

**STATE OF NORTH CAROLINA**  
**COUNTY OF GUILFORD**

**IN THE OFFICE OF**  
**ADMINISTRATIVE HEARINGS**  
**13 OSP 18692**

**GREGG SIPLER,**

**Petitioner,**

**v.**

**UNIVERSITY OF NORTH CAROLINA AT  
GREENSBORO,**

**Respondent.**

**FINAL DECISION**

The above-captioned case was heard before the Honorable Selina M. Brooks, Administrative Law Judge, on April 15, 2014 in High Point, North Carolina.

**APPEARANCES**

**FOR PETITIONER:** Gregg Sipler  
*Pro Se*

**FOR RESPONDENT:** Stephanie A. Brennan  
Special Deputy Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, N.C. 27602

**EXHIBITS**

**Admitted for Petitioner:**

- Ex. 1 Preventive Maintenance Request for Compressors
- Ex. 2 Handwritten Notes re Compressors

**Admitted for Respondent:**

- Ex. 1 Cover Letter & CV
- Ex. 2 Position Posting
- Ex. 3 9/6/07 Appointment Letter
- Ex. 4 9/21/07 Personnel Action Form
- Ex. 5 Performance Planning
- Ex. 6 Performance Management Plan – Interim Review signed 3/12/12
- Ex. 7 Performance Management Plan – Interim Review signed 1/30/13
- Ex. 8 12/7/12 T. White Notes

- Ex. 9 4/16/13 Letter from T. White re Emergency PO
- Ex. 10 Manufacturer Maintenance Schedule
- Ex. 11 Photos
- Ex. 12 Invoice from Pattons, Inc.
- Ex. 13 4/17/13 Purchase Order
- Ex. 14 4/26/13 Email from R. Carney
- Ex. 15 5/13/13 Notice of Pre-Disciplinary Conference
- Ex. 16 5/28/13 Notice of Termination
- Ex. 17 5/28/13 Sipler Grievance Letter
- Ex. 18 6/12/13 Step 2 Grievance Management Review
- Ex. 20 9/30/13 Letter from R. Taylor – final agency decision

### **WITNESSES**

**Called by Petitioner:** Gregg Sipler  
**Called by Respondent:** Raymond Carney  
Dan Durham  
Dan Moore  
Tom White

### **ISSUES**

The issue for consideration is whether Respondent had just cause to terminate Petitioner's employment for gross inefficient job performance.

**ON THE BASIS** of careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following findings of fact. In making these findings, the undersigned has weighed all the evidence 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, and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case. In the absence of a transcript, the Undersigned relied upon her notes to refresh her recollection.

### **FINDINGS OF FACT**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case pursuant to Chapters 126 and 150B of the North Carolina General Statutes.
2. At the time of his termination, Petitioner was a permanent State employee subject to Chapter 126 of the General Statutes of North Carolina (the State Personnel Act).

3. Respondent, the University of North Carolina at Greensboro (“UNCG”) is subject to Chapter 126 of the North Carolina General Statutes, and was Petitioner’s employer.
4. From 2007 until his termination in 2013, Petitioner was employed by Respondent as a HVAC Supervisor II. This was a high level position supervising approximately ten employees. R. Exs. 1, 2, 3 & 4
5. One of Petitioner’s primary job responsibilities was preventive maintenance of HVAC and related equipment, including performing preventive maintenance and making sure equipment was included in the preventive maintenance system. R. Ex. 5
6. Respondent communicated to Petitioner on his interim reviews in 2011-12 and 2012-13 that there were serious concerns about Petitioner’s performance of preventive maintenance duties and that this area needed serious improvement. R. Exs. 6 & 7
7. Preventive maintenance and care of six lab air compressors in the basement of the Sullivan Science Center on campus fell within Petitioner’s responsibility. This responsibility was set forth in Petitioner’s job description, performance plan and performance reviews. Furthermore, Petitioner’s supervisor told him that preventive maintenance was his responsibility. R. Exs. 5, 6 & 7 Preventive maintenance for the six lab air compressors should be entered in the preventive system in accordance with the manufacturer’s guidelines. R. Ex. 10
8. In December 2012, Petitioner’s direct supervisor, Tom White, discovered that a replacement air compressor for one of the six lab air compressors in the Sullivan Science Center had not been installed. He requested that Petitioner take care of the installation. When White spoke to Petitioner about the compressor, he learned that preventive maintenance was not being done on the six lab air compressors and that they were not in the preventive maintenance system. White directed Petitioner to do the preventive maintenance on the compressors and make sure they were put into the preventive maintenance system. R. Ex. 8
9. On April 16, 2013, it was discovered that five of the six lab air compressors for the Sullivan Science Building had failed. An emergency request for the purchase of replacement air compressors was made at a serious financial impact of \$20,238.44. R. Exs. 9, 12 & 13
10. Failure to perform preventive maintenance resulted in failed compressors, compromised system performance and also could have resulted in a total failure of this critical system with a major impact on University research. It was determined after the compressor failures that this equipment was not in the preventive maintenance system and preventive maintenance was not being done on the equipment. R. Exs. 11 & 14

