

hostile work environment and retaliation for her having filed a grievance in 2000 and 2004.

Prior to the presentation of evidence, argument was heard on several pending motions, and this Administrative Law Judge made the following rulings:

- (1) Appellee DEQ's Motion in Limine to limit testimony concerning parking issues, stalking, and evidence of other employees alleged to be similarly situated to Appellant was held in abeyance to be heard when such testimony or evidence is presented during the course of the hearing.
- (2) Appellant's Motion for Legal Counsel [Cristi Andrews] to Withdraw as counsel was denied as Appellant was unable to show that Ms. Andrews misrepresented her role as counsel for DEQ when she talked with Appellant, and failed to show that she was prejudiced or harmed by said conversation.
- (3) Appellant's Motion in Limine on Medical Records was denied on the basis that counsel for Appellant indicated that he intended to raise such medical issues at the hearing, and listed Appellant's doctor as a possible witness.
- (4) Appellant's Motion to Prevent Witness Tampering alleging threats and intimidation of Appellant's witnesses by Appellee was denied for lack of evidence.¹

¹ Following this ruling and during the course of the hearing Appellant called two witnesses, Evelina Morales and Suzanne Dunn, who each testified that she was asked to speak with agency attorney Cristi Andrews concerning her relationship with Appellant; each talk lasted no more than 10 minutes; neither witness felt uncomfortable or intimidated. Ms. Morales testified that she was a little bit surprised and upset when she learned during that meeting that she was listed on Appellant's witness list, since she had not been informed of this by Appellant.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with Exhibits, which were admitted and 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 is a secretary I in the Land Protection Division of the Oklahoma Department of Environmental Quality, and has been employed with the agency since October 1, 1999, nearly seven years. On her first PMP evaluation, for the period October 1, 1999 through June 30, 2000, Appellant received an overall performance rating of "Exceeds Standards" from her supervisor Gregory Garber. (Exhibit 40) However, by 2001 Appellant was facing performance problems. On her July 2001 through December 2001 PMP, Appellant's performance rating had plummeted to "Needs Improvement". (Exhibit 77) She was rated as "Does Not Meet" standards for "Teamwork". Supervisor Garber indicated:

Renee has made an effort to eliminate conflicts with coworkers but she needs to do more. Maintaining open communications with senior staff members is necessary to avoid disruption of the flow of work and to continue productive work relationships. In October, I counseled with Renee regarding an incident in a staff meeting where she was not able to follow directions from my supervisor as to entries to be made in the permit status report. Later in November and also in the staff meeting, she verbally attacked a coworker for not including her in outside social activities, unrelated to work. The net effect of these conflicts has disrupted the flow of work in the section and made the environment tense and communications difficult with Renee. She has been counseled on these conflicts but she cannot leave them in the past.

Exhibit 77, page 3

Appellant had improved her performance to an overall rating of "Meets Standards" on both her January 2002 through June 2002 PMP and on her July 2002 through June 2003 PMP. (Exhibits 39, 30) Both PMP's included an "Exceeds Standards" rating for her organization and maintenance of the filing system. (Exhibits 39 and 30)

However, problems began to surface again in the first half of 2004. On her July 1, 2003 to June 30, 2004 PMP her supervisor, Mike Broderick, noted that with regards to clerical and typographic errors in her work:

During most of the period of this PMP, Renee performed adequately. An increase in lapses such as routing documents to the wrong person and minor errors in correspondence started in the last part of this PMP period. – "Meets Standards"

Exhibit 31, page 2

And as relates to teamwork:

When she was asked to observe time requirements for lunch, Renee became confrontational, yelled at her manager, threatened to use political influence, and was very hostile. The following week, when asked to be quieter in a phone conversation, Renee became loud and hostile (though she did not yell) and agained [sic] threatened to use political influence. The return of this unprofessional behavior is totally unacceptable. Renee is often supportive by organizing farewell lunches and similar events. – "Does Not Meet [Standards]"

Exhibit 31, page 4

In the Summary/Development Plan, Mr. Broderick stated:

Performance Areas for Development: Renee's previous problems with controlling her temper returned during the period of this PMP. Recently she has been low on leave due to extended absence from the office on personal problems, and it appears she may be at risk for leave without pay status. Renee needs to improve her attention to detail.

