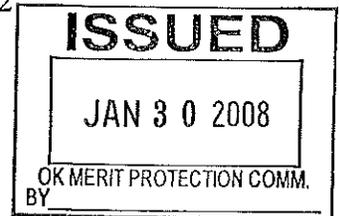


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**

JACKIE M. LOCKETT,)
Appellant,)
)
v.)
)
DEPARTMENT OF HUMAN SERVICES,)
Appellee.)
)

Case No. MPC 08-022



FINAL ORDER

This matter comes on for hearing on January 15, 2008 before the undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. The Appellant, Jackie M. Lockett, appears personally, pro se. The Appellee, Department of Human Services, appears by and through counsel, Richard A. Resetaritz. Also present for Appellee was Table Representative, Steve Scott.

Appellant Jackie M. Lockett was a permanent, classified employee of the Department of Human Services. She is 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 Appellee offered Appellee's Exhibits 1 through 5, 7 through 11, 13 through 38, 40 through 42, 44, 46 through 49, 51 through 53, 55, 56, 59 Exhibit #2 only, and 61 with no objection and they were admitted. The Appellant offered Appellant's Exhibits 1 through 7 with no objection and they were admitted. Accordingly, all exhibits presented and admitted are incorporated herein and made a part hereof. Following the close of the evidentiary hearing, the record was closed effective January 16, 2008.

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 Jackie M. Lockett (hereinafter "Lockett") was a classified employee of the Appellee Department of Human Services (hereinafter "DHS"). Lockett was last employed with DHS as a Child Welfare Specialist at the Creek County office. From April 17, 2007 to mid-May,

2007, Lockett was accused of various misconduct, including improper leave usage and improper time reporting. Lockett was also accused of making numerous significant mistakes in the child welfare records, including inaccurate reports, incomplete referrals and untimely reports.

On or around June 15, 2007, DHS provided Lockett with notice of the proposed disciplinary action, advising her that she was being considered for termination of her employment as a result of the listed misconduct. (Appellee's Exhibit 1). A pre-termination hearing was held on July 13, 2007. Lockett was given an opportunity to respond to the charges and to present evidence, however, she failed to appear at the scheduled place at the scheduled time. Her written comments were presented and considered. The hearing was conducted by Gail Wettstein, a hearing officer assigned to hear the matter. She issued her report, concluding that the agency had presented evidence to prove each of the factual allegations. She further found that there were reasonable grounds to support the proposed discipline of discharge. (Appellee's Exhibit 2). On July 26, 2007, DHS provided Lockett with notice of final discipline, discharging her from her position effective July 27, 2007. (Appellee's Exhibit 3). In the notice, DHS finds that Lockett's behavior and actions constitute unsatisfactory performance, misconduct - willful failure, misconduct - violation of time and leave policies, misconduct - dishonesty, neglect of duty, and conduct unbecoming a state employee, all in violation of DHS policies. The notice contained a reference to two prior disciplinary actions.

The Testimony

DHS offered the testimony of five (5) witnesses in support of its disciplinary action.

Jennifer Santiago was the first witness. In May, 2007, Santiago was employed with the Sapulpa Public Schools. On the morning of May 7, 2007, she telephoned the DHS Creek County office to make a report of suspected child abuse. A 16 year old student had given her information concerning possible abuse and neglect in his home and Santiago spoke with Lockett to make the referral. She testified that she gave Lockett all of the necessary information and that the child was waiting in her office to talk to an investigator. After several hours, Santiago telephoned the Creek County office again and spoke with Lockett. Lockett had no recollection of having spoken to her earlier in the day and had not processed the referral. Santiago complained to Lockett's supervisor, Kelli Heath, and also sent a follow-up e-mail outlining the events and complaining about the conduct of Lockett. (Appellee's Exhibit 59, exhibit 2). Santiago stated that she was very upset that the child had waited all day for the investigator and

also that there were younger siblings in the home that she was concerned for. Santiago's testimony was credible and consistent with the documentary evidence.