11. Respondent issued a notice of pre-disciplinary conference to Petitioner and a pre-disciplinary conference was held. As a result of the air compressor failures, Respondent terminated Petitioner for gross inefficient job performance. R. Exs. 15 & 16
12. Petitioner appealed the decision through UNCG's grievance process, and the Respondent affirmed the dismissal. R. Exs. 17, 18, & 19
13. Petitioner was out for some periods of time for worker's compensation leave, but he was present in the months leading up to the incident. Petitioner's periods of worker's compensation leave did not excuse his failure to ensure that preventive maintenance was done on the lab air compressors.
14. Petitioner's testimony was not credible and his exhibits also were not credible.
15. The testimony of Respondent's witnesses was credible and was substantiated, in significant part, by credible documentary evidence.
16. As explained in Findings of Fact 1 through 15, from the hearing testimony as well as the presentation of Respondent's exhibits, Respondent demonstrated with substantial evidence that Petitioner failed to satisfactorily perform job requirements as set out in the job description, work plan, or as directed by the management of the work unit or agency; and, his act or failure to act caused or resulted in the loss of or damage to state property or funds that results in a serious adverse impact on the State and/or work unit.
17. No evidence was presented that Petitioner was under any duress or coercion that may have contributed to his conduct.
18. No evidence was presented that there are mitigating factors.
19. No evidence was presented that Respondent had improper motivation for dismissing Petitioner or made any improper considerations.
20. Respondent's dismissal of Petitioner was reasonably related to the seriousness of the offense and the record of the Petitioner in his service with UNCG.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over the just cause issue in this contested case pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes.
2. Respondent met its burden of proving by a preponderance of evidence that it had just cause to terminate Petitioner. Petitioner's arguments to the contrary are without merit.

3. A career State employee may be terminated only for just cause. N.C.G.S. § 126-35(a) (2013). The State employer bears the burden of demonstrating just cause. N.C.G.S. § 126-35(d) (2013).
4. To demonstrate just cause, a State employer may show “gross inefficient job performance.” 25 NCAC 01J .0614. Gross Inefficiency (Grossly Inefficient Job Performance) “means a type of unsatisfactory job performance that occurs in instances in which the employee: fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency; and, that failure results in . . . the loss of or damage to state property or funds that result in a serious impact on the State or work unit.”
5. In this contested case, that evidence shows that Petitioner’s actions concerning preventive maintenance of the lab air compressors, detailed in the above Findings of Fact, constituted gross inefficient job performance.
6. Respondent demonstrated with credible and substantial evidence that Petitioner’s conduct was gross inefficient job performance in that it: (1) was failure to perform job requirements as specified in the job description, work plan or as directed by management; and (2) resulted in the loss of or damage to state property that resulted in a serious impact on the University.
7. The University demonstrated with credible and substantial evidence that it had just cause for terminating Petitioner.
10. Respondent followed all of the required procedures to terminate Petitioner for gross inefficient job performance.
11. Petitioner’s termination was reasonably related to the seriousness of the offense and the record of the Petitioner in his service with UNCG.
12. Based on Petitioner’s actions, and in light of his work history, the decision to terminate Petitioner was just.
13. Based on all foregoing Findings of Fact and Conclusions of Law, Petitioner’s actions constituted gross inefficient job performance. Considering the totality of the circumstances, and utilizing guiding principles of equity and fairness, Respondent had just cause to terminate Petitioner.

On the basis of the above Conclusions of Law, the Undersigned issues the following:

### **DECISION**

It is hereby ordered that Respondent has sufficiently proved it had just cause to terminate Petitioner based on his gross inefficient job performance, and Respondent’s decision to terminate Petitioner is **AFFIRMED**.

## **NOTICE**

This Final Decision is issued under the authority of N.C.G.S. § 150B-34. Pursuant to N.C.G.S. § 126-34.02, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C.G.S. § 7A-29 (a). The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

This the 21st day of April, 2014.

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Selina Brooks  
Administrative Law Judge