respondent doesn’t send these sheets, they’ll be reimbursed only for an estimate of their work.
7. Along with the written warning, Respondent also issued a corrective action plan to Petitioner, and implemented greater supervision over Petitioner.

8. In January 2013, Petitioner filed a complaint with the EEOC alleging that Respondent's disciplinary action in 2012 constituted harassment. Following its investigation, the EEOC took no agency action on that matter, and issued Petitioner a "right to sue" letter.

Case No. 1

9. On February 26, 2013, Petitioner investigated a case assigned to him, and visited the home of a family with three children under the age of 10 years. After the home visit, Petitioner rated the home as being safe for children.

10. An intern accompanied Petitioner on the February 26, 2013 home visit. After the intern complained to Respondent about the condition of the home, another social worker visited the home with Petitioner on March 12, 2013. That social worker rated the home "unsafe" for children. There were roaches in the home, and feces on the toilet. The wood floor was flimsy when the coworker walked on it. There was a broken window, and a hole in the ceiling that was not leaking on the second visit. The other social worker took photographs of the home's condition. Those photographs revealed the unsanitary and unsafe living conditions of the home. (See Respondent's Exhibits 2A, 2B, 2C, and 2D)

11. Petitioner stated the conditions of the home were similar during each visit to the home. Petitioner admitted to Respondent that the home was very filthy, and congested. Petitioner claimed he was told, during the first home visit, that the kids lived at the grandmother's home.

12. During the second home visit, the mother confirmed that her kids stayed at the home from time to time. DSS ruled the home unsafe for kids, and removed the children from the family. Respondent received phone calls and complaints from the mother, grandmother, and mother's treating psychiatrist that Petitioner showed a lack of professionalism during Petitioner's contacts with them.

13. At hearing, DSS Director Carlton Paylor opined that Petitioner should have called his supervisor, and removed the children from the home immediately after visiting the home.

14. Carol Thomas was Petitioner's immediate CPS supervisor. Thomas recalled that Petitioner rated the home in this case as safe for children to reside. Thomas opined that Petitioner should have verified through contacts that the kids of this family were staying elsewhere. The second social worker stated that the kids told her "right off" that they were clearly staying in the home [depicted in Respondent's Exhibits 2A-2D]. Thomas opined that the home conditions depicted in Respondent's Exhibits 2A-2D are not what Petitioner described to her. If she had been with Petitioner at the second visit of this home, Thomas would have told them that no child would stay here another night.

Case No. 2

15. On September 30, 2011, this case was assigned to Petitioner after being transferred from Alamance County DSS. The family in this case had four children, ages 2 to 8

years old. Petitioner's August 14, 2012 documentation indicated that the children of this family were residing in Graham, NC.

16. Although Petitioner's supervisors advised him to close this case or transfer it to Alamance County DSS, he did not close this case. When Petitioner failed to close this case, Alamance County DSS had no idea that the family had moved to Alamance County, and needed services. As a result, the family did not receive CPS services for more than a year.

17. After Alamance County DSS received the notice, more than a year later, that the family had moved to Alamance County, Alamance County DSS removed the children from the family, and assumed custody of the children.

18. On February 21, 2013, Alamance County DSS requested the records for this case from Petitioner as they had received a new report on the family. Person County DSS records showed that Petitioner still had an open case on this family, even though the Person County DSS records also showed that Petitioner had verified, on November 2, 2012, that the family had moved from Person County, and the children were enrolled in Alamance County Schools. Yet, according to Alamance County DSS Program Manager, Alamance County was unaware that Person County had an "open" case on this family.

19. On March 19, 2013, the Alamance County DSS Program Manager requested Person County DSS Program Manager Judi Akers assist them in obtaining the family's records as they had not received any response from Petitioner.

20. The children in this family were listed on the "90 Day No Services" list at Person County DSS for at least three months as Petitioner had not provided services to this family for at least that period.

Case No. 3

21. On April 16, 2012, Petitioner was assigned this case involving a family with three children. Petitioner was aware that the father had a history of drugs, and thought the mother, who was pregnant, was on drugs. The youngest child, born February 16, 2013, tested positive for oxycodone and methadone at birth, while the middle child, 2 years old, tested positive for oxycodone when removed from the home by DSS.

22. Petitioner developed a case plan for this family to follow, monitored the family, and knew that the family only performed some of its case plan. At hearing, Petitioner acknowledged that Person County DSS' policy required a social worker to file a petition for custody with the Court if a family failed to follow a case plan for six months. He acknowledged that he did not follow that policy when he failed to take this case Court after the family failed to follow its DSS case plan. Petitioner claimed he did not file a petition for custody, because neither Thomas, his supervisor, nor Program Manager Akers recommended that he file a petition in Court for DSS to obtain custody of a family's children.

