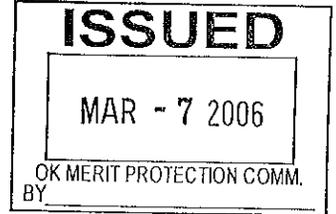


**OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**

Darlene Whaley,)
 Appellant,)
))
v.))
))
Oklahoma Pardon and Parole Board,)
 Appellee.)

MPC 06-035



FINAL ORDER

Hearing on this matter was held January 11th and 25th, 2006, before the duly appointed, undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. Present at this hearing was Appellant, who was represented by attorney Daniel Gamino. Present for the Oklahoma Pardon and Parole Board (hereinafter "Appellee" or "OPP") was Assistant Attorney General William F. O'Brien. Also present for Appellee was Table Representative Cary Pirrong.

Appellant was a permanent, classified employee working as a Business Manager at the time of her discharge for violation of various rules and statutes as stated in a September 13, 2005 Notice of Final Action - Discharge: a nine-page document sent to Appellant putting her on notice of her termination effective September 15, 2005.

Whereupon the hearing began and the sworn testimony of witnesses for Appellee and Appellant was presented, along with exhibits, which are incorporated herein and made a part hereof. In addition, the parties agreed that the record would remain open to allow the parties to file written closing arguments and to allow the undersigned to

prepare the Final Order.

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

Cary Pirrong has been General Counsel for the OPPB for 8½ years. In August, 2005, Mr. Pirrong was approached by two OPPB employees, Valinda Vallejo and Cathy Duncan both of whom expressed concerns about the purchasing practices in the office. Mr. Pirrong arranged for the two employees to meet with the agency's Executive Director, Terry Jenks, on the next day. After the meeting Executive Director Jenks placed the Appellant, who was the Business Manager for the office, on administrative leave for three days. Mr. Pirrong was thereafter ordered to conduct an investigation of the various allegations of Ms. Vallejo and Ms. Duncan against the Appellant. Specifically, Mr. Pirrong was ordered to investigate p/card purchases by the Appellant and travel claims filed by the Appellant.¹

Mr. Pirrong found that Appellant had made p/card purchases for food, candy, snacks, office supplies, and a refrigerator. Mr. Pirrong also found that on November 29th and 30th, 2004 the Appellant had purchased food for herself and two other employees with the agency's p/card. Mr. Pirrong's investigation of travel claims filed by the Appellant showed that in numerous cases, Appellant was both the claimant and the

¹A "p/card" is a state purchase card used by designated state employees to purchase goods and services needed for conducting official state business.

approving officer on the claim form. Mr. Pirrong also found two travel claims submitted by the Appellant for March 2005 showing that the Appellant traveled 20-days out of a possible 23-days during that month. Mr. Pirrong testified that according to his recollection and agency time sheets, Appellant was actually absent from work on sick leave for six of those days in March. Following Mr. Pirrong's investigation, Appellant was called to a pre-termination hearing on August 24, 2005. The pre-termination hearing was held on September 6, 2005 and on September 13, 2005 a nine page Notice of Final Action-Discharge was sent to the Appellant.

During August, 2005 a second audit of the OPPB was being conducted by Kristine Haney, Audit Supervisor for the State Auditor and Inspectors Office. Ms. Haney testified at this hearing that part of her duties as an Audit Supervisor included scanning data in the computer regarding p/cards usage by state agencies. While randomly scanning p/card purchases from the OPPB, Ms. Haney noticed many purchases which she believed to be suspect. Ms. Haney spoke directly to the Appellant and questioned many of the purchases, including the purchase of a digital camera. Ms. Haney had also planned to meet with the Appellant, however, that meeting did not take place due to Appellant's termination. Ms. Haney testified that when she arrived at the Pardon and Parole Office, no p/card procedures or documentation procedures were in place.

A second investigator from the State Auditor and Inspectors Office, Wes Edens, was also assigned to the audit of the OPPB. Both Ms. Haney and Mr. Edens discussed the ongoing audit with Mr. Pirrong. The Special Audit Report issued by the State Auditor and Inspectors Office was submitted to Executive Director Jenks on November

4, 2005: seven weeks after the Appellants' discharge.

There was no evidence provided as to why the Appellee proceeded with the termination of Appellant prior to receiving the Special Audit Report. However, the Appellee, on numerous occasions during the course of this hearing, tried to introduce the Special Audit Report claiming that "The findings contained in the report and the testimony of the witnesses who conducted the investigation are relevant to this action in that they are proof of her [Appellant] misconduct and why she was terminated, and constitutes relevant evidence and should be admitted as a result".²

The Special Audit Report was not admitted into evidence at this hearing because it was received by the Appellee after the termination of the Appellant and was not used by the Appellee when determining what discipline to take against Appellant. The Appellee at this hearing attempted to admit the Special Audit Report as after the fact proof that Appellant's actions warranted termination.

