

STATE OF NORTH CAROLINA
COUNTY OF WASHINGTON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13OSP18590

Renecia Morgan Petitioner v. Washington County Department of Social Services Respondent	FINAL DECISION
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THIS MATTER came on to be heard before the Hon. J. Randolph Ward, Administrative Law Judge, in Halifax, North Carolina, on February 20, 2014.

APPEARANCES

For Petitioner: Dene' V. Alexander
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For Respondent: Robert Wendell Hutchins
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WITNESSES

Petitioner testified and presented the following witnesses: Ms. Patricia Dawson, a former caseworker with Respondent, who retired after 26 years of service with Respondent; and Petitioner's mother, Rev. Camilla Morgan.

Respondent presented the following witnesses: Ms. Carolyn Gurganus, Food Stamps Supervisor with Respondent; Ms. Teresa Downing, Medicaid supervisor with Respondent; Mr. Julius Walker Jr., Vice Chair of the Washington County Social Services Board; Mr. Ed Davenport, Chair, Washington County Social Services Board; and Ms. Rhonda Woolard, Director of Washington County Department of Social Services.

EXHIBITS

Petitioner's Exhibits:

1. July 22, 2013 Statement (letter) of Dr. Myung Kil Jeon, M.D.
2. June 18, 2013 letter from Ms. Rhonda Woolard, Director of Washington County Department of Social Services, to Petitioner Renecia Morgan.
3. Letter from Petitioner Renecia Morgan, received June 20, 2013, to Ms. Rhonda Woolard, Director of Washington County Department of Social Services.
4. June 21, 2013 letter from Ms. Rhonda Woolard, Director of Washington County Department of Social Services, to Petitioner Renecia Morgan.
5. September 17, 2013 letter from Ms. Rhonda Woolard, Director of Washington County Department of Social Services, to Petitioner Renecia Morgan.
6. July 3, 2013 letter from Petitioner Renecia Morgan, to Ms. Rhonda Woolard, Director of Washington County Department of Social Services.
7. July 9, 2013 letter from Ms. Rhonda Woolard, Director of Washington County Department of Social Services, to Petitioner Renecia Morgan.
8. July 22, 2013 letter from Ms. Rhonda Woolard, Director of Washington County Department of Social Services, to Petitioner Renecia Morgan.
9. July 3, 2013 letter from Petitioner Renecia Morgan, to Ms. Rhonda Woolard, Director of Washington County Department of Social Services.
10. July 3, 2013 letter from Petitioner Renecia Morgan, to Ms. Rhonda Woolard, Director of Washington County Department of Social Services.
11. July 3, 2013 letter from Petitioner Renecia Morgan, to Ms. Rhonda Woolard, Director of Washington County Department of Social Services.
12. July 23, 2013 Statement of Ms. Patricia Dawson, former employee the Washington County Department of Social Services.

Respondent's Exhibits:

1. Washington County Department of Social Services' *Personnel Policies and Procedures Manual*.
2. N.C. Gen. Stat. § 126-35 (2013).

ISSUE

Whether Respondent had just cause to dismiss Petitioner from her employment?

UPON DUE CONSIDERATION of the sworn testimony of each witness presented at the hearing, assessing its weight and credibility in light of the demeanor of the witness; the opportunity of the witness to see, hear, know, and recall relevant facts and occurrences; the interests, bias, or prejudice the witness might have; whether the testimony of the witness is reasonable and consistent with other credible evidence; and, taken together with the admitted documents and exhibits, weighing all the evidence of the facts and inferences alleged, or lack thereof, in the record as a whole, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Prior to her dismissal, Petitioner Renecia Morgan had been employed with Respondent Washington County Department of Social Services for approximately six years, including the 24 months immediately preceding her termination on June 21, 2013.
2. Petitioner was hired by Respondent on October 18, 2007, and initially served as a Work First Case Manager. In 2011, she was transferred to the Food and Nutrition Services Unit to handle Food Stamp applications, where she worked until her dismissal.
3. Petitioner was diagnosed with Graves' Disease in 2008, but her supervisors readily accommodated the few occasions when it interrupted her work, and the condition was never a disruptive burden on her ability to complete the work assigned to her.
4. By early June 2013, Respondent agency's leadership was made aware that Ms. Patricia Dawson, the case manager for the Work First Financial Assistance ("WFFA" or "Work First") caseload for Respondent, would be retiring. When asked, Ms. Dawson recommended that Petitioner take over her WFFA case manager duties, because she felt that Petitioner's prior experience best prepared her to handle those duties.
5. On June 5, 2013, Ms. Caroline Gurganus, Food Assistance Supervisor, and Ms. Theresa Downing, Medicaid Supervisor, met with Petitioner to discuss their intention to assign her to be the WFFA manager beginning July 1, 2013. At the time of this meeting, Ms. Gurganus and Ms. Downing thought that there were only about 20 WFFA cases, but said they would be getting additional information about that. During this meeting, Petitioner got the impression that she would be asked to handle all of the WFFA cases, in addition to her existing Food Stamp caseload. She felt she would be overloaded and unable to meet expectations, and she became upset at this prospect. She testified that her blood pressure spiked, and she missed work the rest of that day. She had also missed work the previous week with similar symptoms.

