BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA

JULIE RAMOS-WILMOTH, Appellant,	)	
v.	)	Case No. MPC 07-055
DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES, Appellee.	)	

ISSUED
MAY - 1 2007
OK MERIT PROTECTION COMM.
BY

FINAL ORDER

This matter comes on for hearing on March 30, 2007 before the duly appointed, undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. The Appellant, Julie Ramos-Wilmoth, appears with her counsel, Melinda Alizadeh-Fard. The Appellee, Department of Mental Health and Substance Abuse Services, appears by and through counsel, Deneka Turney Cain and Dewayne Moore.

Appellant Wilmoth was a permanent classified state employee appealing an adverse disciplinary action of discharge. Whereupon the hearing began and the sworn testimony of witnesses was presented, along with exhibits. Regarding the exhibits, the parties offered Appellee's Exhibits "A" through "O" and the Appellant's Exhibits "2" through "12". This Administrative Law Judge admitted these exhibits into the record. Following the hearing, the parties were granted additional time to submit written summations. The record was closed on April 20, 2007, following receipt of the summations.

After careful consideration of the record, including all relevant evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

Background of Case

Appellant Julie Ramos-Wilmoth (hereinafter "Wilmoth") was a permanent classified employee of the Appellee Department of Mental Heath and Substance Abuse Services (hereinafter "the Department"). Wilmoth was an employee at the Jim Taliaferro Mental Health Center (Center).

On October 10, 2006, the Department provided Wilmoth with a Notice of Recommendation to Discharge (Appellee's Exhibit "L"). A pre-termination hearing was scheduled for October 17, 2006. Wilmoth was represented by counsel and was given an opportunity to present testimony and evidence. On October 23, 2006, the Department provided Wilmoth with a final notice of discharge based upon a finding that she engaged in misconduct, insubordination and conduct unbecoming a state employee (Appellee's Exhibit "M"). In the notice, the Department sets forth the specific actions by Wilmoth which were considered to be misconduct, insubordination and conduct unbecoming a public employee, the existence of aggravating factors and lack of mitigating factors and prior discipline.

The Testimony

The testimony of four (4) witnesses was provided in support of the disciplinary action. Patrice Crum testified she was employed at the Center as a secretary and medical transcriptionist. She stated that she had worked at the Center for approximately six (6) years and considered herself a close personal friend of the Appellant. She testified that they frequently enjoyed each other's company both at work and at social events. She testified that she had a prescription for Tylenol #3, a controlled dangerous substance. On a few occasions at work she had given pills from this prescription to the Appellant. She became concerned when the Appellant repeatedly asked her for "#3" pills and even offered to pay her for them. Ms. Crum testified that she reported the incidents when Appellant "wouldn't take no for an answer" and began to pressure her to have her husband bring the pills to her. Ms. Crum reported the events to the individual who was her acting supervisor, even thought it resulted in her own disciplinary action for giving a fellow co-worker a controlled substance.

Angela Bolds testified that she is the Administrative Secretary for the Executive Director at the Center. She testified that, in addition to her regular duties, the Appellant was the back-up for the switchboard/receptionist. She testified that on September 18, 2006, Appellant advised her that she was ill and needed to go home. Appellant gave her a leave request for two days of sick leave. Ms. Bolds advised Wilmoth that it was not appropriate to request two days when she was not aware if she would in fact still be ill the next day and she should call in the next day if she was in fact still ill. Ms. Bolds then requested that Wilmoth remain there until the Director approved the leave. Jim Regan, the Director, approved only the remaining hours of that day, September 18th, and not September 19th. Despite being instructed not to leave, Wilmoth left the Center prior to Ms. Bolds

returning with the approved leave slip. Ms. Bolds also testified that she received a complaint from a customer regarding the inappropriate behavior of the receptionist on the morning of September 25, 2006. Wilmoth was assigned to work the reception/switchboard area at that time. Ms. Bolds knew that because she made the assignment and also relieved Wilmoth for her break that morning. She stated that Wilmoth failed to follow the written instructions and procedures by refusing to assist the customer and by refusing access to the Center Administrator.

Witness Judy Wallace testified that she is a supervisor at the Center. She stated that on September 19, 2006 she was acting as Wilmoth's supervisor due to absence of other staff members. She stated that Wilmoth failed to report for work or to call in. She called Wilmoth's home and was advised by Wilmoth's daughter that Appellant had taken her son to the airport. She further testified that she asked Wilmoth for a corrected leave slip, but she refused to provide one.

Appellee's final witness was Jim Regan, the Executive Director at the Center. He testified that he had worked at the Center for over 32 years, and was responsible for making all disciplinary decisions. He stated that an employee's grievances or workers' compensation claims are never considered in making disciplinary decisions. He stated that multiple infractions or instances and/or certain very serious infractions could accelerate the level of discipline imposed. He stated that he approved Wilmoth's leave slip for September 18, 2006 only and it would be impossible for him to approve the leave for the next day without knowing whether Wilmoth would be in fact ill that day. He stated that he did not see Wilmoth that day (September 18th). He stated that Appellant was directed on multiple occasions to submit a correct leave slip and she refused to do so until October 3, 2006. He further testified that due to the mission of the agency, a drug-free workplace was a top priority. He stated that he considered Wilmoth's solicitation of a controlled substance to be extremely serious. He testified that the Employees' Assistance Program was offered to Wilmoth, but she declined.

Following the testimony of these witnesses, the Appellee rested its case. Appellant moved for Summary Judgment which was denied.

