

STATE OF NORTH CAROLINA
COUNTY OF ROCKINGHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 OSP 00297

<p>GLORIA R WATLINGTON PETITIONER,</p> <p>v.</p> <p>DEPARTMENT OF SOCIAL SERVICES ROCKINGHAM COUNTY RESPONDENT.</p>	<p>FINAL DECISION</p>
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THIS MATTER coming to be heard on May 23, 2016 before the Presiding Judge, J. Randall May, upon Petitioner's Petition for Contested Case Hearing and pursuant to Article 3 of the Administrative Procedure Act, codified at N.C.G.S. § 150B-22 *et seq*;

The case was originally set to be heard in High Point, N.C. on April 25, 2016; however, it was necessary to continue the case until May 23rd because of Counsel for Petitioner's substantiated seizure relating to epilepsy; this constituted an extraordinary circumstance;

AND IT APPEARING TO THE COURT that Petitioner, Gloria R. Watlington, was present, represented by Mr. Kevin Patrick Harrison; and that Respondent, Rockingham County Department of Social Services was present, represented by Ms. Emily Sloop;

UPON REVIEW AND CONSIDERATION of the record, including the stipulations of the parties; the evidence, both testimonial and documentary, presented at trial; and the arguments of counsel, the Court hereby makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

1. Petitioner was hired by Respondent to fill the position of Community Social Services Technician, Grade 61, on or about January 9, 2012.
2. In this position, Petitioner's primary responsibilities were: (1) providing safe transportation to minor children under Respondent's supervision, (2) supervising case visits on behalf of Respondent, and (3) reporting on such case visits to assigned social workers employed by Respondent.
3. At or around the time Petitioner was hired, Respondent made available to Petitioner via its website the full text of the Rockingham County Personnel Policy (the "RCPP").

4. Petitioner was present for and attended a new employee orientation on or about February 2, 2012 where Respondent discussed its organization and policies, specifically including Article V, Section 3 of the RCPP.
5. On or about December 9, 2015, Respondent placed Petitioner on Administrative/Investigatory Leave with Pay in order to investigate allegations that Petitioner had violated the RCPP.
6. At or around 10:00 AM on December 11, 2015, Respondent notified Petitioner, in writing, of its intent to hold a Pre-Disciplinary/Dismissal Conference at 3:30 PM that afternoon.
7. At or around 3:30 PM on 11 December 2015, Respondent held a Pre-Disciplinary/Dismissal Conference in the office of Debbie McGuire, Respondent's then Director, which was attended by Petitioner, Ms. McGuire, and Petitioner's then supervisor, Jodi Lambert.
8. On or about December 14, 2015, Respondent notified Petitioner, in writing, of its decision to terminate her employment with immediate effect, citing five (5) alleged violations of Article V, Section 3 of the RCPP, to wit: (1) accepting a gift of jewelry from a foster child or biological parent; (2) allowing parents and/or minor children under Respondent's supervision to purchase Petitioner food on more than one occasion; (3) using money belonging to a minor child under Respondent's supervision to purchase items for herself with the knowledge such monies were intended to be received by the minor child's group home; (4) accepting cash from a foster parent under Respondent's supervision; and (5) gifting, without permission, a bassinet to a foster family being served by Respondent, which Respondent alleged constituted "unacceptable personal conduct."
9. On or about December 14, 2015, pursuant to Article VIII, Section 3 of the RCPP, Petitioner gave Respondent timely notice of appeal via a letter directed to Respondent's County Manager, Lance L. Metzler.
10. On or about December 14, 2015, Petitioner met briefly with Mr. Metzler to discuss her appeal of Respondent's decision to terminate her employment.
11. On or about December 15, 2015, Mr. Metzler provided Petitioner a letter notifying her of his decision to uphold her termination, which letter did not provide: (1) the specific acts or omissions that constituted the basis for Mr. Metzler's decision; (2) that Mr. Metzler's letter was a public record; or (3) that Respondent is required to release Mr. Metzler's letter in response to any public record requests. Nor did it provide the correct means or address for Petitioner to appeal his decisions.
12. On or about January 12, 2016, Petitioner timely filed a Petition for Contested Case Hearing with the North Carolina Office of Administrative Hearings, leading to this hearing.
13. While employed by Respondent, Petitioner engaged in the following conduct: (1) accepted a loan in the amount of sixty dollars (\$ 60.00) offered by a foster parent between two (2)

and three (3) years prior to her termination by Respondent; (2) used approximately six dollars (\$ 6.00) of a minor child's money to purchase food for herself while transporting the minor child across the state at the request of her supervisor, which Petitioner repaid to Respondent within one (1) week; (3) consumed leftover food purchased by a foster parent for herself and a minor child when offered by the foster parent; (4) gifted a bassinet to a foster family being served by Respondent from an area where Respondent keeps both donations and property assigned to particular families under its supervision, and upon being notified of a problem, retrieved said bassinet and returned it to Respondent; (5) accepted a slice of cake or cupcakes offered by a foster family at a minor child's birthday party; and (6) accepted a wrapped pair of earrings from a foster parent on behalf of her child, which were immediately returned upon an issue being raised by Respondent.