6. The following day, June 6, 2013, Ms. Gurganus and Ms. Downing received a report showing that there were 54 WFFA cases -- substantially more than they had supposed -- and they determined to divide the WFFA caseload among Petitioner and two other employees handling Food Stamp applications, Ms. Clarice Patrick and Ms. Sally Biggs. Ms. Gurganus and Ms. Downing met with Petitioner to tell her this, and also discussed reducing her Food Assistance caseload to accommodate her new responsibility handling WFFA cases. Petitioner's subsequent correspondence shows that she perceived that she was being assigned 17 WFFA cases, and that, "Mrs. Gurganus suggested that someone might be assigned to take on part of my caseload." However, Petitioner declined to accept WFFA cases and stated that she did not think it was fair that the other Food Assistance caseworkers should have to take on more cases.
7. When she retired, Ms. Dawson was responsible for 57 WFFA cash assistance cases and also spent about 10% of her time with an additional 37 Medicaid "transitional," or short-term assistance, cases. On the date of the hearing, two caseworkers, Ms. Patrick and Ms. Biggs, were successfully maintaining the WFFA caseload, then somewhat smaller, as well as portions of the Food Stamp cases. Asked by Petitioner to provide a supportive statement, Ms. Dawson estimated that 17 WFFA cases would take "2-3 hours" a day, and additionally, as the most experienced caseworker handling such cases, that Petitioner would be fielding questions from other caseworkers. She opined that this "could be difficult" if Petitioner were also handling "600 Food Stamp cases," and that if Petitioner's Food Stamp cases "already require 7.5 hours [per] day," then additional work would reduce her ability to do her Food Stamp work effectively. Ms. Gurganus, who had personal experience handling both types of cases, testified that the agency's 1,800 Food Stamp cases were divided among four caseworkers -- an average of 450 each -- and that it was discussed with Petitioner that her Food Stamp responsibilities would be reduced when she took on WFFA cases. Ms. Downing, who had personal experience handling WFFA cases, testified that Petitioner was capable of handling the workload that she and Petitioner's other supervisors sought to give her.
8. The undersigned finds that there was no scenario contemplated by Petitioner's supervisors in which she would be required to manage 600 Food Stamp cases and/or spend 7.5 hours per day managing Food Stamp cases, while simultaneously managing a significant caseload of WFFA cases, and that Petitioner was clearly and repeatedly made aware of her supervisors' intention to assign to her a reasonable and manageable caseload prior to her termination.
9. At Petitioner's request, Washington County Social Services Director Rhonda Woolard met with her on June 17, 2013, together with Ms. Gurganus and Ms. Downing. At this meeting, it was specifically discussed that Petitioner was being asked to take on 17 Work First cases -- a third of the total -- and that her Food Stamp caseload would be reduced to allow her reasonable time to complete her assigned duties. Petitioner declared that, "I will help as much as possible but I refuse to take a Work First caseload." All parties at this meeting testified there was no acrimony or raised voices and that Director Woolard specifically and repeatedly questioned Petitioner to ascertain that she was refusing to undertake to do the work her supervisors were assigning. Petitioner testified that the

quoted statement was intended to convey that she “couldn’t do it” and that she was “refusing to do both” WFFA and Food Stamp cases.

