



Prior to the hearing, the undersigned heard argument on Appellee's Motion for Partial Summary Judgment seeking dismissal of Appellant's claim of retaliation as untimely filed. Appellant argued that a pattern of retaliation existed, and listed 17 incidents as evidence of such a pattern, the last act of which occurred within 20 days of her filing her appeal. It was this last act, Appellant claimed, that made her aware of the pattern. Appellee argued that Appellant's claim is not credible, nor consistent with her previous statements. Further, argued Appellee, Appellant had previously filed a grievance on this same matter that was denied as untimely filed. This appeal was not filed within the requisite 20 days after her grievance was denied.

The undersigned reserved ruling on Appellee's Motion for Partial Summary Judgment and hearing was held on both appeals.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with exhibits, which 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 Child Support Specialist II at the El Reno Child Support Enforcement Office where she has been employed approximately four years. As a Child Support Specialist, Appellant is responsible for providing child support services to children and custodial parents, including monitoring payments for enforcement, conducting pre-settlement conferences, appearing in court as a witness, calculating

arrearage amounts and, in consultation with her supervisor and/or attorneys, initiating enforcement actions in delinquent cases. (Joint Exhibit 34) The El Reno office has 9 to 12 full time employees, including supervisor Carl Moaning, reviewing supervisor Anna Moore, and managing attorney Barbara Hatfield.

Rachael Ann Stone is a custodial parent, divorced with two children, and has been a client of the Child Support Enforcement Division for four years. In early 2007 Ms. Stone was assigned to Appellant's caseload. Ms. Stone's ex-husband had changed jobs and was behind on his child support payments. In about August 2007 Ms. Stone provided Appellant with the name and address of his new employer so that an income assignment could be filed with his new employer to satisfy his support obligations. Appellant did not file the income assignment. However, Ms. Stone's ex-husband, Mr. Moroz, did file a Motion to Modify his child support payments. The motion was scheduled to be heard on December 18, 2007.

Prior to going before the judge on the motion, the parties met with Appellant for an attempted settlement. During the discussion, Appellant learned that while Ms. Stone had all her evidence of salary, expenses and delinquent payments with her for the hearing, Mr. Moroz had no evidence with him. Appellant announced that Ms. Stone would "kill him in court" if he had no supporting evidence, and suggested they reschedule the hearing. When Ms. Stone objected to the rescheduling, she was asked to leave the room so Appellant could talk privately with Mr. Moroz. When she was brought back into the room, Ms. Stone was told that Mr. Moroz had withdrawn his Motion to Modify, there would be no hearing, and she was instructed to sign an agreement to continue the current support amount.

As of January 25, 2008 Ms. Stone had still received no support payments from her ex-husband and Appellant was not responding to her phone calls. When Appellant did respond to Ms. Stone, she indicated that the income assignment still had not been filed and that it would take 90 days before she could get a court hearing on the arrearages. On February 6, 2008 Ms. Stone filed a complaint against Appellant requesting reassignment to a new case worker, and alleging bias and unethical and unprofessional conduct in Appellant's handling of her case. (Joint Exhibits 20 and 25)

On January 31, 2008 Appellant attended a training class in Norman, Oklahoma on *Preparing and Calculating Arrears Computations*. Although her supervisor, Carl Moaning, had given her permission to attend the class, the class was full and Appellant was notified that she could not attend, but that her name would be placed on a waiting list for the next class. (Joint Exhibit 24) Appellant chose to attend anyway. Weather that day was very bad and many who registered for the class were unable to attend. Class participants agreed to move at an accelerated pace to finish the day early and leave before the weather and road conditions grew worse.

Class had already begun when Appellant stuck her head in the door and interrupted class three times claiming she was looking for other classes, before she was told she could stay in that class. Once in class, Appellant had difficulty keeping up, and continually interrupted instruction by making inappropriate comments, asking numerous questions, and seeking assistance with her computer. At one point, Appellant asked "What if I was a dumb fuck CP [Custodial Parent]?" Instructors Lisa Ellington and Courtney Garnand testified that Appellant's constant disruptions were so irritating and unprofessional that the other students were visibly frustrated and annoyed and

commented about her during the breaks and in their class evaluations. Had the class continued past lunch, Ms. Ellington indicated she would have asked Appellant to leave. When she returned to her office after the class, Ms. Ellington reported to her supervisor Appellant's inappropriate behavior and later, along with Courtney Garnand, wrote a memo to document that behavior. (Joint Exhibit 27)