14. Prior to Petitioner's voluntary disclosure of item number six (6) above to a co-worker, Respondent had taken no formal disciplinary action against Petitioner, despite being aware of at least two (2) of the same aforementioned allegations.
15. Prior to Respondent's initiation of an investigation into Petitioner's conduct, no witness called to testify by Respondent had reported items (1), (3), or (5) of the aforementioned conduct as concerning to them, violating the RCPP; or asked Respondent to initiate formal discipline against Petitioner based on such conduct despite being fully aware of them.
16. Respondent offered no evidence that any of the aforementioned conduct by Petitioner: (1) negatively impacted her job performance; (2) influenced her job performance, recommendations, or reporting; (3) diminished the reputation of Respondent in the community; or (4) led to tangible financial, legal, or regulatory consequences for Respondent.
17. On or about April 15, 2013, the Rockingham County Board of Commissioners passed a resolution stating that: "[e]mployees who serve as staff of the Consolidated Human Services Agency are subject to the [RCPP] for all employee relations areas except grievance and dismissal appeals, which shall remain subject to the provisions of the State Personnel Act as they are currently."
18. On or about August 5, 2013, the Rockingham County Board of Commissioners passed an amending and clarifying resolution stating that "[e]mployees of the Consolidated Human Services Agency remain subject to the State Personnel Act. In those areas where the Rockingham County Personnel Policy has been recognized by the state as 'substantially equivalent,' the employees will be governed by the provisions of the [RCPP]."
19. Respondent offered no evidence demonstrating that it is exempt from the provisions of the State Human Resources Act ("SHRA"), codified at N.C.G.S. § 126-1 *et seq.*, as implemented by the North Carolina Administrative Code at 25 NCAC 01J.0101 *et seq.*, or that its disciplinary or grievance procedures have been recognized by the State Human Resources Commission as substantially equivalent.

CONCLUSIONS OF LAW

1. Petitioner is subject to the protections of the SHRA.
2. Due to the language of the two (2) resolutions passed by the Rockingham County Board of Commissioners and the absence of an exemption by the State Human Resources Commission respecting its disciplinary or grievance procedures, Respondent's conduct as to disciplinary or grievance procedures is controlled by Title 25, Subchapter J, of the North Carolina Administrative Code.
3. In cases in which a state employee is disciplined for "unacceptable personal conduct" that does not involve criminal conduct, the North Carolina Court of Appeals interpreted the North Carolina Supreme Court's decision in *Carroll* as adopting a "commensurate discipline" approach. *See Warren v. N.C. Dep't of Crime Control and Pub. Safety*, 726 S.E.2d 920, 924 (N.C. App. 2012). According to *Warren*, "the proper analytical approach is to first determine whether the employee engaged in the conduct the employer alleges. The second inquiry is whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. 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 the third inquiry: whether that misconduct amounted to just cause for the disciplinary action taken."
4. Respondent failed to comply with the procedural requirements for dismissing Petitioner from employment for unacceptable personal conduct by not providing specific written reasons and written details in the Final Agency Decision.
5. 25 NCAC 01B .0432(b) provides, "[f]ailure to give specific reasons for dismissal, demotion or suspension without pay shall be deemed a procedural violation. Back pay or attorney's fees, or both, may be awarded for such a period of time as the Commission determines, in its discretion, to be appropriate under all the circumstances."
6. The December 15, 2015 letter written by Rockingham County Manager Lance L. Metzler constitutes the Final Agency Decision for the purposes of this action.
7. Based on the language of the Final Agency Decision and pursuant to 25 NCAC 01J.0613(4)(h), Respondent lacked procedural just cause to terminate Petitioner.

FINAL DECISION

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

While Petitioner's termination is affirmed, Respondent shall pay back pay to Petitioner as required by 25 NCAC 01J.1306 and N.C.G.S. § 150B-33(11) from the time of her release, December 15, 2015, to May 23, 2016.

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 5th day of July, 2016.

J Randall May
Administrative Law Judge