Development Plan: Seek professional assistance in controlling temper. This can be on her own, or through the EAP. Avoid leave without pay status, and accumulate a cushion of leave to use in emergencies. Pay close attention to ensure that proofreading, documents generated, and that filing and data entry is done in an accurate manner that minimizes errors.

On May 26, 2005 Appellant received a verbal/written warning from the division's Chief Engineer, Saba Tahmassebi, following an incident on May 19, 2005 in which Appellant confronted and threatened Mr. Tahmassebi's secretary that her "tires were going to get slashed." (Exhibit 5, testimony of Saba Tahmassebi and Cindy Gutierrez)

On August 4, 2005 Appellant received a Letter of Reprimand for insubordination and inability to perform job duties. (Exhibit 2) The Reprimand recited four separate instances between June 11, 2005 and July 26, 2005 of Appellant's blatant refusals to comply with directives of her supervisors or others in authority. The Reprimand also cited four separate instances between June 11, 2005 and July 18, 2005 where Appellant made repeated clerical errors, sent correspondence to the wrong recipient, was found to have failed to file 174 certified mail slips and proof of receipt (green cards) dating as far back as 2003, and made so many errors in a small batch of letters to be mailed that the mail room refused to mail them and returned them to her for corrections. (Exhibit 2)

On August 4, 2005 Appellant also received her July 1, 2004 through June 30, 2005 PMP with an Overall Performance Rating of "Does Not Meet Standards". (Exhibit 32) Supervisor, Mike Broderick noted:

Renee has been unable to get her Time and Effort reports done in a timely and efficient manner. Repeated corrections have been needed. Her April and June T&Es were completed late. This takes up a lot of time and causes repercussions with the Administrative Services Division, and puts the agency at risk for not meeting the deadline it is obligated to meet on providing supplementary [sic] payrolls on time.

Renee maintained certified mail slips and green cards in an unorganized stack in her cubicle with no record of which slips and cards go with which enforcement file. This is inconsistent with the policy for handling these that she participated in

developing. It also makes proving that we have sent enforcement documents very difficult and inefficient. – “Needs Improvement”

Exhibit 32, page 1

Additionally:

Renee continues to have significant problems with clerical errors in routine correspondence. Despite being cautioned during her midyear review to pay attention to the issue, Renee has not done any work on small entity certifications, or tracking failure to pay in some time, possibly the entire period of this PMP. – “Needs Improvement”

Exhibit 32, page 2

Concerning Appellant’s specific assignment to assist in conducting the industrial radiography certification exam and issuing certification cards, Mike Broderick indicated:

Renee has not been performing this work. She was counseled on the need to involve herself at it at Midyear and did participate in administering one exam afterwards. When asked to perform duties in this area recently, she denied any knowledge of how to issue cards, where the files for radiography certification were, or how the files were organized. – “Does Not Meet [Standards]”

Exhibit 32, page 1

Concerning “Teamwork”, Appellant’s PMP indicated:

Renee was counseled in writing after making disruptive statements to another DEQ employee. She was told by her management to minimize her contact with that employee and limit any contact strictly to work issues. Despite this, she initiated more contacts with the employee, including some that could be perceived as disruptive.

When asked to make copies, Renee became argumentative and said she should not have to make copies. She felt she should be able to give copying work to others. After disputing the instruction vigorously, Renee did eventually attempt to make the copies. Renee frequently reacts negatively to the exercise of authority, correction of even routine and minor errors, and to instruction. – “Does Not Meet [Standards]”

Exhibit 32, page 3

Appellant did not accept the comments on her PMP, and both her job performance and her relations with her supervisors and coworkers continued to create problems at DEQ. Continued, repeated clerical errors on correspondence created additional work for coworkers who had to check and correct her work, and

embarrassment for the agency when those errors were not caught. Examples of such errors Appellant made between September 12, 2005 and November 23, 2005 include duplicate Acknowledgements of Receipt prepared for the same request and with an incorrect license number (Exhibit 12); Acknowledgement of Receipt with typos, incorrect references, and addressed to the wrong person twice (Exhibit 13); Acknowledgement of Receipt with incorrect information to the recipient (Exhibit 14); Acknowledgement of Receipt with incomplete address (Exhibit 15); Acknowledgement of Receipt with typos, incorrect punctuation, and addressed to the wrong recipient (Exhibit 16); Acknowledgement of Receipt with the name of the recipient misspelled, her title incorrect, and an incorrect license number (Exhibit 17).