While the undersigned did allow testimony of the two auditors who actual spoke with Mr. Pirrong and Executive Director Jenks, it would have been improper to allow this report to be introduced into evidence since it was not used by the final decision maker. In addition, Appellee made no attempt at this hearing to explain why it did not wait seven weeks for the Special Audit Report and then use the Report to support termination of Appellant. This would have been especially prudent if in fact the report contains evidence which was unknown or unavailable to the Appellee prior to Appellant's September 15th termination.

²Appellee's response to Appellant's Motion in Limine filed January 3, 2006.

Be that as it may, the Appellant was called to a pre-termination hearing on August 24, 2005. The pre-termination hearing was held on September 6, 2005 and on September 13, 2005 a nine page Notice of Final Action-Discharge was sent to the Appellant listing approximately 27 different violations.³

At this hearing, Appellee presented seven witnesses and 74 exhibits (not all of which were admitted). At the close of Appellee's case-in-chief, Appellant made a Motion to Strike portions of pages four, five, six, seven, and eight of the Notice of Final Action-Discharge arguing that Appellee failed to meet its burden of proof on those allegations. Specifically, those allegations would be numbered on the attachment to this Final Order as paragraph 5 and paragraph 9 on page four, paragraph 11 on page five, paragraph 16, 17, and 18 on page six, paragraph 19, 22, 23, and 25 of page seven, and paragraph 26 and 27 on page eight: 13 of the 27 charges.

Upon review of all the evidence, testimony and exhibits presented, the undersigned finds that the Appellee offered insufficient or no evidence regarding paragraph 5 and paragraph 9 on page four, paragraph 11 on page five, paragraph 16, 17, and 18 on page six, paragraph 19, 22, 23, and 25 on page seven, and paragraph 26 and 27 on page eight.

The remaining paragraphs and charges will be addressed in this Final Order.

The Appellee has claimed that Appellant made inappropriate purchases with the agency's p/card including those made on November 29th and 30th, 2004 when she purchased food for herself and two other staff members. However, Executive Director

³For purposes of this record, the undersigned has attached to this Final Order a copy of the September 13, 2005 Notice of Final Action-Discharge and for further clarification has numbered the paragraphs which are violations on pages 3 through 8.

Jenks also made food purchases on his p/card on those exact dates for food for himself and others. In addition, the evidence shows that Executive Director Jenks also charged hotel rooms while in the course of business to his p/card which is also a violation.

Appellee claims that Appellant improperly instructed three subordinates to make purchases on the p/card issued to Appellant (paragraph 2, page 3 of the Notice of Final Action-Discharge). Testimony at this hearing is that when claims for the p/card purchases were made, they were prepared by Ms. Duncan, not Appellant, and approved by Executive Director Jenks. This approval came even after Ms. Duncan expressed to Executive Director Jenks some concerns which she had about the actual purchases.

Appellant's purchase of a refrigerator, soda pop, and candy for the office were also charged by the Appellee as violations by Appellant. However, these purchases were also approved by Executive Director Jenks.

Paragraph 6 of the Notice of Final Action-Discharge (page four) deals with filing travel claims filed by Appellant for travel while she was off work on sick leave and the preponderance of the evidence indicates that these travel claims were in fact filed for travel while Appellant was off work. Although Appellant explained that she was on sick leave, but would go by the office to pick up work, there was no testimony from employees supporting the Appellant's story.

There was no evidence presented supporting the Appellee's position as stated in paragraph 7 on page four of the Notice of Final Action-Discharge.

Appellee's charge in paragraph 8 on page four that Appellant submitted travel claims without sufficient information concerning the dates traveled or places traveled, conflicts with the evidence presented at this hearing that the travel claims were paid by

the Office of State Finance. According to testimony of the Appellee's witnesses, such payment would not have been made without proper documentation. In addition, the Appellee has claimed that it was improper for the Appellant to submit a travel claim and sign off on that travel claim as the approving officer. However, there was no policy, rule, or state law provided by the Appellee indicating that was improper. In fact, the testimony of Audit Supervisor Haney was that there was no policy in place at the OPPB during this time regarding submission of claims and signatures of approving officers.

Page five of the Notice of Final Action-Discharge, paragraph 10, alleges the Appellant entered into a contract with a parking garage without discussing the matter with Executive Director Jenks and later gave untruthful information to Mr. Pirrong and Executive Director Jenks regarding the matter. While there is conflicting evidence whether the Appellant, as Business Manager, had the authority to enter into the contract, the preponderance of the evidence indicates that Appellant was not truthful with Executive Director Jenks or Mr. Pirrong regarding the matter. In addition, Appellant's claim that she purchased the refrigerator for the office and never told anyone that she had purchased the refrigerator with her own money is disputed by Appellant's own witness, Juanita Lozier, who testified that Appellant had told her that she had purchased the refrigerator with her own money.

