

STATE OF NORTH CAROLINA
COUNTY OF DUPLIN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14OSP10048

ZOILA BROCK PETITIONER, V. NANETTE OUTLAW, DIRECTOR DUPLIN COUNTY SOCIAL SERVICES RESPONDENT.	FINAL DECISION
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On March 10, 2015, Administrative Law Judge J. Randall May conducted an administrative hearing in this contested case in Wilmington, North Carolina. The undersigned finds by the Preponderance of the Evidence that Respondent had just cause to discipline Petitioner for unacceptable personal conduct, and ordered Respondent's counsel to file a proposed decision.

APPEARANCES

For Petitioner: Zoila Brock, Pro Se
2877 Summerlin Crossroads Road
Mount Olive, NC 28365

For Respondent: Wendy Sivori
Duplin County Legal Department
P.O. Box 966
Kenansville, NC 28349

ISSUE

Whether Respondent had just cause to suspend Petitioner for three (3) days, require reimbursement for fees incurred to the Department, and to remove Respondent's wireless access point from Petitioner?

EXHIBITS

For Petitioner: None.
For Respondent: Exhibits 1 through 6.

FINDINGS OF FACT

1. Petitioner is employed as a Social Work Supervisor at the Duplin County Department of Social Services and has obtained career status.

2. Petitioner used a Duplin County wireless access point that was assigned to the Department of Social Services and accrued excessive overage charges in the amount of \$516.56. (Resp. Ex. 1)

3. Upon meeting with Petitioner, she admitted that she had been using the wireless access point for her school work during off work hours and during time she was placed out on Family Medical Leave. Respondent compared Petitioner's timesheets with the usage bills to determine how much of the charges were for personal use. (Resp. Ex. 1 and Resp. Ex. 2)

4. Petitioner incurred the overage charges to the Department due to her personal use of the wireless access point. Petitioner did not have approval of her Supervisor to use the wireless access point for school work.

5. Petitioner's actions violated Article IV, Section 3 of the Duplin County Personnel Policy in that she used the wireless access point for personal use and incurred a fee in the form of an overage during non-work hours and also while she was out on Family Medical Leave Act. (Resp. Ex. 2 and Resp. Ex. 4) This violation in and of itself is sufficient to justify the sanctions imposed by Respondent.

6. That Article IV, Section 3 of the Duplin County Personnel Policy applied to Petitioner in her position.

7. Petitioner signed two (2) separate acknowledgements admitting that she had received, read, and understood the Personnel Policy which contained Article IV, Section 3. The Policy contains a clear warning that any violation of the rules and guidelines of the policy could result in disciplinary action up to and including termination. (Resp. Ex. 3 and Resp. Ex. 5)

8. Petitioner's actions constituted unacceptable personal behavior in that she violated a written work rule.

9. Petitioner's actions constituted unacceptable personal behavior in that her conduct was such that no reasonable person should have expected to receive prior written warning. The Personnel Policy was a written warning advising employees what use of information technology was allowable for employees.

10. Petitioner's misuse of the wireless access point was conduct that was contrary to policy and was detrimental to the Department's funding.

11. The discipline imposed was the same standard as other Department employees that incurred overage charges to the County for personal use of their assigned wireless access points.

12. Respondent had just cause to require Petitioner to pay back the fees incurred by the Department.

13. Respondent had just cause to suspend Petitioner for three (3) days without pay.

14. Respondent had just cause to take the wireless access point away.

BASED UPON the foregoing findings of fact the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this action and this matter is properly before the Court.

2. Pursuant to N.C. Gen. Stat. § 126-35(a) "No career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause."

3. N.C. Gen. Stat. § 126-5(a)(2)(b) provides that the provision of Chapter 126 apply to local social service departments.

4. Pursuant to 25 NCAC 01I .2301 "Just Cause for Disciplinary Action" allows for an employee to be suspended by the Department but only for just cause.

5. Pursuant to N.C. Gen. Stat. § 126-35(a), Respondent had "just cause" by the preponderance of the evidence to impose suspension, reimbursement of fees, and removal of the wireless access point on Petitioner for unacceptable personal conduct.

6. By way of affirmation and based upon the foregoing, Respondent properly disciplined Petitioner for unacceptable personal conduct.

FINAL DECISION

BASED UPON the foregoing Findings of Fact and Conclusions of Law, it is ordered that the sanctions imposed by Respondent for Petitioner's unacceptable personal conduct have been proved by a preponderance of the evidence and are therefore upheld and affirmed. Respondent did have just cause to require Petitioner to reimburse the \$516.56, to suspend Petitioner for three (3) days, and to remove Petitioner's wireless access point.

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 17th day of April, 2015.

J. Randall May
Administrative Law Judge