Kelli Heath, Lockett's supervisor in Creek County, testified regarding each incident contained in the Notice of Final Disciplinary Action. She stated that Lockett was transferred to Creek County effective April 16, 2007. She stated that she had no previous discussions with Lockett's former supervisors. Her first meeting with Lockett occurred on April 16, 2007. They discussed orientation and duties. Lockett advised her that she was on FMLA and would have periodic doctor's appointments. Heath told Lockett that she did not have any paperwork on the FMLA, and that Lockett should advise her in advance when she would need to be off. Heath later stated that the FMLA leave had expired, that she obtained the necessary forms for Lockett and that the FMLA was approved effective April 23, 2007 for periodic doctor's appointments. Heath also testified that Lockett never advised her of any need for reasonable accommodation, except to request a taller chair. She stated that Lockett never advised her that Lockett's health was affecting her ability to do her job or was the cause of the numerous errors in her work.

Heath well-documented her discussions with and directions to Lockett. This documentation includes memos (Appellee's Exhibits 7 and 8), e-mails (Appellee's Exhibits 11, 13 – 19, 21 and 22) and supervisor notes (Appellee's Exhibits 23 – 32). Heath admitted that Lockett had sent her an e-mail regarding a new medication that she was taking, however she stated that Lockett never advised her that she was experiencing any side effects from the medication. (Appellee's Exhibit 18). Heath testified regarding the specifics of each of the events listed in the Notice of Final Disciplinary Action (Appellee's Exhibit 3). She stated that each of the events occurred exactly as set forth in that Notice, that she had personal knowledge and was personally involved in each of those events. She testified that Lockett's errors were particularly egregious because the safety and welfare of children was involved. Lockett's errors included incorrectly listing perpetrators as victims, incomplete information obtained, errors in names, errors in witness or contact information, incorrect addresses and failing to process referrals in a timely fashion. Most of these errors could significantly hamper the investigations and follow-up decisions. Because of these numerous serious errors, Heath directed Lockett to stop taking referrals on May 4, 2007 (Appellee's Exhibit 8). Heath stated that she provided Lockett with some instruction on the data reporting systems (referred to as "KIDS") but that

Lockett had worked with DHS for many years and never indicated that she needed additional training.

Heath took the second call from Jennifer Santiago on May 7, 2007. Santiago recounted to Heath her conversations with Lockett and expressed her concern over Lockett's inability to remember that morning's referral call. Heath testified that Lockett continued to deny that she took the referral from Santiago earlier that day. Despite Lockett's denial and the directive to stop taking referrals, Heath found an incomplete referral memo regarding Santiago's call in Lockett's handwriting on Lockett's desk later that day (Appellee's Exhibit 5).

Heath testified that Lockett frequently reported late to work or failed to show up. She stated that Lockett repeatedly failed to call in to notify her of the tardiness or absence. Heath also stated that several times, Lockett submitted time sheets showing she worked when she was in fact late or absent. Heath denied that she had ever spoken with any members of Lockett's family about Lockett's health situation or inability to work. Heath's testimony was credible and consistent with the documentary evidence.

Esther Rider-Salem, a programs manager with DHS, testified that the types of errors that Lockett committed were extremely serious and could significantly hamper a DHS child welfare investigation. She stated that if Lockett's supervisor, Kelli Heath, had not been as diligent as she had been in catching these mistakes, there could have been catastrophic consequences. She further testified that DHS is required by federal and state laws to fully document referrals and actions and that these types of errors could impact that responsibility. Rider-Salem also testified that given Lockett's previous jobs at DHS, she should have been very familiar with the KIDS data system in order to properly take referrals. She stated that the errors appeared to be more a result of carelessness or inattention than inability to use the system.

Stephen Scott, Area VI Director, testified that he was the final decision maker in Lockett's disciplinary action. He stated that because Lockett's actions potentially placed children at risk and because of Lockett's previous disciplinary actions, he felt that discharge was the proper and justifiable discipline to be imposed. He further testified that Lockett's health issues had never been submitted to him as mitigating circumstances. He testified that the time and leave allegations were also very serious and were a factor in his decision making.