Ms. Ellington and Ms. Garnand were not the only two who were disturbed enough about Appellant's behavior to report it to their supervisors. Melanie Simmons, staff attorney from Duncan and a participant in the class, reported Appellant's behavior and language to managing attorney Linda Monroe in Chickasha. Ms. Simmons testified that Appellant's interruptions were excessive, not on-point with the instruction, and were so erratic that some class participants speculated that perhaps she had been drinking. In her written account, Ms. Simmons indicated that she was struck by Appellant's "utter lack of professionalism and appropriateness" and her "use of profanity" ["fuck"] during one of her disruptions. (Joint Exhibit 26)

Appellant's propensity toward disruptive behavior was not limited to the training class in Norman. Appellant was the source of constant conflict in the El Reno office, as well. Co-workers Heidi Renee Albrecht Honeyfield, Taryn Beth Wade, and David Sternlof all testified that Appellant created issues in the office with her constant complaints and tried to get everyone involved in her office complaints. Ms. Honeyfield testified that Appellant created conflicts with co-workers and with her supervisor, and that these constant, on-going confrontations led many of the office employees to discuss filing a grievance because of the hostile work environment created. Ms. Honeyfield described Appellant as a constant complainer, arguing with Supervisor

Moaning about office policies and procedures, as well as his instructions concerning the handling of cases and methods of computation. Ms. Wade, whom Appellant called as her witness, described Appellant as argumentative, arrogant, difficult, combative and insubordinate. Appellant initiated arguments and kept them going, refusing to let them die. According to Ms. Wade, Appellant could also be unnecessarily mean and nasty.<sup>1</sup> Mr. Sternlof, also Appellant's witness, described her as difficult to get along with, arrogant, argumentative, sometimes bossy, and insubordinate to Supervisor Moaning. According to Mr. Sternlof, Appellant works to undermine Supervisor Moaning and attempts to get co-workers involved on her side.

In fact, it is not uncommon for Appellant to question, argue, and complain about any direction or instruction given her by her supervisor, Carl Moaning, and to carry these complaints to managing attorney Barbara Hatfield. Testimony from Appellant's own witnesses, along with the numerous e-mails sent by Appellant to Ms. Hatfield, seemed to indicate that Appellant was dissatisfied with just about every directive that came from supervisor Carl Moaning. Not only was Appellant quick to complain to Ms. Hatfield, often by-passing supervisor Anna Moore, she also tried to involve unwilling co-workers in her complaints against Mr. Moaning. (Joint Exhibits 18, 19, 22, 32, 38-31; 38-32; 38-60) Ms. Honeyfield specifically told Appellant that she did not want to be involved in her disputes. Nonetheless, Appellant left copies of the complaint she lodged against Mr. Moaning with her and asked Ms. Honeyfield to read it. (Joint Exhibit 32)

When Mr. Moaning instituted a policy requiring workers to wear headphones when listening to their music, Appellant protested to Ms. Hatfield and pressed to have

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<sup>1</sup> Ms. Wade testified that Appellant called her numerous times prior to the hearing to discuss her testimony and told her, "If you have anything bad to say about me, then fuck you."

the issue discussed in staff meeting. (Joint Exhibits 5 and 7) Instructions not to rearrange the office cubicle were ignored by Appellant and resulted in more complaining e-mails to Ms. Hatfield concerning the situation. (Joint Exhibits 21, 38-4 to 38-8) Appellant was reluctant to follow instructions to obtain approval from supervisor Moaning to participate in training classes. (Joint Exhibits 38-23, 38-38) When Mr. Moaning gave her direction concerning her handling of cases, Appellant again sought intervention from Ms. Hatfield.<sup>2</sup> (Joint Exhibits 29, 33, 38-58)

Appellant's work performance is less than exemplary. During her initial training by Ms. Wade, Appellant had difficulty grasping concepts that others understood, repeatedly asked the same questions, and had problems in learning the job that no one else trained by Ms. Wade had. During the training session on January 31, 2008 Appellant exhibited similar difficulties in grasping the subject matter. Her difficulty in learning the job was expressed in the quality of her work. Mr. Moaning indicated that the quality of Appellant's work product was the lowest in the office. Additionally, Appellant was disrespectful and disdainful of her clients, refusing to answer clients' phone calls; often referring to the women as bitches; speaking discourteously to clients on the phone; asking inappropriate questions about the sexual orientation of ex-spouses; giving legal advice to clients; exhibiting bias in dealing with clients and their ex-spouses; and exhibiting overall poor judgment in the handling of her cases.

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<sup>2</sup> The larger problem here is the failure of leadership by the managing attorney, who has allowed one manipulative employee to undermine her supervisor and create havoc in the work environment.

## DISCUSSION

Appellant claims that she is the victim of retaliation in violation of her Whistleblower rights, and has listed numerous "grievances" as evidence of a pattern and practice of retaliation culminating in her five day suspension without pay. Prior to the hearing, Appellee moved for partial summary judgment on the grounds that this allegation is untimely appealed. Ruling on the motion was reserved. Assuming facts most favorable to Appellant, the undersigned now denies the motion and considers the claim on its merits. Considering all the evidence presented, Appellant has failed to establish facts that would sustain her claim.