The preponderance of the evidence indicates Appellant attempted, although unsuccessfully, to give herself a salary increase of 8.5% when she came off probation in violation of agency policy allowing for a 5% salary increase as charged in paragraph 12 of page five of the Notice of Final Action-Discharge.

The preponderance of the evidence does not support Appellee's claim against

Appellant as stated in paragraph 13, page six of the Notice of Final Action-Discharge .

No evidence was presented to substantiate Appellee's claim in paragraph 14, page six of the Notice of Final Action-Discharge.

Regarding the Appellee's claim in paragraph 15, page six of the Notice of Final Action-Discharge, the Appellee has proved by a preponderance of the evidence that Appellant did give incorrect information to the Deputy Director. However, there was no evidence presented establishing that Appellant did not agree with the dollar amount to be given to the Deputy Director nor tell any additional staff members that she disagreed with the amount to be given.

Appellee maintains that Appellant spent time while at work working on color fliers to be posted around Appellant's neighborhood regarding a lost dog. Appellee presented testimony by Ms. Cathy Duncan that she had witnessed Appellant printing off more than 100 fliers on her color printer at the office. However, on cross-examination, Ms. Duncan was only able to identify the top page as being a color flier regarding the lost dog. In addition, Linda Graham, a witness for Appellant, testified that she received one color copy of the flier from Appellant and made the additional copies at Kinko's.

Regarding the allegations in paragraph 21, page seven of the Notice of Final Action-Discharge, the Appellee presented sufficient evidence to establish that Appellant spent more than the 15 minutes allowed every four hours for break using her state owned computer to e-mail friends and shop online.

There was no evidence presented regarding the charges in paragraph 22 and 23 on page seven alleging Appellant "spent a lot of time" playing computer games and shopping for new cellular telephones.

Appellee presented no evidence to support its allegations found in paragraph 24, 25, 26, or 27 of page seven of the Final Notice of Discharge.

Regarding the Appellant's position, Appellant has raised issues of wrongdoing by the Appellee. Specifically, it is uncontroverted that Executive Director Jenks did not perform any performance appraisal or employee service evaluation on the Appellant as required by the OPPB policy, Merit Rule, and state law. It is uncontroverted that Mr. Pirrong faxed information to a reporter from the Daily Oklahoman regarding the Appellant, including Appellant's home address, in violation of policy and state statute 74 O.S. § 840-2.11. It is uncontroverted that neither Executive Director Jenks nor General Counsel Pirrong received any discipline for those violations.

The preponderance of the evidence also indicates that Appellant was placed on suspension with pay, however, never received any written notice of her suspension with pay as required by Merit Rule 530:10-11-120.

The preponderance of the evidence and the admissions of Executive Director Jenks along with the Exhibits presented establish that both Appellant and Executive Director Jenks purchased food on the p/card and in addition that Executive Director Jenks also purchased hotel rooms for himself and employees within the course of business on the p/card. Although Appellant was discharged, no action what so ever was taken against Executive Director Jenks.

In addition, at this hearing Appellee failed to present sufficient evidence to prove violation of 13 of the 27 charges cited in Appellees' Notice of Final Action-Discharge. Of the remaining 14 charges paragraph 1 and 4 deal with the purchase of food by Appellant, which were identical to purchases of food made by the Executive Director;

paragraph 2 and 3 deals with p/card purchases which were prepared on claim forms by Ms. Duncan and approved by Executive Director Jenks; paragraph 8 deals with travel claims allegedly submitted with no information but which the Office of State Finance approved indicating there was sufficient information; paragraph 8 also deals with Appellant signing a claim both as claimant and approving officer however the evidence shows there was no policy in place at the time at the OPPB prohibiting this; there is insufficient evidence to establish that Appellant told staff members that she disagreed with the dollar amount to be paid to the Deputy Director regarding his increase in salary; there is insufficient evidence that Appellant printed 200 color fliers regarding a lost dog on her agency printer.

Appellee did establish by a preponderance of the evidence that Appellant submitted travel claims for dates when she was on sick leave in March, 2005; that Appellant gave improper or untruthful information to the Executive Director regarding a contract with a garage for parking spaces; that Appellant did attempt to receive an 8.5% salary increase; and that Appellant did give untruthful information to the Deputy Director and Executive Director regarding the Deputy Director's increase in salary.

There was no evidence presented by the Appellee that any one of the 27 violations, in and of itself, would justify discharge of the Appellant. In fact, the Executive Director stated he based his decision to discharge the Appellant on the volume and length of time of the violations and the sheer number of situations.

