

**OKLAHOMA MERIT PROTECTION COMMISSION**

**STATE OF OKLAHOMA**

KAREN J. SOUDERS,	)	
Appellant	)	
	)	
vs.	)	CASE NO. MPC 07-039
	)	
OFFICE OF JUVENILE AFFAIRS	)	
Appellee.	)	

**ORDER**

Hearing on this matter was held before the undersigned Administrative Law Judge on March 13, 2007, at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant, Karen Souders, appeared in person and was represented by Melinda Alizadeh-Fard, General Counsel, Oklahoma Public Employees Association. Appellee, Office of Juvenile Affairs (hereinafter referred to as "OJA" or "Appellee"), appeared by and through its Counsel, Wayne L. Johnson, Esq., and Table Representative, Teresa Wolfe, Human Resource Management Specialist at the Central Oklahoma Juvenile Center (COJC) in Oklahoma City.

Appellant, a permanent classified employee working for Appellee, was discharged from her position as a Food Service Specialist at the Central Oklahoma Juvenile Center for unsatisfactory performance – inability to properly perform because of her medical limitations – in accordance with OJA Policy # P-03-05-801.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with exhibits, which are incorporated herein and made a part hereof. Accordingly, after careful consideration of all evidence, testimony, and exhibits,

the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

### FINDINGS OF FACT

Appellant Karen Souders began her employment with OJA in May 2002 as a Juvenile Specialist I, and within two years was promoted to a Juvenile Specialist II. She suffered an on-the-job injury on September 26, 2004 that required her to be off work several months. On November 24, 2004 Appellant's medical doctor released her to return to light duty with temporary restrictions. On January 25, 2005 she was determined to have reached maximum medical improvement and was given a full duty release with restrictions from lifting 25 pounds or more and from pushing or pulling 70 pounds or more. (Exhibit 24, page 4)

On March 5, 2005 Appellant returned to COJC to fill a vacant position in the kitchen as a Food Service Specialist I.<sup>1</sup> With her medical restrictions she was not able to perform all the duties of the position and performed assignments that were within her medical limitations. Nonetheless, Appellant's old injury began to give her trouble and in June 2005 Appellant's doctor placed her on light duty with temporary restrictions from lifting, pushing or pulling more than 10 pounds and from reaching above her chest. Appellant was determined to be temporarily totally disabled beginning June 6, 2005, and in need of surgery. Following surgery, convalescence, and physical therapy, in May 2006 Appellant returned to work in the kitchen under release for light duty with

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<sup>1</sup> Appellant was not selected to fill this position under the usual selection process, but was appointed to the kitchen job with first preference after returning to work from her on-the-job injury.

temporary restrictions of 10 pounds lifting, pulling, or pushing and "sedentary work, self-paced." (Exhibit 23, page 12 and Exhibit 26)

On August 11, 2006 Appellant was determined to have reached maximum medical improvement and was given a full duty release and release from active medical care. However, the release included permanent restrictions from lifting more than 10 pounds, pushing or pulling more than 10 pounds, restricted overhead reaching, and no stooping. Her work was required to be sedentary and she was medically determined to be unable to perform the same occupational duties she performed before the injury. (Exhibit 4 and Exhibit 24, page 15).

Additionally, Appellant was unable to perform the duties of her position as Food Service Specialist. She requested "reasonable accommodations for a disability", but there were no vacant positions at COJC that would meet Appellant's medical restrictions. (Exhibit 3 and Exhibit 21) Accordingly, Appellee discharged Appellant effective September 19, 2006 for unsatisfactory performance – inability to perform job because of medical limitations. (Exhibit 2)

Appellant argues that she is able to perform the food service worker job, as the written job description does not state any lifting requirements. In contrast, the Direct Care Specialist, #Z12 includes under its "Special Requirements" section: "Some positions may require that applicants be physically able to lift 50 pounds." No similar "special requirement" for lifting is included in the Food Service Specialist job description.

Although the Food Service Specialist job description does not specify a lifting requirement by weight, the description does describe activity requiring lifting, bending, stooping, and standing, and does not describe a sedentary job. Typical functions include cleaning and preparing foods using ovens and steamers; gathering, cleaning,

and stacking dishes, pots and pans, silverware and other cooking and baking utensils; sweeping, moping and scrubbing kitchen, dining, and storage areas; defrosting and cleaning refrigerators, walk-in coolers, and other equipment. Teresa Wakolee, Appellant's food services manager, explained that the position is very active and requires constant handling of large institutional size utensils and containers of food. For example, a typical six-can case of canned food weighs 36 pounds; frozen meats come in 10 to 50 pound packages; nearly all boxes of food weigh over 10 pounds. The smallest mixing bowl weighs 7.5 pounds empty; larger bowls weigh 20-plus pounds. Stocking shelves requires stooping, bending, and lifting more than 10 pounds. At each meal multiple containers of food weighing over 10 pounds are lifted onto the steam table for the serving line. Cleaning the kitchen requires lifting cleaning supplies that weigh over 10 pounds and moving floor mats daily that weigh over 10 pounds.