Appellant continually failed to comply with agency procedures and could not maintain effective working relationships with coworkers and supervisors. Carla Crawford, Human Resources Manager, testified that her department had on-going problems with Appellant submitting her Time and Effort Reports timely and correctly. Ms. Crawford testified that Appellant's leave request forms were continually inaccurate (Exhibits 7 and 18); were continually late to the point that she had to run a separate payroll for Appellant so that everyone else's payroll was not held up; that Appellant was not cooperative with human resources; that her department had to get Appellant's supervisor involved to obtain the reports needed (Exhibit 18). Ms. Crawford testified that Appellant became belligerent with the payroll staff, causing Ms. Crawford to instruct her staff to have another person in the office when Appellant came down to talk to one of them. Even this was not sufficient, and Ms. Crawford ultimately directed her staff to converse with Appellant only through e-mails, rather than face-to-face.

Rhonda Craig, manager of the central records unit testified² that her unit had difficulty getting Appellant to comply with the proper records procedures; that Appellant would send records to her department without the required certified return receipt (green card) attached; that Appellant would not complete the routing slips to identify the file in which the document should be filed; that she would not properly sign out files she took from the system; that Appellant was rude to the central records staff; and that she had to get Appellant's supervisor involved to attempt to straighten out the continuing problems with Appellant. (Exhibit 11)

Pam Bishop, Radiation Management Technical Supervisor, testified that she had numerous run-ins with Appellant and difficulty getting Appellant to follow her instructions. Ms. Bishop testified that when Appellant was injured on the job on October 18, 2005, she instructed her to report the injury to the appropriate person in Human Resources, as required by agency policy, but Appellant refused to do so. Subsequently, Appellant sought medical treatment and sought to obtain a workers' compensation form from DEQ. However, since no accident report had been filed by Appellant as required, this request for a claim form created some unnecessary confusion in Human Resources. (Exhibit 8)

On October 28, 2005, while training a temporary employee in Appellant's absence, Ms. Bishop discovered unopened, undistributed mail dating back to October 10, 2005, along with piles of unfilled certified mail slips (green cards) dating back to 2002. (Exhibit 9)

On December 2, 2005 Ms. Bishop asked Appellant to help Central Records locate some missing files after she finished her lunch. Appellant became angry,

² Ms. Craig's testimony was admitted by video deposition and a transcript of that deposition.

complained that other people took hour lunches and were not written up, threw her lunch in the trash and walked out to search for the files. A short time later, after locating the missing files, Appellant again became angry when Ms. Bishop told her to give the files to coworker Kelly Pham, and raised a clenched fist at Ms. Bishop and made a hostile remark to her. (Exhibit 10)

Early in the afternoon of December 27, 2005 Appellant stormed into supervisor Mike Broderick's office. She was very agitated and angry and began directing threats and accusations toward him. Mr. Broderick testified that he was taken by surprise at this outburst, as the two had had no encounters that day. Appellant appeared to be ranting incoherently, threatening "civil court", threatening that he was "going down", that her mission in life was to take him down. (Exhibit 3) She entered and exited his office several times during this tirade. Ms. Bishop happened to pass by Mr. Broderick's office and witnessed a small part of Appellant's outburst. Upon seeing Ms. Bishop, Appellant turned on her, as well. (Exhibit 4) Later in the afternoon Ms. Bishop also had an encounter with Appellant. She testified that Appellant was excited, agitated, upset, and exhibited erratic behavior. Appellant indicated she was going home because she needed to take her medication. (Exhibit 4)

Appellant was given a Notice of Pre-Disciplinary Hearing dated December 29, 2005 scheduling a hearing to determine if a proposed 30-day suspension without pay for alleged misconduct, insubordination, inability to perform the duties of her position, and conduct unbecoming a public employee, in violation of Oklahoma Statutes and Merit Rules is justified based upon the above recited actions and behaviors of Appellant. Following the hearing and recommendation of Hearing Officer Lawrence A.