Vanessa Ashley, Assistant Area Director for DHS, testified that she was present at the pre-termination hearing and that Lockett failed to appear. She testified that the only

“accommodation” ever requested by Lockett was for taller furniture to fit her height as a result of “arthritis and nerve damage” (Appellee’s Exhibit 61). This request was received on July 16, 2007, after the pre-termination hearing had been held. She testified that she was not aware of the FMLA situation. She further testified that the use of shared leave could be a reasonable accommodation, however, Lockett had never made that request. Ashley also testified that Lockett’s ability to perform the essential duties of her job was the ultimate issue.

The Appellant offered the testimony of five (5) witnesses in addition to herself. Kellie Mullen, a DHS Programs Field Representative, testified that she had known Lockett for over ten (10) years. She stated that she had always known Lockett to be honest and a good social worker. Mullen stated that Lockett’s illness had gotten progressively worse over the last three years and had probably affected her ability to do her job. She stated that Lockett was a very moral person with integrity, who worked hard to reunite families. She had previously donated 120 hours of shared leave to Lockett. Mullen acted as a character witness but offered no testimony on the specific events that gave rise to this proceeding.

Lockett’s daughter, Tara Price, testified that, on at least two separate occasions, she called Toy O’Brien and/or Kelli Heath to advise them that her mother was ill and would be absent from work. She was unclear of the dates, stating that she thought it was before her Mother moved in April of 2007, which is prior to the events giving rise to this disciplinary action. She was unable to recall the specifics of those calls.

Sally Larison, Lockett’s sister, testified that Lockett moved in with her on May 14, 2007. She said that Lockett’s illness was obvious, and that she was in extreme pain most of the time. She testified that she called to report Lockett’s illness and absences but does not recall the dates except that it was before May 14, 2007.

Toy O’Brien, DHS Creek County Director, testified that she was on leave until mid-May. She stated that she furnished Lockett with the ADA forms to request reasonable accommodation but she never received them back. O’Brien recalls talking with Lockett on June 14, 2007 and discussed Lockett’s health and kidney failure, but stated that she was not aware that Lockett had been hospitalized in February or April, 2007. She stated that she had no personal knowledge of Lockett’s leave situation.

Shirley Roberts, DHS Osage County Director, testified that she approved FMLA leave for Lockett in February, 2007. She said that Lockett was on leave with Osage County until April

15, 2007, when she was transferred to Creek County, effective April 16, 2007. She recalls several conversations with Lockett about her health and would receive periodic doctor's statements during the time that Lockett worked in Osage County.

Appellant, Jackie Lockett, testified that she was aware that her illness affected her ability to do her job. Lockett states that she did advise Heath that she would need to be off on April 17, but she doesn't recall any of the other absences. She admits she incorrectly reported that she worked on some days when she was absent and that the time records that she submitted were wrong. She admits that she made the errors alleged by DHS but testified that they were due to her unfamiliarity with the KIDS data system. Lockett admitted that the Santiago referral memo was her handwriting and found on her desk, but continued to deny speaking with Santiago on May 7. She stated that her last day physically on the job was May 7, 2007. Lockett stated that she was very ill, that DHS knew she was ill and that her illness excuses or mitigates the errors and the time and leave violations.

ISSUES

1. Did the Appellant's actions, as set forth in the Notice of Final Action, occur as alleged warranting disciplinary action?
2. If so, was the discipline imposed upon the Appellant just and appropriate under the circumstances?
3. Were there violations of ADA or FMLA that affect the disciplinary proceedings?

DISCUSSION

There is substantial evidence that the Appellant's actions as alleged in the Notice of Final Action did occur as alleged and did warrant disciplinary action. There is substantial evidence that numerous, significant and serious errors were made by the Appellant in taking, documenting and submitting child welfare referrals. Most of the errors were admitted by Lockett. Whether the errors were caused by Lockett's carelessness or her unfamiliarity with the data system makes little difference. DHS has proven, by a preponderance of the evidence, that the actions of the Appellant in committing these errors constitute Unsatisfactory Performance, Neglect of Duty and Conduct unbecoming a public employee as those terms are defined by DHS Policy DHS: 2-1-7. These actions warrant disciplinary action. There was not sufficient evidence that Appellant's

actions constituted Misconduct – Willful failure as that term is defined by DHS Policy DHS: 2-1-7 in that the Appellee has not shown that the actions of the Appellant in making these errors was willful; however, this makes little difference in the outcome given the other numerous violations.

