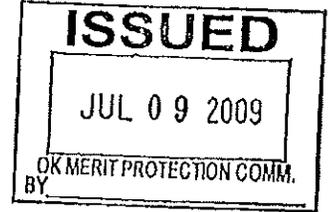


OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA



LILY N. BLUM,)
)
 APPELLANT,)
)
 v.)
)
 OKLAHOMA DEPARTMENT)
 OF VETERANS AFFAIRS,)
)
 APPELLEE.)

CASE NO. MPC-08-194

FINAL ORDER

Hearing on this matter was held June 24, 2009, before the duly appointed, undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. Present at this hearing was Appellant who was represented by her attorney, Philip Watson. Present for Department of Veteran Affairs (hereinafter "Appellee" or "ODVA") was Assistant Attorney General William O'Brien. Also present for Appellee was table representative Cindy Adams.

Appellant was employed by Appellee as a Patient Care Assistant I ("PCA") working at the Oklahoma Veterans Center in Claremore, Oklahoma ("the Center") at the time of her discharge on May 27, 2008. Appellant was discharged for misconduct, insubordination, inefficiency, and willful violation of the Oklahoma Personnel Act as well as failure to fulfill the duties of her position and failure to devote full time, attention and effort to the duties and responsibilities of that position. Specifically, Appellant engaged in unprofessional and disruptive behavior on May 10 and 11, 2008, while on duty at the Center.

Whereupon the hearing began and the sworn testimony of witnesses for Appellee and Appellant was presented, along with exhibits, which were admitted and are incorporated herein and made a part here.

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

On Saturday, May 10, 2008, Tonia Ward, a Senior Nurse Aide was on duty at the Center. Around two o'clock a co-employee, Marenda Boles, came to Ms. Ward's unit to talk to a third employee, Dee Copeland. While Ms. Boles and Ms. Copeland were talking, Appellant, who was also on the unit at the time, became very loud and started yelling that she did not want to be in the middle of anything between Ms. Boles and Ms. Copeland.

Ms. Ward has worked as a Nurse Aide for twelve years and has worked with the Appellant for four to five years. During that time, Ms. Ward has observed Appellant being loud, hysterical, and prone to yelling. Ms. Ward has observed that patients at the Center, especially Alzheimer's patients, become very upset when Appellant becomes loud or yells, and some patients have asked the Appellant to be quiet. Ms. Ward has talked to her supervisor about Appellant's behavior several times.

Ms. Boles remembers that on May 10th, she was told that Ms. Copeland was crying over a situation involving Ms. Boles so she went to Ms. Copeland's unit to find her. When Ms. Boles arrived, Ms. Copeland was not crying and was not upset. Appellant then walked up to Ms. Boles and Ms. Copeland, began waving her arms in the air and yelling that she was "not involved in this".

Ms. Boles has also worked with Appellant and has observed that Appellant will purposely cause friction between other aides, tell people things which are not true, and "blow situations out of proportion". Ms. Boles has observed that Appellant's behavior disturbs the Alzheimer's patients and Ms. Boles has talked to her supervisor about Appellant's behavior.

Supervisor Kathleen Phipps is a R.N. III, who oversees the unit where Appellant worked. On May 10th, Appellant approached Ms. Phipps and told her that Ms. Boles had made Ms. Copeland cry. Supervisor Phipps went to investigate and found Ms. Boles and Ms. Copeland talking. Ms. Copeland was not crying and was not upset. Appellant, however, became very agitated and began yelling about "harassment" and stating she needed to go home. Supervisor Phipps attempted to get Appellant to calm down and then allowed Appellant to go home.

During the course of her duties, Supervisor Phipps had supervised Appellant. She noted that while Appellant's nursing skills were good, Appellant was loud and talked constantly which was especially disturbing to the dementia patients. Appellant would start a task and not finish it and Appellant had also started rumors that other employees were not doing their work. On one occasion, Appellant had talked to the family of a patient about that patient's medical information, which was improper and outside the scope of her duties.

Judy Mallicoat has been a LPN at the Center for twenty years and on May 10th, she was at the nurses' desk when Ms. Boles came onto the unit. While Ms. Boles was

talking, Appellant started yelling and told Ms. Mallicoat to call for the supervisor. Ms. Mallicoat told Appellant to calm down and take a break and Appellant left the unit.

Ms. Mallicoat has worked with Appellant and has observed that Appellant would leave the unit during working hours. She also observed that Appellant was very loud around patients which was upsetting to those patients.

Tara Western worked as an LPN II at the Center for one year. On May 10th, Mrs. Western observed Ms. Boles and Ms. Copeland speaking to each other when Appellant came down the hall towards them, yelling. Mrs. Western heard a patient on the unit at the time yelled at Appellant to "shut up". Mrs. Western was present when Supervisor Phipps arrived and attempted to calm down Appellant.

Mrs. Western began working with Appellant in May 2008 and observed that Appellant talked all the time, was very loud, and made patients restless and nervous.

On May 11, 2008, a second incident involving Appellant took place at the Center. On that day, Appellant told Ms. Ward, Ms. Mallicoat and Fire Prevention Security Officer Keith Lewis that Mrs. Western's husband (a physician) had killed the Appellant's husband's first wife. Mrs. Western was also told Appellant had made that statement to other employees at the Center. Later that day, Ms. Western was discussing another matter with Supervisor Phipps when Appellant walked by and randomly yelled at them "it is a lie".