Appellant suggests that since juveniles work in the kitchen, they can be called on to assist in lifting and cleaning. However, juvenile assistance is voluntary and, because of school and other activities, juveniles are often not available when needed. Further, the clients' rights policy prohibits use of residents as substitution for employed staff. (Exhibit 7)

Michael Heath, Program Administrator and Affirmative Action Officer for OJA, responded to Appellant's September 1, 2006 request for accommodation by checking on available jobs within a 50-mile radius of Shawnee. In addition to the food service specialist position, there were four juvenile justice specialist positions available, one secretary IV position, and one security position, none of which Appellant met the minimum qualifications.

Appellant called several witnesses who testified that they had worked on light duty in the control center when they had medical restrictions. Ken Thompson testified that he worked in the control center while he was recovering from knee surgery. Ronald Hester testified that he worked at COJC only six months, but worked light duty assignments in the control center and on the yard. Ina Bushyhead testified that she worked in the control center on two separate occasions while recovering from an on-the-job injury. Brandy Smith testified that she worked in the control center when she returned to work with temporary restrictions from an on-the-job injury. Kathy Brewer testified that she worked light duty in the kitchen for four months while on temporary medical restrictions and named two other employees who also worked in the kitchen on light duty while on temporary medical restrictions. None that she recalled worked light duty for more than three months except Rita Cain, a food service supervisor. All of these witnesses testified that their light duty assignments were temporary while they were recovering from an injury, and most lasted three months or less.

Appellee acknowledges and admits that employees with temporary medical restrictions are accommodated when possible with light duty *assignments*. However, there are no permanent light duty *jobs* at COJC. Appellee tries to accommodate employees with temporary medical restrictions when possible with light duty assignments of typically 90 days or less. These assignments often assist various positions in the control center and the kitchen.

Additionally, there may be certain positions that persons with permanent restrictions may still perform. Rita Cain is an example of such a person. A food service supervisor whose job consists largely of paperwork and supervising others, she was able to perform all critical duties of her job despite her restrictions. Earlene Parker is

another example. She was a customer service representative working in the control center and was able to continue her job with her medical restrictions. When she left COJC in August 2005, her position was abolished.

Appellant identified three positions at COJC that she believed she could physically perform: (1) Appellant identified the kitchen as an area where she could work with restrictions because she had worked there in the past with restrictions. However, as discussed above, Appellant was unable to perform all the duties of her position and worked there while on temporarily medical restrictions. There is no permanent position in the kitchen that she can perform with her limitations. (2) Appellant also identified the control room as an area where she can work with her medical restrictions. Again, the control room often has temporary light duty assignments, but no permanent light duty positions. All permanent positions in the control room are police officer positions. Appellant acknowledged that she cannot pass the police officer required test because of her medical restrictions. (3) The Records Department is another area Appellant identified as having sedentary positions for which she can qualify. While it may be that Appellant is able to perform certain positions in Records with her medical restrictions, there are no positions open or available in Records.

Appellant, a food service specialist, is unable to perform the duties of that position due to her permanent medical restrictions. At her request, Appellee searched for all vacant OJA jobs within a 50-mile radius of Shawnee for which Appellant was qualified, and reviewed the duties of the food service specialist to determine if Appellant could reasonably perform her job. Appellant is either unqualified or unable, because of her medical restrictions, to perform any available job, including her job as Food Service

Specialist. Appellee took reasonable measures to attempt to accommodate Appellant, but is not required to create a new job or move another employee or make unreasonable changes in Appellant's job to accommodate her restrictions. Appellant is unable to perform her job and just cause exists for her discharge from her position as a Food Service Specialist at the Central Oklahoma Juvenile Center for unsatisfactory performance – inability to properly perform because of her medical limitations – in accordance with OJA Policy # P-03-05-801.

### CONCLUSIONS OF LAW

1. Any findings of fact that are properly conclusions of law are so incorporated herein as conclusions of law.

2. Merit Rule 455:10-11-14 states that a permanent classified employee may be discharged for inability to perform the duties of her job and any other just cause.

3. Merit Rule 455:10-9-2 states that the Appellee bears the burden of proof in an adverse action and must prove by a preponderance of the evidence that just cause exists for the action taken.

4. Office of Juvenile Affairs Policy # P-03-05-801 *Causes for Disciplinary Action*, 1. **Unsatisfactory performance** states that an employee's performance that fails to meet established standards and criteria for the position constitutes unsatisfactory performance and may result from inability to properly perform because of medical limitations.

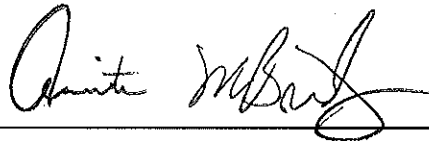
5. Appellee took reasonable measures to attempt to accommodate Appellant, but is not required to create a new job or move another employee or make unreasonable changes in Appellant's job to accommodate her medical restrictions.

6. Appellee, Office of Juvenile Affairs, has met its burden to prove, by a preponderance of the evidence, that Appellant, Karen Souders, violated OJA Procedure SP-03-05-801(1), Unsatisfactory Performance and that just cause exists for her discharge.

**ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** by the undersigned Administrative Law Judge that the petition of Appellant is hereby **DENIED** and the discharge is sustained.

DATED this 13<sup>th</sup> day of April, 2007.



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Annita M. Bridges, OBA # 1119  
Administrative Law Judge  
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