In addition, there was no explanation given as to why Appellant was disciplined for actions identical to the Executive Director (using the p/card on food), why the Executive Director was not disciplined for failure to conduct performance service

evaluations on employees, why the general counsel was not disciplined for violating state law regarding confidentiality of personnel information, or why the Executive Director or General Counsel were not disciplined for violating OAC 530:10-11-120 regarding the suspension with pay notice.

CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and subject matter in the above entitled cause.
2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.
3. The burden of proof in this case was placed upon Appellee, as the Appointing Authority, pursuant to OAC 455:10-9-2 and Appellee has met its burden of proof in part.
4. OAC 530:10-11-120: **suspension with pay**, states in pertinent part that an appointing authority may suspend a permanent employee from duty with pay for internal investigative purposes and that a notice of suspension with pay, stating the beginning and ending dates and times and specifying any reporting requirements shall be issued to the employee in writing.
5. OAC 530:10-11-91: states in part that state employees shall fulfill the duties of the position conferred upon the employee and behave at all times befitting the office or position the employee holds, the employee shall pursue the common good, the employee shall not engage in any activity which has been determined to inconsistent, incompatible or in conflict with their duties as a classified employee or with the duties, functions or responsibilities of the appointing authority by which the person is employed, each

employee shall devote full time attention to their official duty.

6. 74 O.S. § 585, **use of state property**, states in pertinent part that any property acquired by the state shall be used only in the conduct of the official business of the state.

7. Dept. of Central Services Rule 580:15-6-18, **state purchase card program**, states that the use of state purchase cards be in accordance with the policies and procedures of the purchase card program.

8. Pardon and Parole Board Employee Handbook Section 4.3, **use of state equipment, supplies and services**, states in pertinent part that state law prohibits the use of agency equipment, supplies, or other resources for personal benefit.

9. Pardon and Parole Board Employee Handbook Section 8.2, **mode of travel**, states in pertinent part, several modes of travel are approved for official state business, automobiles owned or leased by the agency must be used if available and supervisors may approve the use of personal vehicles when agency vehicles are not readily available.

10. OAC 455:10-11-4 **Progressive Discipline** states in pertinent part that based on relevant circumstances, a single incident may justify a higher step of discipline without proceeding through lower steps of discipline.

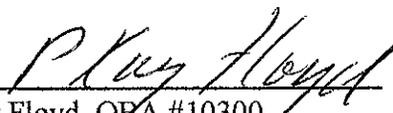
ORDER

It is therefore **ORDERED, ADJUDGED** and **DECREED** by the undersigned Administrative Law Judge that the Petition of Appellant be sustained in part. The discipline imposed upon Appellant is reduced to a 60 day suspension without pay and Appellee is ordered to immediately reinstate Appellant to her previous position of Business Manager with full back pay and benefits. Appellant is to be disciplined for

those charges proved by Appellee and set forth in this Order. A new Notice of Final Action is to be issued by the Appellee reflecting a 60 day suspension without pay. Appellant's record shall be adjusted to reflect this Final Order. Appellee shall effectuate this Final Order within 15-days after this Final Order becomes effective.

Nothing in this Final Order precludes Appellee from taking additional action against Appellant for violations of policy, rule or state law, if any, as established in the Special Audit Report of the Oklahoma State Auditor and Inspector issued November 4, 2005, which actions were heretofore not asserted as charges against Appellant.

Dated this 6th day of March, 2006.



P. Kay Floyd, OBA #10300
Administrative Law Judge
201 N.E. 38th Terrace, Suite 5
Oklahoma City, OK 73105

September 13, 2005

CERTIFIED MAIL, RETURN RECEIPT REQUESTED
(7005 1820 0006 6809 0303)

To: Darlene Whaley

From: Terry Jenks, Executive Director

Re: **NOTICE OF FINAL ACTION - DISCHARGE**

A Pre-Termination hearing was held on Tuesday, September 6, 2005 at which Daniel J. Gamino represented you; you were not in attendance. After review of the relevant evidence and statements your attorney made at the hearing, I have made the decision to terminate your employment with the Pardon and Parole Board agency effective Thursday, September 15, 2005. This decision comes after consideration of all information available. This action is taken in accordance with O.S. Section 840-6.5 and Merit Rule 455:10-11-17, Discharge. As previously stated the effective date of termination is Thursday, September 15, 2005.

During the hearing your attorney stated that you had not received the Notice by Certified Mail, Return Receipt Requested. The Notice was mailed to you at 714 N.W. 137th Street, Edmond, Oklahoma 73013 by Certified Mail, Return Receipt Requested (7004 2510 0003 9102 9469) on August 24, 2005. Delivery was attempted on August 25, 2005 at 3:15 p.m. and again on September 9, 2005 at 12:01 p.m.. Each time a notice was left by the Post Office stating that the item could be redelivered or picked up at the post office. At 12:45 p.m., on September 10, 2005 the Post Office declared the Notice Refused and mailed it back to us.