10. The following day, Director Woolard, together with Ms. Gurganus and Ms. Downing, again met with Petitioner. Director Woolard again described to Petitioner the reasons for the change in her work assignments and the expectation that she would manage portions of the WFFA and Food Stamp caseloads. Director Woolard then asked Petitioner whether she would undertake her assignment or if her attitude about it remained the same. Petitioner answered, “The same.”
11. Petitioner was given a letter from Director Woolard on June 18, 2013, setting a “pre-dismissal conference” for her the following morning, and citing the agency’s *Personnel Policies and Procedures Manual* for the prospect that “willful failure or refusal to carry out a reasonable order” would be “considered unacceptable personal conduct” for which she could be dismissed, and quoting Petitioner’s refusal to accept a WFFA caseload. The letter emphasized that a final decision to terminate Petitioner had not been made and invited her to provide “any information you want [Director Woolard] to consider” regarding Petitioner’s employment.
12. On June 19, 2013, Director Woolard held the pre-dismissal conference with Petitioner and again explained the reasons for the change in work duties and again informed Petitioner of the expectations for her work performance. Petitioner stated that she could not accept the changed assignment then, but she would be willing to discuss it with the Director when she was satisfied with the status of her Food and Nutrition Services caseload.
13. On June 20, 2013, Petitioner gave Director Woolard a letter to consider in making the decision whether to dismiss her from her job. Referring to her statement that, “I will help as much as possible but I refuse to take a Work First caseload,” quoted in the Director’s letter, Petitioner’s letter said, “I realized how that statement could have been regarded as insubordinate,” a term Petitioner testified she understood to mean “disrespectful.” Petitioner “apologize[d] for the tone of my response,” but did not state that she was willing to accept a work assignment that included a WFFA caseload.
14. On June 21, 2013, Director Woolard met with Petitioner and terminated her employment for insubordination constituting unacceptable personal conduct.
15. On July 3, 2013, Petitioner appealed Respondent’s decision to dismiss her directly to Director Woolard. At each level of the appeal, Petitioner asserted that she was unable to do the work, not because she did not want to do the work, but due to the magnitude of work and her health. However, the evidence shows that Petitioner was able to complete similar tasks without significant interference by, or exacerbation of, her medical condition.

16. An appeal hearing was held on July 16, 2013, and Respondent sent a letter dated July 22, 2013 upholding the decision to dismiss Petitioner, and providing information regarding Petitioner's appeal rights.
17. On July 24, 2013, Petitioner appealed to the Washington County Social Services Board of Directors, and an appeal hearing was held on September 17, 2013. After Petitioner and Director Woolard each spoke before the Board, Petitioner's attitude towards her work assignment remained unclear. Mr. Julius Walker, Vice Chair of the Board, asked Petitioner directly whether, if the opportunity to return to work for Respondent was offered, she would be willing to take a caseload of WFFA cases, along with a Food Assistance caseload. Petitioner said no, she would not do a WFFA caseload. Mr. Walker testified that he asked again if she would still refuse to take the WFFA caseload. Petitioner answered, yes, that she would refuse to take the WFFA caseload because she had too much other work to do and did not have time. After its deliberations, the Board unanimously voted to uphold the decision of the Director to terminate Petitioner's employment.
18. In light of Petitioner's demonstrated abilities, the informed opinions of her supervisors and Ms. Dawson concerning the nature of the work assigned, as well as Petitioner's capabilities, the undersigned finds that Petitioner was capable of performing the duties assigned by Respondent, including the WFFA caseload.
19. When discussing her refusal to accept the WFFA cases, both in testimony and in her correspondence with Respondent, Petitioner expressed frustrations with program changes and the Department's computer system; that her Graves' Disease symptoms can be exacerbated by stress; and, an unexplained and unsubstantiated skepticism about her supervisors' repeatedly-stated intentions to adjust her Food Stamp caseload to compensate for new WFFA-related duties. In particular, there is no evidence to suggest that handling the WFFA cases had or would put Petitioner in danger medically or at a greater risk than performance of the Food Stamp case management duties that she had performed and continued to perform until her termination. The evidence reveals no credible reason to believe Petitioner could not perform the work assigned her, nor a reasonable excuse for not undertaking to perform that assignment.
20. Petitioner willfully and intentionally refused a reasonable and proper assignment by her authorized supervisors without reasonable cause or excuse.
21. Whereas Petitioner offered no reason to believe that a lesser sanction that permitted her to continue working for Respondent would result in her appropriately accepting work assignments, Respondent had just cause to terminate Petitioner's employment.
22. Petitioner's letter addressed to the Office of Administrative Hearings, complaining of her termination by Respondent, was timely received as a Petition and filed on October 22, 2013.