Julie Ramos-Wilmoth testified on her own behalf. She denied that she ever asked Ms. Crum for Tylenol #3 and also denied ever receiving any pills from her. She testified that Ms. Crum was also friends with her husband from whom she is separated. She testified that she was ill on September 18, 2006 and left work to go home. She further testified that she was next door at her parent's house when Ms. Wallace called on September 19, 2006 and admits that she did not call in to

report that she was still sick. She admitted being asked at least four or five times for a corrected leave slip, but failed to submit one because she thought she already had an approved slip. She admitted that she did not refer back to the slip that was signed on September 18th, which only approved that day. She expressed confusion and stated that she believed that she took the leave slip to Mr. Regan for his approval. She further testified that she could not recall any of the events of September 25, 2006 at all, so that she could neither admit nor deny the misconduct charge. She testified that she had prescriptions for Loritab and Flexaril, but she was not under the influence of either drug during the hearing.

Following this testimony the evidentiary portion of the hearing was concluded. Each party was given an opportunity to submit written summations which were considered.

ISSUES

1. Did the actions of Appellant Wilmoth constitute conduct unbecoming a state employee, misconduct and/or insubordination?

2. If so, was the discipline imposed appropriate under the circumstances?

3. Was the action of the Department retaliatory?

DISCUSSION

Ms. Crum testified that Wilmoth solicited Tylenol #3 from her on numerous occasions and she gave her the pills at least twice. Ms. Crum came forward with this information out of concern for the Appellant, her friend. She did so at the risk of disciplinary action for herself and did, in fact, receive discipline for giving the pills to Appellant. There was no apparent reason for the witness to fabricate this information and her testimony was credible and consistent. The Appellant simply denied that these solicitations ever occurred.

The testimony and evidence supports the Appellee's claim that Appellant Wilmoth was at the switchboard on September 25, 2006 when a customer was treated rudely and refused assistance in violation of the Center's written procedure. Appellant's only response was that other employees at the Center may match the physical description of the woman given by the customer but she admits

that she has no recollection of that day. Wilmoth did not deny that she treated the customer in the manner complained of.

The evidence at the hearing was clear that Appellant Wilmoth left work on September 18th without waiting for an approved leave slip and failed to report in the following day, September 19th. It is also clear that Wilmoth was asked repeatedly to submit a corrected leave slip which she either failed or refused to do, until after she submitted an incorrect time sheet and she received a written memo on October 3, 2006. It is also undisputed that Wilmoth submitted the time slip showing that she did work on September 19, 2006 when she admits she did not work. It is still unclear if Wilmoth was sick on September 19, 2006 or at the airport. The Department's policy defines insubordination as a refusal to follow a supervisor's directive. There is no evidence that the directive given to Appellant to complete a correct leave slip was unreasonable or illegal. Wilmoth's excuse for refusing the directive is not credible or reasonable.

All of the Appellee's witnesses were credible and consistent in their testimony. Wilmoth offered very little evidence to refute these allegations. Based upon the totality of the record, the undersigned finds that the Department has met its burden of proof that Wilmoth engaged in conduct unbecoming a state employee by soliciting controlled drugs while at work at the Center; met its burden of proof that Wilmoth engaged in misconduct on September 25, 2006 while working at the reception area at the Center; and met its burden of proof that Wilmoth committed acts of insubordination by refusing her supervisor's repeated directives to submit a correct leave slip for September 19, 2006.

Although the charges of insubordination and the misconduct on September 25, 2006 are serious infractions, they alone may not have warranted a disciplinary action of discharge. It is clear from the testimony, that the solicitation of a controlled substance is considered to be very serious misconduct, especially in light of the mission of the Department. The Merit Rules recognize that a single incident may justify a higher step of discipline without proceeding through lower steps of discipline. *See* OAC 455:10-11-14. The solicitation of drugs alone would justify the disciplinary action taken by the Department and the fact that other acts of misconduct and insubordination occurred numerous times further supports the action taken by the Department. In addition, Appellant has had previous informal and formal discipline. Based upon the record, the undersigned finds that the Department has met its burden of proof that just cause existed for the discipline imposed and the

Department has proven, by a preponderance of the evidence, that this disciplinary action was just and appropriate under the circumstances and not a violation of its progressive disciplinary procedure.

Wilmoth claimed that the Department's disciplinary action was in retaliation to Appellant's filing of grievances or worker's compensation claims. It must be noted that Appellant offered no evidence in support of this claim and as such, it is found to have no merit.

CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause.
2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.
3. Merit Rule 455:10-9-2 states that the Appellee has the burden of proof in an adverse action and must prove by a preponderance of the evidence that just cause exists for the adverse action and that the discipline imposed is just.
4. Merit Rule 455:10-11-17 states that a permanent classified employee may be discharged for any of the reasons set forth in 455:10-11-14, which are misconduct, insubordination, inefficiency, habitual drunkenness, inability to perform the duties of the position in which employed, willful violation of the Oklahoma Personnel Act or the Merit Rules, conduct unbecoming a public employee, conviction of a crime involving moral turpitude or any other just cause.
5. Wilmoth violated the Department's Drug-free Workplace Policy by soliciting a drug while on duty at the Center. (Appellee's Exhibit "E"). The Department's Progressive Discipline Policy defines the specific acts of the Appellant as constituting misconduct, insubordination and conduct unbecoming a state employee. (Appellee's Exhibit "D", page 2).
6. Appellee has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Wilmoth for failing to comply with the above referenced policies.
7. Appellee has met its burden to prove, by a preponderance of the evidence, that the discipline imposed was just under the circumstances considering the seriousness of the conduct as it relates to the employee's duties and responsibilities and other mitigating circumstances.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant Julie Ramos-Wilmoth, MPC 07-055 be **DENIED**.

Dated this 30th day of April 2007.

Lydia Lee
Administrative Law Judge
Oklahoma Merit Protection Commission
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Oklahoma City, Oklahoma 73112