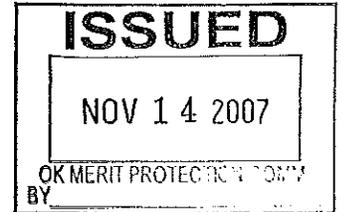


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**

Lana Allen,)
Appellant,)
v.)
CompSource Oklahoma,)
Appellee.)

Case No. MPC 08-018



FINAL ORDER

This matter comes on for hearing on October 30, 2007 before the duly appointed, undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. The Appellant, Lana Allen, appears personally, and by and through her counsel, Melinda Alizadeh-Fard. The Appellee, CompSource Oklahoma, appears by and through counsel, Robert Mitchell. Also present for Appellee was Table Representative, Sharon O'Connor.

Appellant, Lana Allen, is a permanent, classified state employee appealing an adverse disciplinary action of suspension without pay for three (3) days. Whereupon the hearing began and the sworn testimony of witnesses was presented, along with exhibits. Regarding the exhibits, the parties stipulated to the admissibility of Joint Exhibits No. 1 through 19. Accordingly all exhibits presented and admitted are incorporated herein and made a part hereof. The record was closed on October 30, 2007.

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, Lana Allen (hereinafter "Allen"), is a classified employee of the Appellee, CompSource Oklahoma (hereinafter "CompSource"). Allen is a Secretary III. As part of her duties, she served as timekeeper for certain employees. Allen testified that when she received employee Carol Hines' leave request on May 8, 2007, the form stated that Hines wanted ten days

of annual leave in order to take care of a sick daughter. The leave request form was already signed by the employee and approved by the employee's supervisor, Jo Miller. Allen took the leave form to Jo Miller to discuss whether Hines should be taking enforced leave rather than annual leave. Allen testified that she did not remember being told not to change the form. However, Jo Miller testified that she specifically told Allen not to change the leave request form. Allen altered the original leave request form by crossing out annual leave and writing enforced leave. She then went to the employee, Carol Hines, to discuss the use of enforced leave. Hines indicated that her daughter had just had a baby and that she did not want to have to provide a doctor's statement, which was required for absences over three days. Hines completed a second leave request for annual leave, at the suggestion of Allen, stating the reason was personal business. Allen destroyed the original leave request form that she had altered. Allen stated that she believed Hines' request more appropriately fit the definition of enforced leave but she understood Hines' reason for requesting annual leave. She further testified that she believed "personal business" was the more appropriate reason to list and that she felt that it was part of her job to advise employees regarding leave issues, although there was nothing specifically in the policy and guidelines for timekeepers which indicated that. Allen further testified that in the last four years that she has been supervised by Debbie Willingham, that she has been picked on and that many of the things that she is criticized for are "no big deal" as long as she gets her job done.

Carol Hines is a postal clerk with CompSource. She testified that she needed to take off for two weeks to take care of her daughter. She stated that her daughter had recently had a baby with health problems, her son-in-law was in Iraq and she was needed to provide assistance to care for her daughter's other child. During the time she needed leave, there were two or three "critical mail dates" and so Hines personally spoke with her supervisor, Jo Miller, to request the leave. Hines, Jo Miller and Debbie Willingham all testified that it was important to note on the leave request that Hines' daughter was sick to justify granting annual leave during the critical mail dates. Hines further stated that she only changed the request because of Allen's insistence.

On June 19, 2007, CompSource provided Allen with notice of the proposed disciplinary action (Exhibit 1). Allen was given an opportunity to file a written response (Exhibit 6) and a pre-suspension hearing was conducted by Don Holman on June 27, 2007 (Exhibit 3). Holman stated that he made his recommendation on the basis of Allen's pattern of behavior in ignoring

instructions and directives and that he believed it was clear that she overstepped her responsibilities and intentionally ignored the supervisory directive to not change the form. Don Holman, Debbie Willingham and Sharon O'Connor all testified that discipline was warranted because Allen ignored two specific directives, the original directive not to change the leave request and the second directive to complete another form with the same information as the first form.

Allen was previously disciplined in a formal written reprimand for failing to follow instructions (Exhibit 7). The reprimand, dated November 15, 2006, includes multiple instances where Allen failed to follow instructions. This reprimand was followed by a written memo, detailing the subsequent corrective discipline efforts (Exhibit 10). The memo again reflects a continued pattern of behavior in ignoring supervisory instructions.

On July 12, 2007, CompSource provided Allen with a notice of discipline, imposing a three (3) day suspension without pay (Exhibit 4). In the notice, CompSource found that Allen changed employee Carol Hine's first leave request form after she was specifically instructed not to and then changed the reason for requested leave on the second leave request form after she was specifically instructed not to change the form. CompSource found that Allen's actions constituted misconduct and insubordination. The notice also contained a reference to a prior disciplinary action of a written reprimand.

ISSUES

1. Did the conduct of the Appellant, Lana Allen, on May 8, 2007, in changing the leave request forms of employee, Carol Hines, constitute misconduct and/or insubordination?
2. If so, was the discipline imposed appropriate under the circumstances?

DISCUSSION

The record supports the finding that Allen was instructed not to change Carol Hines' leave request on May 8, 2007. The record is also clear that Allen did change the leave request on two occasions and that the final leave request was different from the form originally submitted

and approved. Allen's entire defense is based upon her belief that enforced leave or annual leave for personal business would have been more appropriate. This was not Allen's decision to make. Allen substituted her judgment for that of the supervisor and completed the form in the manner that she felt was best without regard to the specific instructions of Jo Miller. Based upon the record, including the testimony and exhibits, the conduct of the Appellant, Lana Allen, on May 8, 2007, in changing the leave request forms of employee, Carol Hines, does constitute misconduct and insubordination because she ignored the specific instructions of Jo Miller. Therefore, the undersigned finds that CompSource has met its burden of proof that just cause existed for the discipline imposed.

Having found that Allen's conduct did constitute misconduct and insubordination, the next issue is whether the discipline imposed was just under the circumstances. Allen's supervisor, Debbie Willingham, initially recommended a five day suspension without pay be given as discipline for this misconduct/insubordination. This recommendation was based upon Allen's prior record and behavior (Exhibit 5). The ultimate discipline that was imposed was a three day suspension. According to the testimony of Sharon O'Connor, the three-day suspension was based on the circumstances of this incident, Allen's previous disciplinary history, her evaluations and a comparison to other similar incidents and the discipline imposed. Appellant offered no evidence that the discipline imposed was disproportionate. The undersigned cannot reasonably find that the discipline imposed was unjust given all of the circumstances. Therefore, CompSource has proven, by a preponderance of the evidence, that the level of disciplinary action imposed was just and appropriate under the circumstances.

CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause and the filing of the Petition for Appeal was timely.
2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.
3. Title 74 O.S. §840-6.5 and Merit Rule 455:10-9-2 state that the Appellee, CompSource Oklahoma, 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. Title 74 O.S. §840-6.5 and Merit Rule 455:10-11-17 state that a permanent classified employee may be suspended without pay 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. Appellee, CompSource Oklahoma, has met its burden to prove, by a preponderance of the evidence that just cause exists to discipline Appellant, Lana Allen, for her acts of misconduct and/or insubordination on May 8, 2007.

6. Appellee, CompSource Oklahoma, 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; the consistency of action taken with respect to similar conduct by other employees of the agency, the previous employment and disciplinary records of the employee and other mitigating circumstances.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant, Lana Allen, MPC 08-018 be **DENIED**.

This Order entered this 8th day of November, 2007.



Lydia Lee
Administrative Law Judge