The Notice was also mailed to you by regular mail on August 24, 2005.

Also during the hearing your attorney stated that there had been no prior or progressive discipline actions against you. The Merit Protection Commission Rules and state statutes do not mandate progressive discipline in all instances nor is the agency required to prove that a less severe disciplinary action would be ineffective before imposing a more stringent penalty. This action is being taken after consultation with the Attorney General's office and the State Auditor & Inspector's office.

Also during the hearing your attorney stated that your actions had not caused any harm or embarrassment to the agency. This is not true. Money has been spent on unnecessary items that could have been better spent on items needed by staff to fulfill the agency's statutory duties. Also, as a direct result of your actions or omissions, the agency is paying approximately \$8,000 or more for an audit to be conducted by the State Auditor and Inspector's office, notice of said audit was received from Jeff McMahan, State Auditor and Inspector on Tuesday, September 6, 2005.

Your discharge is as a result of your violation of Merit Rule 530:10-11-91, **CONDUCT OF CLASSIFIED EMPLOYEES**, which requires that state employees shall fulfill to the best of his or her ability the duties of the office or position conferred upon the employee and shall behave at all times in a manner befitting the office or position the employee holds, the employee shall pursue the common good, and not only be impartial, but act so that there can be no question of impartiality, the employee shall not engage in any activity which has been determined to be inconsistent, incompatible, or in conflict with his or her duties as a classified employee or with the duties, functions or responsibilities of the Appointing Authority by which the person is employed, each employee shall devote full time and attention to their official duties; violation of 74 O.S. Section 585, **USE OF STATE PROPERTY**, which requires that any property acquired by the state shall be used only in the conduct of the official business of the state; violation of 21 O.S. Section 341, **EMBEZZLEMENT OF STATE PROPERTY**, which states in pertinent part that every public officer of the state who fraudulently alters, or falsifies any such account shall, upon conviction thereof, be guilty of a felony; violation of 21 O.S. Section 358, **FALSE, FICTITIOUS, OR FRAUDULENT CLAIMS AGAINST STATE**, which states in pertinent part that it shall be unlawful for any person to make, present, or cause to be presented to any employee or officer of the State of Oklahoma any false, fictitious or fraudulent claim for payment of public funds upon or against the State of Oklahoma, knowing such claim to be false, fictitious or fraudulent; violation of 21 O.S. Section 1542, **OBTAINING SIGNATURE OR PROPERTY BY FALSE PRETENSES**, which states in pertinent part that every person who, with intent to cheat or defraud another, designedly, by color or aid of any false token or writing, or other false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money or property shall be guilty of a felony; violation of Department of Central Services Rule 580:15-6-18, **State Purchase Card Program**, which requires that use of State Purchase Cards be in accordance with the policies and procedures of the purchase card program; Employee Handbook Section 2.8 **Training**, which states in part the agency will make training available to all employees, the agency will provide employees with applicable training to increase proficiency in their positions; Employee Handbook Section 3.2 **Review of Personnel Records**, which states that access to employee personnel records is limited to the employee's supervisor, the affirmative action office and other authorized staff with a legitimate need to review records (such as for statistics and litigation); Employee Handbook 3.12 **Whistleblower laws**, which states that certain communications between employees and others regarding operations of the agency are protected by law; Employee Handbook 4.3 **Use of State Equipment, Supplies & Services**, which states in part that state law prohibits the use of agency equipment, supplies, or other resources for personal benefit; Employee Handbook 4.5 **Employee Conduct & Courtesy**, which states in part that employees are expected to devote full-time attention and effort to their duties and responsibilities and to behave appropriately; Employee Handbook Section 4.6 **Relationships with Offenders**, which states in part that the buying anything of value for an offender or offering a gift of anything of value for an offender or giving anything of value to an offender is strictly prohibited; Employee Handbook Section 4.10 **Non-P&PB Business**, which states in part that ordering or the delivery of merchandise or other similar activities shall not take place at the duty station during office hours; and Employee Handbook Section 8.2 **Mode of**

Travel, which states in pertinent part several modes of travel are approved for official state business, automobiles owned or leased by the agency must be used if available and supervisors may approve the use of personal vehicles when agency vehicles are not readily available.

This action is being taken pursuant to Merit Rule 455:10-11-14, **CAUSES FOR DISCHARGE, SUSPENSION WITHOUT PAY OR INVOLUNTARY DEMOTION**, which states in part that 'any employee in the classified service may be discharged...for misconduct, insubordination, inefficiency, habitual drunkenness, inability to perform the duties of the position in which employed, willful violation of the Oklahoma Personnel Act or of the rules prescribed by the Office of Personnel Management or by the Oklahoma Merit Protection Commission, conduct unbecoming a public employee, conviction of a crime involving moral turpitude, on any other just cause."