Gales, the proposed 30-day suspension without pay was reduced to a 15-calendar day suspension without pay. Appellant has appealed this suspension. She alleges that there is no just cause for the suspension, and that she was the victim of retaliation and a hostile work environment.

In addition to her own testimony, Appellant presented testimony from six other witnesses in support of her position.³ DEQ Security Officer Christopher Barr testified concerning an incident wherein Appellant parked her vehicle in a church parking lot next to the DEQ. As she was not authorized to park in the lot, Officer Barr asked her to move her vehicle. Appellant became "irate", words were exchanged, and Appellant did not move her vehicle until others intervened and ordered her to do so. As a result, he was directed by Linda Fine, administrative assistant, to retrieve Appellant's parking decal. Officer Barr testified that he had never been asked to confiscate a parking decal other than Appellant's. Additionally, he has never had an irate employee refuse to follow his directions concerning moving a vehicle other than Appellant.

DEQ employee Ralph Leonard Johnson testified that he interacted with Appellant "a little" and that he got along with her. DEQ employee Mohamed Idrissa testified that he and Appellant are friends, that he has had professional disagreements with Mike Broderick during which he might sometimes raise his voice (he is hard of hearing), he has taken annual leave a couple of times followings such arguments, and he has never received a written disciplinary action. Mark Steven Conley testified that he had an "excellent" relationship with Appellant when he worked at DEQ from June 2002 to July 2004; that while he didn't get along with Pam Bishop, everything she said about him

³ Appellant presented two additional witnesses to support her allegation of witness tampering, neither of whom testified about the merits of this appeal.

was true; and Mike Broderick was always fair to him in their dealings. Steven Hoggard left DEQ in 2002, but worked with Appellant before he left and had an "outstanding" working relationship with her. He personally didn't get along with Mike Broderick and thought his treatment of all employees was bad, but never witnessed any such behavior specifically directed at Appellant. James Cobb, a friend of Appellant's who never worked at DEQ, testified that he has parked in the church parking lot while waiting for Appellant; that Appellant told him that someone was stalking her and she believed someone had messed with her car.

Appellant denies an inability to perform the duties of her position, denies that her behavior with others has been disruptive or insubordinate, and alleges that she is the victim of harassment and retaliation because she filed grievances in September 2004 and in 2000. Appellant testified that she has had "personal problems" during all times relevant to this action, and acknowledged that she has been diagnosed as paranoid and delusional by her doctor.

This Administrative Law Judge finds that a preponderance of the evidence presented supports a finding that just cause exists for discipline, and that the discipline imposed was just under the circumstances. This Administrative Law Judge further finds no credible evidence to support Appellant's allegations that she was subjected to a hostile work environment or that she was the subject of retaliation.

CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and subject matter in the above-entitled matter.

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

3. Merit Rule 455:10-11-14 states that a permanent classified employee may be disciplined, including suspended without pay, for misconduct, insubordination, inability to perform the duties of the position in which employed, willful violation of the Oklahoma Personnel Act and Merit Rules, conduct unbecoming a public employee, and any other just cause.

4. Merit Rule 455:10-9-2(f)(1) 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 adverse action and that the discipline imposed was just.

7. Appellee, Oklahoma Department of Environmental Quality, has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Appellant Renee McConnell for confrontational, threatening, insubordinate behavior, for failure to establish and maintain effective working relationships, and for failure to perform her job duties, all in violation of Merit Rules.

8. Appellee, Oklahoma Department of Environmental Quality, has met its burden to prove, by a preponderance of the evidence, that the discipline imposed -- 15 day suspension without pay -- was just under the circumstances.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the undersigned Administrative Hearing Officer that the petition of Appellant is hereby **DENIED**.

DATED: this 28th day of August, 2006.

A handwritten signature in black ink, appearing to read "Annita M. Bridges". The signature is written in a cursive style with a large, looping initial "A".

Annita M. Bridges, OBA # 1119
Administrative Law Judge

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