23. The preponderance of the evidence at hearing showed that Petitioner kept this case open for more than six months without “measurable progress, a positive drug screening, and no court involvement.” (Respondent Exhibit 1)

Case No. 4

24. In September 2011, Petitioner was assigned this case involving a family with a newborn who tested positive for marijuana and cocaine at birth. The mother claimed she did not have a substance abuse problem, and only sold drugs to buy items that the baby might need. Petitioner had a case open on the other children in the family from April 16, 2011 until March 13, 2013, and failed to taking the case to Court after the family failed to follow its case plan. In six weeks after another social worker took over this case, all four kids in this family were brought into DSS custody.

25. Petitioner violated the CPS In-Home Services policy by keeping case number 4 open for more than six months without providing services, or taking this case to Court for Court involvement.

Analysis

26. As a Child Protective Services social worker, Petitioner’s job was to protect the children of each family he was assigned, monitor their safety, and remove them from dangerous situations. At hearing, Ms. Thomas opined that no family should live under Child Protective Services. The social worker should work quickly to identify issues in the home, develop a case plan, and help correct the identified issues, or take action in Court. If there is no documented progress with the family after six months, then the social worker should file a petition for Court intervention.

27. A preponderance of the evidence in this case showed that Petitioner did not sufficiently advise his supervisor of the severity of the four above-cited cases. Carol Thomas learned, after the fact, that Petitioner often minimized information about cases in that the [actual] “picture” of a case often turned out differently than what Petitioner portrayed to her about a case.

a. In case number 1, the preponderance of the evidence proved that Petitioner failed to follow Respondent’s policy by failing to verify where the children were living, and failing to ensure the living conditions of the children’s home was sanitary, and safe.

b. In case number 2, a preponderance of the evidence established that Petitioner failed to follow Respondent’s policy regarding transfer of cases. Specifically, Respondent’s policy required Petitioner notify a new county of residence when a family, who is receiving CPS In-Home Services from Person County DSS, moves to another county. That policy also required Petitioner request the new county of residence provide CPS In-Home Services to the family. Petitioner failed to follow such policy when he failed to notify Alamance County DSS that a family had moved to Graham in Alamance County, failed to provide services to the family for at least 3-5 months, and failed to close the case.

c. In case number 3, a preponderance of the evidence showed that Petitioner (1) failed to ensure that the pregnant mother of this family received prenatal care, and (2) failed to aggressively pursue drug interventions with this pregnant mother. The result was a newborn and a toddler tested positive for drugs.

d. In case number 4, the preponderance of the evidence proved that Petitioner kept a case open from February 2011 until March 2013, but failed to take the case to Court after the family failed to follow the DSS case plan.

28. Respondent proved by a preponderance of the evidence that it had just cause to dismiss Petitioner from employment for failing to take action to protect and safeguard children, as required by his position, in four cases in a six week period from February 18, 2013 until March 25, 2013.

29. Petitioner failed to prove by a preponderance of the evidence that Respondent discriminated against him, based on his color, when it terminated Petitioner from employment.

30. Petitioner failed to prove by a preponderance of the evidence that Respondent retaliated against him, by terminating him from employment, for filing a grievance with the EEOC regarding Respondent's January 2012 disciplinary action against Petitioner.

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. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

3. In 2006, Respondent adopted personnel rules and regulations governing personnel management for all county employees under the authority of N.C.G.S. § 153A, Article 5 and N.C.G.S. § 126 of the North Carolina General Statutes. (Respondent's Exhibit 4) As such, Respondent's Personnel Policy governed the personnel action against Petitioner in this contested case.

4. Respondent's Personnel Policy, Article IX, titled "UNSATISFACTORY JOB PERFORMANCE AND DETRIMENTAL PERSONAL CONDUCT," provides in pertinent part as follows

Section 4. Disciplinary Action for Detrimental Personal Conduct

With the approval of the Department Head, Human Resource Director, and County Manager or Hiring Authority, an employee may be placed on disciplinary suspension (without pay), demoted, or **dismissed without prior warning for**

causes relating to personal conduct detrimental to County service in order to:
a) avoid undue disruption of work; (or) b) **to protect the safety of persons or property; . . .**

Section 5. Detrimental Personal Conduct Defined

Detrimental personal conduct includes behavior of such a serious detrimental nature that the functioning of the County may be or has been impaired; **the safety of persons or property may be or have been threatened;...**"

(Emphasis added; Respondent's Exhibit 4, pp. 40-42)

5. In this case, Respondent proved by a preponderance of evidence that Petitioner engaged in "detrimental personal conduct," as defined in Section 5, Article IX of Respondent's Personnel Policy, by failing to perform critical job duties ensuring the safety of children. Petitioner's conduct was detrimental to County service as Petitioner's failure to perform his duties to protect the subject children resulted in children being left in life-threatening situations in their homes.

6. Respondent proved by a preponderance of the evidence that it had just cause to discharge Petitioner from employment.

7. Petitioner failed to prove that Respondent discriminated against him, based on his color, when it terminated him from employment. Petitioner also failed to prove that Respondent retaliated against Petitioner, for filing a grievance against Respondent in 2013, when Respondent terminated Petitioner from employment.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **UPHOLDS** Respondent's termination of Petitioner from employment.

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 26 N.C.A.C 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 30th day of January, 20114.

Melissa Owens Lassiter
Administrative Law Judge