1. Specifically, on November 29th and 30th, 2004, you purchased food on the agency's p-card for yourself and two other staff members. You explained to the other employees, who were your subordinates that it was okay because there was no way to make or bring lunch. The food was purchased from The Italian Express. When these purchases were questioned in August 2005, you explained to the Executive Director, the Department of Central Services and the State Auditor and Inspectors Office that food was purchased for offenders that were in the building helping us with the move, you did not mention the purchase of food for yourself or other employees. Since the incident in November 2004, you have told DOC to bring offenders making deliveries to our office to come around lunchtime so that you could provide lunch for the offenders as well as yourself and other staff members.
2. You have instructed three of your subordinates, one of which was a temporary employee, to make purchases of merchandise on the p-card issued to you. Those purchases have included office supplies from Copelin's Office Supply, aspirin and other medical supplies from The Medicine Cabinet, a variety of items including soda pop, candy and cleaning supplies from Wal-Mart and food from The Italian Express. On at least one occasion former temporary employee, Michelle Johnigarn used the p-card issued to you to purchase items at Wal-Mart.
3. You purchased a refrigerator for the business office using the p-card. At the time the purchase was made, you implied to the Executive Director and other employees that you were purchasing the refrigerator with your own money. The General Counsel questioned this purchase during an executive staff meeting on August 3, 2005 and other staff assured him that you had used your own money to make the purchase. In fact the refrigerator was purchased on the p-card issued to you.
4. You have purchased soda pop and candy for "the office", even though the soda pop is kept in the refrigerator located in the business office and the candy is kept in a file drawer in your office. On Thursday, August 18, 2005, the drawer in your office was filled

approximately half full with candy and other food items. Your subordinates report that only the Business Office is allowed to consume any of the items located in the drawer.

5. You also purchased artwork for the office while implying to the Executive Director that the artist had donated the artwork to the office. In fact the artwork was purchased for over \$700.00. You also spent approximately \$2,000.00 on frames for posters acquired from the Department of Tourism when similar frames could have been purchased at a much lower cost. These purchases were made on the p-card issued to you.

6. You submitted a travel claim on March 18, 2005 claiming mileage for travel on March 15 and 16, 2005. You then submitted a travel claim on May 16, 2005 again claiming mileage for travel on March 15 and 16, 2005. According to both travel claims, which based upon you were paid, on March 15 you traveled to Core and either DCS or DOT (the 3/18/05 claim shows DOT and the 5/16/05 claim shows DCS). On March 16 you traveled to Wal-mart, however the March 18 claim shows you also went to the Capitol, while the May 16 claim does not.

According to the two travel claims you submitted for March, you traveled on twenty days out of a possible 23 days. You were off on sick leave (shown as comp time on your time record) for six of those days (March 1 through March 8) according to your time record; however according to the travel claim submitted on March 18 you traveled on each of those days.

7. On March 24, 2005 you were on the interview committee for the vacant Accountant I position and you conducted interviews from 8:00 a.m. to 5:00 p.m. However, according to the travel claim you submitted on May 16, 2005 you traveled 28 miles on official state business on March 24, 2005 to Garden Ridge.

You submitted travel claims for the months of July, August, September, October, November and December 2004, as well as January, February and March 2005 totaling - \$1,093.24.

8. The travel claims you submitted on March 18, 2005 for October 2004 (\$100.12), November 2004 (\$193.12), December 2004 (\$122.25), January 2005 (\$141.75), and February 2005 (\$85.45) have no information concerning the dates traveled or the places traveled on official business. You signed each claim as the Agency's Approving Officer on March 21, 2005. Regarding October 2004, you had previously submitted a travel claim for that month on November 15, 2004 in the amount of \$50.63 showing ten days of travel, it is not possible to determine what is different between the October claim submitted on March 18 and the claim submitted on November 15, 2004. You signed as the Approving Officer on each of the October 2004 claims.

9. In December 2004 a former employee requested handicap accessible parking in the Main Street Parking garage be made available to her. You stated that you talked to the First National Center about obtaining such parking and were informed that there was a waiting list for such parking. On August 22, 2005, First National Center management stated that

no request was received for said parking until April 2005 when you made a similar request on your own initiative for a different employee that had been recently hired and was seven months pregnant. First National Center was able to obtain the special parking soon after receiving the request. The employee that made the request in December 2004 was terminated from the agency for poor attendance, however, her attendance had not been poor up until she requested and was not provided with special parking.

