

June 9, 2008 was devoted to evidence and testimony on the issue of the remaining oral and written reprimands.

On March 13, 2008, the hearing began and the sworn testimony of witnesses was presented, along with exhibits. Regarding the exhibits, Appellee's Exhibits 1, 2, 11 and 16 were presented and admitted are incorporated herein and made a part hereof. Appellant did not offer any exhibits and none were admitted. At the end of the hearing on March 13, 2008, the undersigned announced to the parties that Appellant had not met her burden of proof regarding the lack of mid-year reviews. The undersigned further announced that the meetings between Hiller and her supervisors in November, 2006 and January, 2007, separately and together, constituted a sufficient review of Hiller's accountabilities and behaviors and gave her sufficient information of the expectations and duties that formed the basis of her PMP, thereby satisfying the requirements of 74 O.S. § 840-4.17. On June 9, 2008, the second day of the hearing began and the sworn testimony of witnesses was presented, along with exhibits. Regarding the exhibits, Appellee's Exhibits 1, 5, 7, 8, 9, 11, 13, 14, 15 and 16 were presented and admitted are incorporated herein and made a part hereof. Appellant did not offer any additional exhibits and none were admitted. At the conclusion of the evidentiary hearing on June 9, the parties were given an opportunity to submit written summations and arguments for consideration. Those were timely filed by each party by the deadline of June 25, 2008. Due to out-of-state travel, those summations were not received by the undersigned until July 7, 2008 and the record was closed as of that date.

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

Appellant Hiller was a classified employee of DHS, employed as an Administrative Tech III. On October 9, 2006, Hiller's Performance Management Process evaluation (hereinafter "PMP") for the period of July 5, 2005 to June 30, 2006 was closed out. Hiller received an overall accountability rating of "Does Not Meet Standards" and an overall performance rating of "Does Not Meet Standards". On October 16, 2007 Hiller's PMP for the period of July 1, 2006 to

June 30, 2007 was closed out. Again, Hiller received an overall accountability rating of “Does Not Meet Standards” and an overall performance rating of “Does Not Meet Standards”. The PMP forms for both of these periods do not contain signatures for the initial planning meeting or for the mid-year review. (Appellee’s Exhibits 1 and 2).

In August, 2007, Hiller received an Oral Reprimand for her actions at a July 19, 2007 staff meeting. This oral reprimand was documented by a memo from Martha Pryor. (Appellee’s Exhibit 9). On August 15, 2007, Hiller received a Written Reprimand from Martha Pryor as a result of her failure to timely submit weekly time reports for area workers, failing to re-schedule and attend a missed training session and refusing or failing to perform notary services for the area workers.

Hiller filed a grievance (GVC#08-09) with DHS. After investigation, Linda Smith responded with a Grievance Decision dated September 27, 2007. Smith did not rescind the Oral Reprimand concerning Hiller’s behavior at a July 19, 2007 staff meeting or the Written Reprimand of August 14, 2007 concerning the untimely time reports, the failure to reschedule training as directed by her supervisor and refusing to perform notary services. Smith also found that there were sufficient mid-year review meetings conducted with Hiller. (Appellee’s Exhibit 14). On October 19, 2008, Smith issued an Addendum Decision to address HIPAA violations, retaliation and a second written reprimand, dealing with unsatisfactory performance. Smith found no HIPAA violations occurred and that there was no evidence of retaliation, although there was a contentious working relationship. Finally, Smith rescinded the second Written Reprimand dealing solely with unsatisfactory performance due to lack of documentation. (Appellee’s Exhibit 15). Hiller appealed the Grievance Decisions and these proceedings were held.

At the hearing on March 13, 2008, Hiller was charged with the burden of proof in this alleged violation appeal³. Martha Pryor, Amy White, David Johnson and Willa Hiller testified regarding the PMP process and the meetings that were held on November 1, 2006 and January 25, 2007. There was substantial testimony that during both of these meetings, Hiller’s job duties were discussed, as well as her progress and any problems that were occurring. There was also much discussion of the new protocols that Hiller was given and the new process for redacting confidential information. (Appellee’s Exhibit 11). Each witness indicated that Hiller stated that

³ OAC 455:10-9-2(f)(2)

she understood the instructions and had no confusion as to the information discussed. While there was some evidence of sloppy completion of the PMP forms, that fact alone does not result in a violation of the law. It is clear that Hiller was given ample information about her duties and her supervisor's expectations. Hiller's testimony was extremely evasive at times, and she had to be admonished to answer posed questions on several occasions. At the end of the testimony, the undersigned announced that Hiller had not met her burden to prove that a violation had occurred and that the meetings in November, 2006 and January, 2007 were the equivalent of mid-year reviews.

