

STATE OF NORTH CAROLINA  
COUNTY OF FORSYTH

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14OSP03556

Bryan Haynes Petitioner  v.  North Carolina School Of The Arts Respondent	<b>FINAL DECISION</b>
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THIS MATTER came on for hearing before Hon. J. Randolph Ward, Administrative Law Judge, on December 3, 2014, in Winston-Salem. Following preparation of a transcript, and submission of proposed findings and conclusions by both parties, this Final Decision was prepared.

#### **APPEARANCES**

For Petitioner: B. Ervin Brown  
Law Firm of B. Ervin Brown  
Winston-Salem, NC

For Respondent: Laura Howard McHenry  
Assistant Attorney General  
Raleigh, NC

#### **ISSUE**

Whether Respondent had just cause to dismiss the Petitioner from employment.

#### **EXHIBITS**

For Petitioner: Exhibits 25 and 28 were admitted.

Joint: Exhibits 1 – 15 were stipulated to and admitted.

#### **WITNESSES**

For Petitioner: Mr. Kenneth Bryan Haynes, Petitioner

For Respondent:        Mr. James Lucas, Director of Human Resources, UNCSA

                                 Ms. Stephanie Colopy, Head of Production, School of Filmmaking

                                 Ms. Susan Ruskin, Dean of the School of Filmmaking

                                 Mr. Burton Rencher, Chair, Production and Design Department

### **MOTIONS**

Mr. Robert Kirk, former UNCSA Tech Ops Coordinator, testified for the Respondent subject to the objection of the Petitioner that he was not listed as a witness in the *Joint Pretrial Order* signed by the parties on November 25, 2014. While the testimony of this witness was relevant and otherwise admissible, it cannot be assumed that Petitioner's ability to prepare to cross examine and rebut the testimony of this witness was unaffected by the lack of prior notice. Consequently, his testimony must be STRICKEN.

Petitioner's Proposed Exhibits 18 and 30, characterized as "Mr. Haynes' contemporaneous notes," are handwritten screeds attacking his supervisor concerning facts and allegations about which he had ample opportunity to testify, subject to cross-examination and rebuttal, at the hearing. These are EXCLUDED.

**UPON DUE CONSIDERATION** of the arguments and submissions of counsel, the exhibits admitted, and the sworn testimony of each of the witnesses, considering their opportunity to see, hear, know, and recall the relevant facts and occurrences, any interests they might have, and whether their testimony is reasonable and consistent with other credible evidence, assessing the greater weight of the evidence from the record as a whole, in light of the applicable law, and based upon the preponderance of the credible evidence, the undersigned Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. Respondent, North Carolina School of the Arts ("UNCSA") is a constituent institution of the University of North Carolina System, and an agency of the State.
2. Petitioner was hired by Respondent as a Production Assistant in the School of Filmmaking at UNCSA in July 2010. At all times pertinent hereto, Petitioner was a "career state employee," within the meaning of the State Human Resources Act, N.C. Gen. Stat. § 126-*et seq.*
3. Petitioner's job responsibilities included maintenance of the film school vehicle fleet, administrative support, instructional support, and maintenance of the prop and set dressing warehouse. (Ex. 1) Petitioner's job description specifically states that he was responsible for maintaining the "School of Filmmaking mock weapons inventory," and informing "students how weapons are used and how to safely and correctly handle them."

Petitioner was also responsible for coordinating “check-in check-out procedures for student productions.” (Ex. 1 at Hearing Trans. 38:12-39:6) Because Petitioner oversaw the prop inventory for the School of Filmmaking, one of his job duties was to move props to and from storage during student productions. (Ex. 1 at 2, Trans. 61:23-25)