10. In regard to the additional parking space in the Main Street Parking garage, you entered into a contract with the garage on July 6, 2005 to pay for the space that had previously been provided to the agency at no cost. You did so without discussing the matter with the Executive Director. When asked about the space by the Executive Director you implied that the space was being provided to the agency at no cost. The General Counsel raised this matter during an executive staff meeting on August 3, 2005, and you replied during the August 10, 2005 meeting that the agency was able to pay for the space through the State's Employee Recognition program. You stated that the agency was allowed to spend \$150 per employee per year for this program. Beginning August 1, 2005 you conducted a drawing to award the extra space to an employee, with drawings to be held monthly. In fact, the Employee Recognition program is designed to reward exceptional performance by an employee benefiting the agency. You were made aware of this requirement by one of your subordinates after she looked up information about the program for you after you directed her to find a justification for paying for the parking space. You instructed her to find the justification the day of the meeting on August 10, 2005, instead of before entering into the contract in July.
11. You and another employee conspired to circumvent the provisions of the Merit Rules and promised a former temporary employee that she would be hired into a permanent classified position no matter who the other applicants were once the former temporary employee was able to score high enough to make the register. These conversations took place in front of other employees. You told the former temporary employee that you and the other employee would be two of the three agency employees on the interview committee and that she already had two votes.
12. You gave yourself an 8.5% salary increase when you came off probation. Agency policy is that a 5% salary increase is given whenever an employee comes off probation. Anything more than 5% is also a violation of the Merit Rules. You implied to the Executive Director that you were receiving a 5% increase, when you knew it was an 8.5% increase. When the Office of Personnel Management discovered this you stated that the 3.5% was a market adjustment. However, when you were to receive a 16.6% market adjustment but realized you could only receive one market adjustment per year, you instructed one of your subordinates to add in the 3.5% you had not received earlier; however, you instructed your subordinate to do it "paperless". You stated that you were told to do this by Ron Thatcher with OPM. Mr. Thatcher stated on August 22, 2005 that this was not correct and that he never made such statement.

13. You gave yourself a 16.6% market adjustment even though it put your salary over the maximum of the pay band for your job classification. It is a violation of the Merit Rules to exceed the maximum of a pay band without legislative approval.
14. One employee was to receive a career progression salary increase of 5% to 20%. You set the amount at the maximum of 20% without any input from her supervisor the Executive Director. You then implied to the Executive Director that the salary increase was the minimum this employee could receive under Office of Personnel Management rules. You told the Executive Director, the Deputy Director and other employees that inquired about this employee's career progression that you were told by Thomas Patt from the Office of Personnel Management that this employee was working out of classification and that a career progression was necessary. Mr. Patt states that he did not instruct you to modify this employee's classification.
15. You were instructed by the Executive Director to increase the salary of the Deputy Director by a specific dollar amount. However, you did not agree with the dollar amount telling staff members that the Deputy Director did not deserve the dollar amount set by the Executive Director. You did not modify the salary for one month, when the Deputy Director's salary was increased according to the instructions given to you by the Executive Director. You also told the Deputy Director that the Executive Director had not received the \$700 salary increase effective July 1, 2005 by his own choice and therefore the Deputy Director would not receive the increase either. This was not correct; the \$700 salary increase for the Executive Director was built into the FY 2006 Budget, which had been submitted for approval before you made the statements to the Deputy Director. You attempted to convince the Executive Director that he had previously decided not to accept the \$700 increase when the Deputy Director questioned this issue.
16. You told the Executive Director that the agency's Information System Network Administrator was not eligible to receive a market adjustment salary increase due to the fact that he was already being paid at the market rate. However, you had been informed on June 17, 2005 that the employee's current salary was actually \$205.05 below the market rate, meaning that he was in fact eligible to a market adjustment.
17. On June 28, 2005, you sent by e-mail a copy of the Agency's salary adjustment plan worksheets to an employee that is not part of the business office. The employee you shared the information with is a supervisor; however you did not share information concerning only the employees she supervises. Instead you sent her the information for every employee in the agency. While at the same time you refused to share this information with the Deputy Director and other supervisory employees within the agency.
18. In April 2005 you modified a subordinate's time record after she had signed it in effect docking her pay by approximately 20 hours. When asked about this by the employee you stated that another subordinate had made a mistake and that she was owed 15 hours of pay. It was apparent that you had modified her time record because one of the days that

show her being off she was in training on behalf of the agency. You did not follow proper procedure for docking an employee's pay.