There is also substantial evidence that the time and leave violations did occur as alleged. In general, the Appellant did not deny the majority of those allegations. The only evidence to refute these allegations is the testimony of two witnesses who each indicated that they called in sick for Lockett, but neither could recall the month or the week of the call much less the date or time. DHS has proven, by a preponderance of the evidence, that the actions of the Appellant in falsely reporting her time worked and leave and in failing to report her tardiness or absences constitute Misconduct – Violation of time and leave policy, Neglect of Duty, Misconduct – Dishonesty and Conduct unbecoming a public employee as those terms are defined by DHS Policy DHS: 2-1-7. These actions warrant disciplinary action.

Having found that Appellant's actions, as set forth in the Notice of Final Action, did occur and warrant discipline, the next issue is whether the discipline imposed upon the Appellant just and appropriate under the circumstances? It is clear from the testimony and evidence that the errors committed by the Appellant in the referral process could have had serious, possibly deadly, consequences for the children of Creek County. It is also clear that incorrect or fraudulent use of time and leave is a very serious offense.

Appellant offers two responses as mitigation for her conduct. The first response is that the referral errors were simple errors due to her unfamiliarity with the data system. She further alleges that DHS did not provide the proper training on the KIDS system. However, there is no evidence that Lockett ever requested additional training or indicated that she was unable to use these systems. Review of Lockett's PMP from her previous assignment in Osage County indicates that a "critical" part of her job was to input necessary documentation in the KIDS system. Her opening PMP in Creek County also refers to a 95% accuracy in KIDS documentation and accurate research on other DHS data systems the same day as the referral. Also, many of the errors were contained on the hand-written referral forms as well as in the KIDS system. The evidence clearly and substantially supports DHS' allegations that the errors were a result of carelessness rather than unfamiliarity with the data system.

Lockett also alleges that her actions were as a result of her deteriorating health conditions. Even if this were the case, Lockett still must be able to perform the essential duties of her job. When these incidents occurred, Lockett was working as a Child Welfare Specialist and receiving wages. Lockett also fails to acknowledge the seriousness and the consequences of her errors. The undersigned has considered the facts and circumstances of this case, the testimony of the witnesses and Lockett's prior disciplinary actions of a Written Reprimand in October of 2005 and a Suspension without Pay in March of 2007. Based upon the entire record, it is clear that DHS has met its burden of proof that the discipline imposed was just and appropriate.

Lockett's arguments that DHS violated ADA and FMLA are not supported by the evidence. Lockett failed to provide any documentation that she had been denied ADA accommodations or FMLA during this period of time. Although FMLA was approved for periodic doctor's visits, there is not sufficient evidence that she properly reported her absences. She did not request extended leave – she was reporting to work, albeit sporadic and tardy at times. Lockett's allegations about violations of ADA and FMLA are without merit.

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 states that the Appellee DHS 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. 74 O.S. §840-6.5 and Merit Rule 455:10-11-17 state that a permanent classified employee may be discharged for the reasons of 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. DHS Policy DHS: 2-1-7. Discipline further defines those terms as causes for disciplinary actions.
6. The preponderance of the evidence shows that Lockett's actions constituted Unsatisfactory Performance, Neglect of Duty, Conduct unbecoming a public employee Misconduct – Violation of time and leave policy, and Misconduct – Dishonesty as those terms are defined by DHS Policy DHS: 2-1-7.
7. Appellee, DHS, has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Lockett for her actions as set forth in the Notice of Final Disciplinary Action.
8. Appellee, DHS, has not met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Lockett for her actions as Misconduct – Dishonesty as set forth in the Notice of Final Disciplinary Action.
9. Appellee has met its burden to prove, by a preponderance of the evidence, that the discipline of discharge imposed was just under the totality of the circumstances.
10. There is no evidence that DHS violated ADA or FMLA as alleged by the Appellant.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant Jackie M. Lockett, MPC 08-022 be DENIED.

This Order entered this 28th day of January, 2008.



Lydia Lee
Administrative Law Judge