4. Petitioner reported to Stephanie Colopy, who had served as Head of Production in the School of Filmmaking at UNCSA since 2008. (Ex. 1. Trans. 37:22-24) (Trans. 37:5-14). Ms. Colopy completed an annual Performance Review for Petitioner at the end of each academic year that he was employed by UNCSA. (Exs. 2-4). During the academic years 2010-2011 and 2011-2012, Petitioner received an overall evaluations on his performance reviews of “Very Good” and “Outstanding,” respectively. (Exs. 2-3) However, on May 31, 2012, Ms. Colopy noted concerns in Petitioner’s Performance Review regarding “times that I ask you to do a task and you give me verbal and/or nonverbal communication that tells me that you disagree with my direction,” and Petitioner’s unwillingness to utilize the chain of command concerning communications. (Ex. 3 at 4) This performance review put Petitioner on notice of his supervisor’s concerns.
5. In December 2012, the School of Filmmaking did not have a permanent storage facility for its prop inventory and needed to move items from one temporary facility in Winston-Salem to another storage facility in High Point. (Trans. 41:10-14) While administrators were waiting on their superiors to authorize funding for a moving company, Petitioner took it upon himself to start moving items without authorization from Ms. Colopy, and continued even after Dean Susan Ruskin and Associate Dean Henry Grillo asked Petitioner to stop. (Ex. 6; Trans. 41:15-42:4)
6. On February 19, 2013, Petitioner sent an email to approximately twenty (20) UNCSA students, with the subject, “We Got It!,” stating that “I have learned that we have acquired the warehouse on Starlight Drive to be used as our new prop house.” (Ex. 5) Petitioner copied School of Filmmaking administrators on the email but did not discuss the email with any of his superiors prior to sending it. (Exs. 5-6, Trans. 44:17-46:5). At the time Petitioner drafted this email, his supervisor, Ms. Colopy, was sitting at her desk just a few feet away from him. (Trans. 33:24-45:6; 2013:11-13). Petitioner had ample opportunity to ascertain the facts with his supervisor, and ask permission to notify students prior to sending his email, but elected to send the email to the students without discussing it with Ms. Colopy, or any of his other superiors. (Trans. 45:19-46:5; 203:14-23)
7. Petitioner alleged that the February 19, 2013 email was prompted by a newspaper article. However, the article was published on December 7, 2012, discussed the interest that UNCSA had expressed in leasing a portion of the building, and noted a statement by UNCSA’s Director of Communications and Marketing that any lease would have to be approved by the UNC General Administration. (Ex. 28.) UNCSA later ceased discussions about the space when it was discovered to have lead contamination. The email raised expectations among the students who were inconvenienced by the prop storage problems, and complicated internal discussions about affordability, financing, and

how the two departments involved would utilize the space.

8. On February 21, 2013, Petitioner received a written reprimand from Ms. Colopy for “unacceptable behavior bordering on insubordination.” (Ex. 6) The written reprimand refers to two specific incidents of insubordination: (1) Petitioner’s refusal to follow instructions from Susan Ruskin, then-Interim Dean of the School of Filmmaking, and Henry Grillo, Associate Dean of the School of Filmmaking, regarding the moving and storage of props, and (2) Petitioner’s decision to email students with the claim that UNCSA had “acquired ... our new prop house” without first verifying the truth of the information he had received, or seeking approval to disseminate the information to students. (Exs. 5-6)
9. After receiving the written reprimand, Petitioner met with James Lucas, UNCSA’s Director of Human Resources to see if he could file a grievance concerning the written reprimand. Mr. Lucas met with Petitioner on several occasions to discuss his concerns. (Trans. 17:2–18:4). Mr. Lucas informed him that a written reprimand is not grievable under UNCSA’s SPA Grievance policy. (Ex. 12) but encouraged him to communicate with his supervisors to discuss the issue and resolve it informally. (Trans. 17:2–18:4). Mr. Lucas also tried to impress on Petitioner the harm done by sending out the false and unauthorized email.
10. In the Spring of 2013, Ms. Colopy asked Petitioner to provide a schedule indicating when he would be at the temporary prop house in High Point and when he would be in the office. (Trans. 47:16-48:11). Ms. Colopy continued to ask Petitioner for a prop house and office schedule throughout the summer. (Trans. 49:4-11). Burton Rencher, Chair of the Production Design Department in the School of Filmmaking, also requested a prop house schedule from Petitioner. (Trans. 152:9-11). Mr. Rencher asked Petitioner several times over a period of at least one year for a schedule. (Trans. 152:16-19)
11. On May 30, 2013, Ms. Colopy completed Petitioner’s annual performance review for the 2012-2013 school year. In it, she noted Petitioner’s failure to file a damage report for a vehicle in the production fleet, as well as Petitioner’s failure to “follow policy and procedures” or communicate properly with his supervisors, specifically mentioning Petitioner’s decision to move props from one storage facility to another “rather than honor the instructions of the Associate Dean, Henry Grillo and the Interim Dean, Susan Ruskin in which they had asked him to stop,” and his email communication to students regarding acquisition of the Douglas Battery warehouse. (Ex. 4 at 3) The 2012-2013 performance review concludes, “It is imperative, in the coming year, that Bryan honors his relationship with me as his immediate supervisor and improves his communication with me and SoF administration.” (Ex. 4 at 3)
12. Petitioner’s 2012-2013 performance review also noted “Bryan was asked to establish a schedule for students to check in and check out props for their productions. Because he did not develop this schedule, he had to make several unscheduled trips to the prop house in High Point for special student requests. The end result was that Bryan was out of the office and off campus more than required.” (Ex. 4 at 2) Petitioner never complied with