On June 9, 2008, the hearing continued, limited to the issues surrounding the oral and written reprimand. DHS argued that the Executive Director's decision referring the case for hearing was limited to only whether there had been a violation concerning the PMP evaluation and that since that issue had been resolved in DHS's favor, further hearing was inappropriate. While agreeing that Hiller was not entitled to an "adverse action" appeal⁴, the undersigned found she had alleged a violation of the law and Merit Rules, and was entitled to a hearing on that issue. Hiller offered her own testimony and the testimony of Linda Smith, Gail Patton, Linda Foster, Martha Pryor and Karen Poteet. DHS offered the testimony of Katrina Hasty and Amy White.

Regarding the oral reprimand, the evidence clearly shows that on July 19, 2007, Hiller entered a unit staff meeting late, was disruptive, rude and disrespectful to her supervisor and her co-workers and left the meeting early. This finding is supported by the testimony of Martha Pryor and Katrina Hasty. Several employees, Kyla Garza, Katrina Hasty and Robin Gibson, sent unsolicited written complaints about Hiller's rude, disruptive and inappropriate behavior at this meeting. (Appellee's Exhibit 8). The evidence concerning Hiller's behavior at this staff meeting is consistent and supports the discipline imposed. Hiller essentially admits that her behavior was inappropriate, but states that she was reacting to racially offensive comments made about another person or "mirror imaging" other staff. Hiller also admitted to the disturbance, stating that she was trying to "break up some of the unnecessary noise". (Appellee's Exhibit 16). Rather than pointing out that the comments were not appropriate or were offensive, Hiller chose to "react" by rudeness and inappropriate behavior. Further, the allegedly offensive remarks that Hiller

⁴ 74 O.S. §840-6.5 provides that adverse action appeals are limited to appeals of demotions, suspensions or discharges.

complained of came later in the meeting and do not excuse Hiller's behavior throughout the meeting, including her disruptive and tardy entrance. Her anger and attitude was evident to all those in attendance as reflected in their complaints sent contemporaneously the same day. The burden was on Hiller and she has failed prove to prove, by the preponderance of the evidence, that there was a violation of the law and Merit Rules or a procedural defect in the grievance decision regarding the oral reprimand.

Regarding the written reprimand, there were three primary issues addressed. First, Hiller was reprimanded for failing to complete and submit the weekly time reports for the area workers. She had been given specific written direction on this issue in November, 2006, which she acknowledged receiving. (Appellee's Exhibit 11). Hiller offered virtually no evidence or testimony regarding this issue except to say that she "did her best" and that the area workers were often late giving her the reports. The written protocol specifically requires Hiller to notify her supervisor if this occurred and Hiller offered no evidence that she complied with this directive. This duty was also listed as a "critical" accountability on her PMP. (Appellee's Exhibits 1 and 2).

The second issue addressed in the written reprimand deals with Hiller's refusal to reschedule required training. The testimony and evidence shows that Hiller was excused from attending an Adoption Retreat in April, 2007 provided that she schedule and attend a meeting with Cindy Whitesell to go over the missed materials. There was some evidence that Hiller may have attempted to schedule the training, but did not follow-up to finalize it. It appears, however, that the primary reason that the training was not rescheduled is that Hiller wanted to control the time and place of the meeting. Hiller refused to travel to Tulsa as directed, and excused her failure to obtain the training as directed by stating that she had a better solution. (Appellee's Exhibit 16). The end result is that Hiller did not make up this missed training and the allegations in the written reprimand on this issue are correct.

The third issue contained in the written reprimand deals with Hiller's refusal to perform notary services for DHS. The testimony and evidence showed that DHS protocol and practice was improper regarding notarizing documents where the notary was not present when the document was signed. However, the evidence shows that Hiller did notarize these improper documents for over a year with full knowledge that it was a violation of Title 49 O.S. §113. Further, rather than bring her objections to the attention of her supervisor or any one else at

DHS, in June, 2007, Hiller simply indicated to her supervisor that she had “misplaced” her seal and was temporarily unavailable to notarize documents. DHS offered to replace the “lost” seal at DHS’s expense. On July 13, 2007, Hiller advised her supervisor that she was “electing to suspend” her notary services completely. This was also the first mention of her allegations of violations of Title 49, but no specifics were offered. On July 19, 2007, her supervisor asked for clarification of Hiller’s complaint and again requested that she provide notary services for the area. On July 20, 2007, Hiller responds with an absolute refusal to perform any notary services for DHS. (Appellee’s Exhibit 5). It is undisputed that Hiller also provided proper notary services for individuals who were present in the office and that this was a necessary job duty. Hiller’s entire response for this refusal is that DHS should have known that some of the services she was asked to perform violated Title 49. The testimony was also undisputed that once her supervisors became aware of her concern, they advised her that she was not required to notarize any signatures unless the person was present and signed in her presence. She still refused to perform all notary services. Testimony showed that DHS paid to have Hiller’s notary renewed and paid the cost of the bond. Hiller offers no basis for refusing to perform proper notary services. Providing notary services is listed as a “critical” accountability on her PMP. (Appellee’s Exhibits 1 and 2). The written reprimand addresses Hiller’s refusal to perform any notary services and is supported by the evidence in this case. Although, clearly Hiller was legally excused from improperly notarizing documents, Hiller has offered no authority to support her refusal to perform all notary services, even legitimate, proper notarial acts.