Cindy Adams has worked at ODVA for thirty-three years and for eight years has been the Administrator of the Center.

During her time as Administrator, Ms. Adams had numerous discussions with Appellant regarding her behavior and regarding complaints about Appellant from staff, from patients, and from the families of patients. In spite of those discussions, Appellant's behavior did not change and Ms. Adams was forced to move Appellant frequently to different units because other staff did not want to work with Appellant.

Although the Appellant was disciplined frequently regarding her behavior, none of the corrective actions remedied the situation. During the three years prior to Appellant's discharge, Appellant received the following disciplinary action:

1. August 9, 2005: corrective counseling for taking extra breaks and leaving the unit without notifying the nurse.
2. August 11, 2005: corrective counseling for use of foul language.
3. July 19, 2006: verbal warning for discussing personal life on the nursing unit.

4. July 30, 2007: informal discussion for being loud on the unit and gossiping.
5. August 22, 2007: letter of reprimand for misconduct, conduct unbecoming a state employee, and insubordination.
6. January 27, 2008: corrective counseling for arguing about assignments, failure to follow the chain of command, discussing staffing or problems in front of families and "bossing" CNA's around when on the med cart.
7. March 13, 2008: suspension without pay for one week for insubordination, misconduct, and failure to perform the duties in [sec] which employed. Appellant was assigned to another unit upon her return from suspension without pay.

In addition, on April 15, 2008 Appellant's midyear performance review indicated she had been counseled about gossiping.

When Supervisor Phipps reported Appellant's actions of May 10 and May 11, 2008, Administrator Adams believed Appellant's behavior had gone beyond gossip and was creating a hostile work environment which was hurtful to other staff and disruptive to the unit.

On May 20, 2008, Appellant was sent a Notice of Pre-termination Hearing and given an opportunity to respond. The pre-termination hearing was held on May 27, 2008 and Appellant did not attend. Appellant's attorney however sent a letter stating that Appellant denied all charges and stating she had not violated any regulations or statutes. At the conclusion of the hearing, Appellant was discharged.

At this hearing, Appellant maintains she did nothing wrong and she was not gossiping because what she said was true. Appellant maintains that on May 10, 2008, Ms. Copeland was crying about something said by Ms. Boles. Appellant testified her comment about Mrs. Western's husband was made in regards to a comment her son had made about Dr. Western and not a comment which she made directly.

Appellant believes that she was discharged because she contracted an illness while working at the Center and because she spoke out about abuse and neglect taking place at the Center. There was no evidence presented by Appellant to establish either one of these beliefs is factual.

Conclusions of Law

1. The Merit Protection Commission has jurisdiction over the parties and subject matter in the above entitled cause.
2. Any finding of fact, which is properly a conclusion of law, is incorporated herein as a conclusion of law.
3. The burden of proof in this case was placed upon Appellee, as the appointing authority, pursuant to OAC 455:10-9-2 and Appellee has met its burden of proof.
4. OAC 455:10-11-14, **Causes for Discharge, Suspension Without Pay, or Involuntary Demotion** states in pertinent part that any employee in the classified services may be discharged for misconduct, insubordination, inefficiency, willful violation of the Oklahoma Personnel Act or any of the rules prescribed by the Office of Personnel Management or by the Oklahoma Merit Protection Commission, conduct unbecoming a public employee, or any other just cause.
5. OAC 530:10-11- 91, **Conduct the classified employees** states in pertinent part that every classified employee shall fulfill to the best of his or her ability the duties of the office or position conferred upon the employee and shall behave at all times in a manner befitting the office or position the employee holds.
6. ODVA **Code of Conduct** states, in pertinent part that as a state employee and associate representing the agency, employees are expected to comply with the agency's established policies and Merit rules that affect employment. Every associate shall fulfill to the best of his or her ability the duties of the office or position conferred upon them and shall behave at all times in a manner befitting the office or position he or she holds. Associates are required to devote full time and attention to their duties during their assigned work schedule. Associates are also expected to be courteous and helpful in their contacts with veterans, family members, visitors, co-workers and the general public. Associates are expected to act in a professional manner, avoid boisterous activity or loud talk and refrain from any idle talk or gossip.
7. Appellee has established written policies and procedures for progressive discipline and has followed those policies and procedures in this matter.
8. The Appellee, Oklahoma Department of Veteran Affairs, has shown by a preponderance of the evidence that just cause existed for the discharge of the Appellant and that such discharge was proper. Furthermore, it is the conclusion of the undersigned Administrative Law Judge that the discharge of Appellant did not constitute an abuse of discretion by Appellee under the facts and circumstances of this case.

ORDER

Is Therefore Ordered, Adjudged and Decreed by the undersigned Administrative Law Judge that the appeal of Lily Blun v. The Oklahoma Department of Veteran Affairs, MPC 08-194, be **DENIED**.



P. Kay Floyd, OBA 10300
Administrative Law Judge
Oklahoma Merit Protection Commission.
3545 NW 58th Street, Suite 360.
Oklahoma City, OK 73112.
405-525-9144