Ms. Colopy or Mr. Rencher's requests for a meaningful prop house schedule. (Trans. 49:12-18, 154:8-11).

13. On or about August 29, 2013, a student submitted a Weapons Request and Release Form to Ms. Colopy. (Ex. 25) The student told Ms. Colopy he wanted to test a prop AK-47 for a film project in his apartment to see what the weapon would look like being pulled out of water. Ms. Colopy signed the form, authorizing the student to check out the prop weapon for that purpose. (Trans. 50:8-22).
14. On August 29, 2013, the student presented the Weapons Request and Release Form to Petitioner in order to check out the prop weapon. (Ex. 9 at 2, Ex. 25). Page 1 of this Form, which had not been signed by Ms. Colopy, indicated that the student was going to take the weapon to Washington Park, and that the student requesting the weapon would serve as Producer, Director, 1<sup>st</sup> Director, 2<sup>nd</sup> Director and "Weapons Wrangler" in this production. (Ex. 9 at 2, Ex. 25) For visual authenticity, prop weapons are real guns that have been disabled internally. On two occasions, UNCSA students using prop weapons have had law enforcement officers approached them with their service weapons drawn. Petitioner released the prop weapon and trained the student in the use of the prop weapon despite the fact that this request had not been approved by Ms. Colopy, was in violation of the School of Filmmaking's Safety Handbook, and clearly presented a very dangerous situation for the students and the community. Petitioner knew or should have known that the student was not authorized to take two prop AK-47s to a public place like a city park for a film shoot based on UNCSA's School of Filmmaking Safety Handbook, given his three years of employment as Production Coordinator responsible for the mock weapons inventory and safety training.
15. On August 30, 2013, Bob Keen, a faculty member in the School of Filmmaking, notified Ms. Colopy that the student was taking the weapons into Washington Park. Upon learning this, Ms. Colopy informed Professor Keen that she had not authorized the student to take the weapons off campus. Professor Keen called Dean Ruskin, who shut down the film shoot.
16. Dean Ruskin met with Petitioner to discuss this incident on or about August 30, 2013. When Dean Ruskin explained why it was unacceptable to have given this student the weapons under these circumstances, Petitioner told her that was "her opinion." Petitioner's conduct with respect to the Weapons Request and Release Form was a willful violation of written work rules.
17. In October 2013, Mr. Rencher and some of the fourth-year students needed to move some large props for a production and planned to use the school's Mack truck. (Trans. 59:16-23). A Cheerwine soda machine was on the truck. (Trans. 60:2-3). The students needed the space on the truck for their other props, so Mr. Rencher and the students moved the Cheerwine soda machine to the breezeway of the stage area. (Trans. 60:3-8).
18. Moving and storing props was part of Petitioner's job responsibilities. At the end of October, 2013, Ms. Colopy asked Petitioner to move the Cheerwine soda machine to the

prop house. Petitioner refused. Ms. Colopy asked Petitioner to move the soda machine again in November 2013. Again Petitioner refused. On December 5, 2013, Ms. Colopy asked Petitioner a third time to move the soda machine out of the breezeway. Petitioner again refused to move the soda machine.