As a threshold matter, none of the acts alleged by Appellant fall within the protection of the Whistleblower statute. There was no disclosure of public information; no reported violation of state or federal law, mismanagement, waste of public funds, abuse of authority or danger to public health; no discussions of agency operations or functions with the Governor, legislature, media, or persons able to investigate or correct the situation. Appellant's argument that her reporting to managing attorney Barbara Hatfield her complaints concerning supervisor Moaning falls within the purview of the Whistleblower protection is erroneous. Supervisor Moaning's actions were not "agency operations or functions". All of the complaints alleged by Appellant were personal grievances not issues affecting public policy or issues of importance to the public.

Even assuming, *arguendo*, that the Whistleblower protection is applicable, the acts alleged were not discriminatory or retaliatory in nature. Many of the acts Appellant alleges as discriminatory and retaliatory applied uniformly to all the staff, not just to Appellant. The requirement to wear headphones when playing their radio; the

placement of the worker's computer in their cubicle; the ergonomic evaluation by Gregg Lott; reassignment of cases of a departing co-worker – all of these complained of grievances applied, not only to Appellant, but to all the workers in the office. Securing of Appellant's desk to the partition was not a retaliatory act, but was performed by engineering to help secure the partition with the attached heavy bookcase. The same was done to David Sternlof's desk, for the same reason. Contrary to Appellant's allegation of retaliation, Appellant's witnesses David Sternlof and Taryn Beth Wade both testified that it appeared to them that Appellant was given preferential treatment, in the tolerance with which her continual complaints, demands, and insubordination were met and the fact that Appellant was selected to receive the cubicle that two other co-workers had requested.

Based on a preponderance of the evidence presented at the hearing, the undersigned Administrative Law Judge finds that just cause exists to support Appellee's allegations concerning Appellant's five day suspension without pay for violating DHS policies concerning willful failure to follow established DHS policy and/or failure to complete required forms and reports (DHS: 2-1-7(i)(2)(B)); willful disobedience by disregarding or refusing to comply with supervisory directives (DHS:2-1-7(i)(2)(D); insubordination by exhibiting a course of conduct evidencing disrespect, disdain or contempt for her supervisors (DHS:2-1-7(i)(2)(E); discourteous treatment of clients, other employees, and the general public (DHS:2-1-7(i)(2)(H). Appellant had previously received an oral reprimand and written reprimand for similar violations.

## CONCLUSIONS OF LAW

1. Any findings of fact that are properly conclusions of law are so incorporated herein as conclusions of law.
2. Merit Rule 455:10-11-14 states that a permanent classified employee may be suspended without pay for misconduct, insubordination, willful violation of Merit Rules, conduct unbecoming a public employee, and any other just cause.
3. Merit Rule 455:10-9-2 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 the action taken.
4. DHS:2-1-7(i)(2) states that an employee may be disciplined for misconduct, including (B) willful failure to follow DHS policy, to attend training, and to complete required reports and forms, (D) willful disobedience to supervisory directives, (E) insubordination as conduct evidencing disrespect, disdain, or contempt of supervisors, or other proper authority, and (H) discourteous treatment of clients, other employees or the general public.
5. Appellee, Department of Human Services has met its burden to prove, by a preponderance of the evidence, that the five day suspension of Appellant, Patricia Tubb, was just under the circumstances.
6. Merit Rule 455:10-9-2 states that the Appellant bears 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 Merit Rules occurred.
7. 74 OS §840-2.5 and Merit Rule 455:10-3-6 prohibits disciplinary action taken against an employee for (1) disclosing public information, (2) reporting violation of

state or federal law, mismanagement, gross waste of public funds, abuse of authority, or a substantial and specific danger to public health or safety, (3) reporting such information without giving prior notice to the employee's supervisor, or (4) discussing operations and functions of the agency with the Governor, legislature, or persons with authority to investigate or initiate corrective action.

8. Appellant, Patricia Tubb, has failed to meet her burden to prove, by a preponderance of the evidence, that her rights under the Oklahoma Personnel Act or Merit Rules have been violated.

**ORDER**

***IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED*** by the undersigned Administrative Law Judge that the adverse action appeal of Appellant, MPC 08-153, is hereby **DENIED** and the five-day suspension without pay is sustained.

***IT IS FURTHER ORDERED, ADJUDGED, AND DECREED*** that the alleged violation appeal of Appellant, MPC 08-160, is hereby **DENIED**.

DATED this 15<sup>th</sup> day of October, 2008.



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Annita M. Bridges, OBA # 1119  
Administrative Law Judge  
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