23. To the extent that portions of the following Conclusions of Law addressing mixed issues of law and fact are Findings of Fact, such factual findings shall be deemed incorporated herein by reference as Findings of Fact.

CONCLUSIONS OF LAW

1. To the extent that portions of the foregoing Findings of Fact addressing mixed issues of law and fact are Conclusions of Law, such legal conclusions shall be deemed incorporated herein by reference as Conclusions of Law.
2. A court need not make findings as to every factual dispute that arises from the evidence, and needs 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).
3. As a former career employee of a local social services department, the Petitioner was entitled to appeal her dismissal by commencing a contested case in the Office of Administrative Hearings. N.C. Gen. Stat. §§ 126-5(a)(2)b. and 150B-23(a). Her petition was timely filed within 30 days of receipt of the final agency decision, following exhaustion of Respondent's grievance procedure. N.C. Gen. Stat. § 126-34.02. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this action, and the parties received proper notice of the hearing.
4. As a "career state employee," Petitioner could not be discharged for disciplinary reasons, except for "just cause." N.C. Gen. Stat. §§ 126-1.1(a); 126-35(a). The "burden of showing that a career State employee ... was discharged ... for just cause rests with the department or agency employer." N.C. Gen. Stat. § 126-35(d). The foregoing statutory language was in effect at the time of Petitioner's discharge. It was essentially re-codified, effective August 21, 2013, at N.C. Gen. Stat. § 126-34.02(d).
5. "Just cause" for disciplinary action, including dismissal, exists when a career employee has been guilty of "unsatisfactory job performance," or "unacceptable personal conduct." 25 NCAC 01J .0604.
6. Petitioner's willful and intentional refusal to comply with a reasonable and proper assignment by her authorized supervisors, without reasonable cause or excuse, was an act of insubordination. *Souther v. New River Area Mental Health Dev. Disabilities & Substance Abuse Program*, 142 N.C. App. 1, 6, 541 S.E.2d 750, 754 *aff'd sub nom. Souther v. New River Area Mental Health Developmental Disabilities and Substance Abuse Program*, 354 N.C. 209, 552 S.E.2d 162 (2001). "Insubordination means the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning." 25 NCAC 01J .0614(7). "One act of unacceptable personal conduct presents 'just cause' for any discipline, up to and including dismissal. [Cites omitted]. No showing of actual harm is required to satisfy

the definition” of unacceptable personal conduct. *Hilliard v. N. Carolina Dep't of Correction*, 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005).

7. 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 this inquiry: whether that misconduct proven amounted to just cause for the disciplinary action taken. Whether such just cause exists must be determined based upon an examination of the facts and circumstances of each individual case. *Warren v. N.C. Dep't of Crime Control & Pub. Safety*, ___ N.C. App. ___, 726 S.E.2d 920, 925, 2012 WL 2305781 (N.C. App., 2012).
8. Upon consideration of the particular facts and circumstances of this case, including the nature of the unacceptable personal conduct, and its intentional and considered repetition, these acts of insubordination provided just cause for Respondent's termination of Petitioner. *Id.*, at 925.
9. Respondent has carried its burden of proof by the greater weight of the evidence that it had just cause to terminate Petitioner's employment. N.C. Gen. Stat. § 126-35(d).

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

FINAL DECISION

THE DECISION of the Washington County Social Services Board to terminate Petitioner's employment is upheld and **AFFIRMED**.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

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 the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **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 21st day of April, 2014.

J. Randolph Ward
Administrative Law Judge