19. Petitioner's supervisors contacted Mr. Lucas about these additional incidents of unacceptable personal conduct to seek advice about whether dismissal was appropriate. Petitioner's supervisors provided extensive information demonstrating a pattern of insubordinate behavior, and Mr. Lucas supported their recommendation to dismiss Petitioner from employment for unacceptable personal conduct.
20. On January 13, 2014, Petitioner received a Notice to Attend a Pre-Disciplinary Conference ("Notice") scheduled for January 14, 2014, to discuss whether recent events of unacceptable personal conduct warranted disciplinary action up to and including dismissal. The Notice referenced the February 2013 written warning as well as three additional incidents of unacceptable personal conduct: (1) failure to submit a Prop House and Office Schedule, (2) failure to follow UNCSCA's School of Filmmaking Safety Handbook policy and protocol concerning weapons wrangler on set, and (3) failure to follow instructions regarding the movement of a Cheerwine soda machine prop to the prop house or other appropriate storage area. Petitioner, Ms. Colopy, Dean Ruskin and Mr. Lucas attended the Pre-Disciplinary Conference on January 14, 2014. During this conference, Petitioner had an opportunity to respond and present information that would be relevant to the decision of whether or what disciplinary action was warranted.
21. On January 16, 2014, Petitioner received a Disciplinary Decision of Dismissal, notifying him that he was being dismissed from employment effective January 16, 2014, for unacceptable personal conduct, specifically insubordination. (Ex. 8) Petitioner filed a formal grievance to contest this disciplinary action on January 31, 2014. Petitioner's grievance was heard by a panel made up of Respondent's Grievance Committee on March 31, 2014. On April 2, 2014, the Grievance Committee issued a unanimous recommendation to UNCSCA's Interim Chancellor to uphold Petitioner's dismissal from employment. On April 21, 2014, Interim Chancellor James Moeser issued the final agency decision dismissing Petitioner from employment. On May 16, 2014, after exhausting the grievance process and the administrative remedies available to him, Petitioner filed his Petition for Contested Case Hearing with the Office of Administrative Hearings to challenge the final agency decision.
22. The Respondent erroneously failed to submit its agency final decision the Office of State Personnel for review and approval, in the good-faith belief that the University of North Carolina system could continue to operate under its previous personnel procedures until May 1, 2014.
23. This decision is timely filed, within the statutory strictures for personnel cases, after exclusion of continuances necessitated by extraordinary causes affecting the ability of counsel for the parties to proceed with the normal and appropriate attention to their client's interests, specifically, a maternity leave, a spouse's surgery, and a death in the

family. N.C. Gen. Stat. §126-34.02(a); 26 NCAC 03 .0118(b).

24. To the extent that portions of the following Conclusions of Law include findings of fact, such are incorporated by reference into these Findings of Fact.

Upon the foregoing Findings of Fact, the undersigned makes the following:

### **CONCLUSIONS OF LAW**

1. To the extent that portions of the foregoing Findings of Fact include conclusions of law, such are incorporated by reference into these Conclusions of Law.
2. “If the employee ... is unable, within a reasonable period of time, to obtain a final agency decision, the employee may appeal to the Office of Administrative Hearings.” § N.C. Gen. Stat. 126-35(a). No default or action of a State agency can deprive its employee of the right to an administrative hearing granted by statute. The parties and the subject matter of this contested case hearing are properly before the Office of Administrative Hearings on the Petitioner’s request for a contested case hearing. N.C. Gen. Stat. §§ 126-34.02(a) and 150B-23.
3. “No career State employee subject to the State Human Resources Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.” N.C. Gen. Stat. § 126-35(a). The Respondent has the burden of showing by a preponderance of the evidence that there was just cause for dismissal. N.C. Gen. Stat. § 126-34.02(d); see also *Teague v. N.C. Dept. of Transportation*, 177 N.C. App. 215, 628 S.E.2d 395, *disc. rev. denied*, 360 N.C. 581 (2006). Respondent has met its burden of proof to show it had just cause to dismiss Petitioner.
4. A dismissal for just cause may be made due to either, (1) unsatisfactory job performance, or (2) unacceptable personal conduct. However, these “categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case.” No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly. N.C. Gen. Stat. § 126-35; 25 NCAC 01J .0604(b).
5. An employee may be dismissed without any prior warning or disciplinary action when the basis for dismissal is unacceptable personal conduct. 25 NCAC 01J 0608(a). A single instance of unacceptable personal conduct constitutes just cause for dismissal. *Hilliard v. N.C. Dept. of Correction*, 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005).
6. Unacceptable personal conduct, as defined by the Office of State Human Resources, includes insubordination, the willful violation of known or written work rules, conduct unbecoming a state employee that is detrimental to state service, and/or conduct for which no reasonable person should expect to receive prior warning. 25 NCAC 01J 0614(8).

7. Insubordination is defined as “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). (Ex. 13 at 3)
8. An “employer’s work rules may be written or ‘known,’ and a willful violation occurs when the employee willfully takes action which violates the rules, and does not require that the employee intend his conduct to violate the work rule.” *Hilliard*, 173 N.C. App. at 597, 620 S.E.2d at 17.
9. Proof of “conduct unbecoming a state employee that is detrimental to state service,” does not required a showing of actual harm, “only a potential detrimental impact (whether conduct like the employee’s could potentially adversely affect the mission or legitimate interests of the State employer).” *Id.*
10. Determining whether a State employer had just cause to discipline its employee requires two separate inquiries: first, whether the employee engaged in the conduct the employer alleges, and second, whether the conduct constitutes just cause for the disciplinary action taken. *N.C. Dept. of Environmental & Natural Resources v. Carroll*, 358 N.C. 649, 665, 599 S.E.2d 888, 898 (2004).
11. Petitioner’s failure to follow instructions from Dean Ruskin and other superiors regarding the movement and storage of props constituted willful failure or refusal to carry out a reasonable order from an authorized supervisor. This act of insubordination was unacceptable personal conduct and unsatisfactory job performance justifying dismissal.
12. Petitioner’s unauthorized communication with students alleging acquisition of property to serve as a prop house for the School of Filmmaking was conduct unbecoming a state employee that was detrimental to state service. Petitioner’s unauthorized communication was also a willful violation of known or written work rules concerning following the chain of command with respect to communications. This communication constituted unacceptable personal conduct justifying dismissal.
13. Petitioner’s refusal to provide a prop house schedule was a willful failure or refusal to carry out a reasonable order from an authorized supervisor. This act of insubordination was unacceptable personal conduct, and unsatisfactory job performance justifying dismissal.
14. Petitioner’s failure to follow the UNCSCA’s School of Filmmaking Safety Handbook policy and protocol regarding weapons wranglers on film sets was a willful violation of written work rules as well as conduct unbecoming a state employee that is detrimental to state service, and risked “potential detrimental impact.” this behavior constitutes unacceptable personal conduct and unsatisfactory job performance justifying dismissal.
15. Petitioner’s failure to move the Cheerwine soda machine after multiple requests spanning several months by Ms. Ms. Colopy constitutes the willful failure or refusal to carry out a



reasonable order from an authorized supervisor. This act of insubordination was unacceptable personal conduct justifying dismissal.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned enters the following:

### **FINAL DECISION**

The decision of Respondent North Carolina School of the Arts to discharge the Petitioner must be, and hereby 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.

**IT IS SO ORDERED.**

This the 6<sup>th</sup> day of March, 2015.

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J. Randolph Ward  
Administrative Law Judge