

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 OSP 01091

<p>Joevelyn Heard-Leak Petitioner</p> <p>v.</p> <p>NC State University Center For Urban Affairs Respondent</p>	<p>FINAL DECISION ORDER OF DISMISSAL</p>
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The Petition in this matter was filed on February 16, 2015. This matter extended beyond the mandated 180 days due to extraordinary cause.

THIS MATTER was set for hearing on April 23, 2015 before the Honorable Augustus B. Elkins. For good cause shown, Judge Elkins extended the discovery deadline to June 5, 2015 and continued the hearing in this matter to the week of June 22, 2015 with a stipulation that the parties could seek an earlier hearing date. At the request of the parties, this matter was brought on for evidentiary hearing before the Honorable Donald W. Overby, Administrative Law Judge presiding, on June 15-16, 2015 at the Office of Administrative Hearings (“OAH”) in Raleigh, North Carolina, within the 180 day mandated time frame. At the conclusion of the evidence on June 16, 2015, the hearing was recessed until sufficient time could be allotted for conclusion of the hearing. Due to scheduling conflicts among the parties, including the undersigned’s hearing docket caseload for the remainder of June and July, the hearing in this matter was scheduled to resume and be heard to conclusion on August 19 – 21, 2015. In the interim, on August 7, 2015, Petitioner filed with OAH a Motion for Summary Judgment.

Oral argument on the motion for summary judgment was presented by counsel for both parties when the hearing was resumed on August 19, 2015. Although the Respondent had not concluded its evidentiary presentation, Respondent acknowledged that the prospective testimony would be consistent with and corroborative of the testimony of its prior witness Sheila Brown. The testimony of Ms. Brown was that she had considered documentation of the Petitioner’s work productivity for about a year before the first written warning was issued and that the decision makers considered the Petitioner’s prior work history before the Respondent began a successive discipline program. Respondent had identified and introduced into evidence more than 20 exhibits, dating back as much as a year, documenting Petitioner’s work performance history which were not mentioned in any regard in the dismissal letter. As the Undersigned’s questions became more directive, Ms. Brown began to back-track somewhat; however, there is no question that matters well beyond the purview of the dismissal letter were considered in Petitioner’s dismissal.

N.C. Gen. Stat. § 126-35(a) states

No career State employee subject to the North Carolina Human Resources Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. (Emphasis added)

It is a fundamental premise of “due process” that the employee be given fair notice of the grounds upon which he or she is being disciplined in order to be able to adequately confront the allegations. Otherwise the employee is subject to trial by ambush if matters beyond the notice become the basis, even in part, for the disciplinary action. The statute further recognizes the importance of proper notice in that it notes that an employee may be suspended without prior warning under certain conditions to preserve the integrity of the work place, but such suspension is still while “pending the giving of written reasons.” N.C. Gen. Stat. § 126-35(a)

There is no genuine issue of material fact in this instant case, and, therefore, summary judgment is appropriate. Considerable information concerning Petitioner’s work history with Respondent, which was beyond the notice given Petitioner as to the reasons for her termination, was considered by Respondent in making the decision to terminate Petitioner. In so doing, Respondent exceeded its authority, acted erroneously, failed to use proper procedure and failed to act as required by rule or law.

Now, therefore, based upon the foregoing, Petitioner’s Motion for Summary Judgment is **ALLOWED**.

It is therefore **ORDERED** Petitioner shall be retroactively reinstated to the same or equivalent position from which she was terminated with back pay and restoration of all accompanying benefits, as well as reasonable attorney’s fees paid by Respondent to Petitioner and/or her attorney.

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 31st day of August, 2015.

Donald W. Overby
Administrative Law Judge