19. You asked a subordinate if you should issue and circulate a backdated memo regarding the disappearance of a digital camera from your office. The camera had disappeared two months prior. The subordinate told you that you should not, because it would be false and the other employees would know that it was false. This was the second disappearance of a digital camera from your office in less than six months. After the purchase of the third digital camera, you filed an incident report with the building management.
20. You spent time that you reported as time worked on your time record, shopping on-line using your state owned computer and e-mail shopping for a dog. You did this on Friday, July 22; Monday, July 25 and Tuesday, July 26, 2005. Shortly after purchasing the dog, the dog was lost. You then spent work time preparing fliers, including using the Agency's color printer to print approximately 200 color fliers announcing your lost puppy. The Agency pays approximately \$0.05 per page for color printing.
21. You spent time that you reported as time worked on your time record, shopping on-line using your state owned computer and e-mail shopping for a house. You did this on Tuesday, June 21; Wednesday, June 22; Thursday, June 30 and Friday, July 1, 2005.
22. You spend a lot of time playing computer games on your state owned computer. You have downloaded game software to the state owned computer without prior approval from the Agency's Information System Network Administrator. Your subordinates have witnessed you playing "Chuzzle" on the computer. There is a link to "Chuzzle" on the desk top of the state owned computer issued to you.
23. On Tuesday, August 16, 2005 you spent many hours along with a former temporary employee choosing new cell phones. You then had the cell phones delivered to the office by Fed Ex in violation of Agency policy, which prohibits employees from having personal deliveries made at the office.
24. You allowed a former temporary employee to park in the Main Street parking garage and use the "comp" parking coupons issued to the Agency by the First National Center for the agency to use for members of the public having business with the agency. It is currently agency policy to not give the coupons to members of the Board or other employees that travel Oklahoma City for meetings.
25. You had furniture removed from the office of the Agency's Information System Network Administrator so it could be used by a former temporary employee to display pictures. In the meantime, the ISN Administrator was forced to use chairs in place of a workstation to work on computers for agency staff. When asked about his replacement furniture you misrepresented the truth concerning the status of the order with Oklahoma Correctional Industries. You knew that the order would take approximately six weeks to be shipped, yet you stated that the order would be delivered much sooner.

26. On August 15, 2005, you gave two letters to a subordinate, an accountant, seeking assistance. The letters were from the United States Internal Revenue Service and the Oklahoma Tax Commission. You stated at that time that you had not filed a tax return for the previous two years because you knew it would be bad. You also stated that you had filed in April 2005 but did not pay what you owed. Upon reviewing a W-4 form claiming you were exempt from taxes, the employee decided that it was against her best interests to get involved.

27. Since you were hired as Business Manager for the agency there appears to be a trend of racial and gender bias developing in the hiring practices of the agency. Within a few days of your hiring, a Native American female employee resigned from the Business Office citing harassment by you. The employee that requested the handicap parking space in December 2004 discussed above was an African American female. She was terminated by you soon after her request was denied and her attendance habits rapidly deteriorated to poor. In July 2005 a white (claiming Hebrew decent) male employee left the agency to take a lower paying position with another state agency citing harassment by you as a reason for leaving. Previously you had initiated a verbal dispute with the employee in the presence of the Executive Director, the Deputy Director and the General Counsel. The agency's Information System Network Administrator, about who's salary and possible market adjustment you were untruthful about as discussed above is an African American male. Since you were hired as Business Manager the agency has only hired female applicants (not including one male temporary obtained through AARP) for positions in the central office, all of which except for one have been of Caucasian decent. The one exception is a Hispanic female. You discharged the agency's first AARP temporary, an African American woman for reasons that are not clear. You directed a subordinate to not pay the Chairman of the Pardon and Parole Board, an African American male the full rate for the month of June 2005 even though he was on an excused absence the day he was not in attendance at the Board meeting. You argued that the Deputy Director did not deserve the salary adjustment set by the Executive Director and did not comply with the directive for one month; the Deputy Director is an African American male. Many times you have used an insensitive derogatory term to describe a picture hanging in the central office lobby of a Native American. You have continually referred to the picture as "Tonto", offending at least one employee of the agency.

When any of the issues listed above have been questioned in the past by any staff member, whether the staff member be a subordinate, an Investigator or the General Counsel you have demonstrated a belligerent attitude. When a subordinate questioned the p-card purchases she was reminded that due to her probationary status she could be fired at any time. When the subordinate discussed this matter with the Executive Director you responded by canceling training that had been scheduled for the employee and was needed for the agency. You told your subordinates that even though some of the purchases were not legal, the worst that would happen to you would be a slap on the wrist. When the General Counsel questioned the contract with the Main Street parking garage you told your subordinates that everyone at the Agency that had come into conflict with you was no longer with the agency. When one or two investigators asked

simple questions about the status of the agency's pay increase plan you sent e-mails to the entire agency chastising them for asking questions.

You have failed to follow established policies and procedures regarding purchasing and conduct of the business office as well as established policies and procedures regarding the conduct of classified employees. Your behavior is unacceptable and cannot be tolerated. It is for these reasons that you are being terminated from your employment with this agency effective September 15, 2005.

You may appeal this action in writing to the Merit Protection Commission within twenty (20) days of receipt of this notice at 201 N.E. 38th Terrace, Suite 5, Oklahoma City, Oklahoma 73105. Telephone (405) 525-9144. A copy of MPC Form 200, Notice of Appeal is attached for your use, if necessary.

cc: Daniel J. Gamino, Attorney at Law
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