Hiller’s argument is that everything in this case revolves around her complaints regarding the improper notary acts. This is simply not the case. Once the issue was brought to DHS’s attention, it was addressed and remedied. Even Hiller’s closing argument fails to address the other issues in this case. The burden regarding the Written Reprimand was on Hiller and she has failed prove to prove, by the preponderance of the evidence, that there was a violation of the law and/or Merit Rules or a procedural defect in the grievance decision regarding the written reprimand.

Hiller alleged that the discipline was racially motivated and that she has been discriminated against. She testified that her supervisor’s references to her as “Mizz Dee” or references to her behavior as a “D thing” were racially discriminatory and showed the bias against her. There is no evidence in the record or produced by the Appellant that her agency

grievance contained these issues. Appellant has given the undersigned no basis for considering these complaints in this review of the grievance decision.

ISSUES

1. Was the mid-year review requirement of 74 O.S. § 840-4.17 satisfied by the meetings with Appellant and her immediate supervisors in November, 2006 and January, 2007?
2. If not, what is the appropriate remedy?
3. Was this issue timely appealed?
4. Did the grievance decisions of September 27, 2007 and October 19, 2007 fail to address the issues; were the decisions incorrect or did violations occur during the processing of the grievance?

DISCUSSION

As previously discussed, Hiller has the burden of proof by the preponderance of the evidence. Regarding Issue #1, 74 O.S. § 840-4.17 requires that the PMP include “a mid-term interview with the immediate supervisor for the purpose of discussing the progress of the employee in meeting the accountabilities and behaviors upon which the employee will be evaluated”. It is clear from the record that the meetings of November 1, 2006 and January 25, 2007 were held between Hiller and her supervisors to discuss her duties and performance. Even if these meetings were not reflected on the year end PMP, the facts is that they did occur and were documented elsewhere. Hiller fails to offer any evidence as to how she may have been prejudiced by DHS’s failure to document these meetings on the PMP form. Further, since Hiller’s accountabilities and behaviors did not significantly change from year to year, she is unable to show that she was rated unfairly or upon standards that she was unaware of. The two meetings satisfy the requirements of 74 O.S. § 840-4.1 and Hiller’s alleged violation complaint on this issue is without merit. As a result of this conclusion, Issues #2 and #3 are moot.

Regarding Issue #4, Hiller has failed to prove that the grievance decisions of September 27, 2007 and October 19, 2007 failed to address the issues, that the decisions are incorrect or that violations occurred during the processing of the grievance. Hiller’s attitude towards her

supervisors and co-workers is clear from a reading of her responses in this case. (Appellee's Exhibit 16). The evidence that Hiller did present is more in the way of mitigating circumstances which does not address the burden with which she was charged.

The undersigned has considered the facts and circumstances of this case and the testimony of the witnesses. Given the totality of the circumstances, the Appellant has failed to prove that a violation of the Oklahoma Personnel Act or the Merit Rules has occurred.

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. §840-6.6 and Merit Rule 455:10-9-2 provides that the Appellant Willa Hiller has the burden of proof in an alleged violation action and must prove by a preponderance of the evidence that a violation of the Oklahoma Personnel Act or the Merit Rules has occurred.
4. 74 O.S. §840-6.5 limits adverse action proceedings to appeals of classified employee who have received discipline in the form of suspension without pay, demotion or discharge. The discipline imposed of an oral reprimand and a written reprimand does not entitle Appellant to an adverse action appeal of her discipline.
5. 74 O.S. § 840-4.17 requires a mid-term interview with the employee's immediate supervisor for the purpose of discussing the progress of the employee in meeting the accountabilities and behaviors upon which the employee will be evaluated and that this requirement was satisfied with the meetings of November 1, 2006 and January 25, 2007 between Hiller and her supervisors.
6. The Appellant, Willa Hiller has failed to prove by a preponderance of the evidence that there were violations of the Oklahoma Personnel Act or the Merit Rules regarding the mid-term interview requirements of 74 O.S. § 840-4.17 and her appeal on that ground is denied.
7. The Appellant, Willa Hiller has failed to prove by a preponderance of the evidence that there were violations of the Oklahoma Personnel Act or the Merit Rules regarding the imposition

of discipline in the form of an oral and a written reprimand and her appeal on that ground is denied.

8. The Appellant, Willa Hiller has failed to prove by a preponderance of the evidence that the grievance decisions were incorrect or that violations occurred during the processing of the grievance and her appeal on that ground is denied.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant Willa D. Hiller, MPC 08-049 be DENIED.

This Order entered this 16th day of July, 2008.



Lydia Lee
Administrative Law Judge