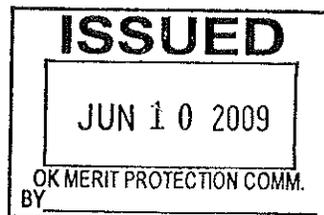


**OKLAHOMA MERIT PROTECTION COMMISSION**

**STATE OF OKLAHOMA**



PAMELA GILLETTE, )  
 )  
 APPELLANT, )  
 )  
 v. )  
 )  
 OKLAHOMA DEPARTMENT )  
 OF HUMAN SERVICES, )  
 )  
 APPELLEE. )

CASE NO. MPC-09-057

**FINAL ORDER**

Pre-Hearing was held regarding this matter on January 30, 2009 before the duly appointed, undersigned Administrative Law Judge at the offices of the Merit Protection Commission, Oklahoma City, Oklahoma. Present for Appellant was Philip L. Watson, Attorney at Law. Present for Appellee was Richard Resetaritz, Assistant General Counsel for Department of Human Services.

On May 11, 2009, Appellee filed a Motion for Summary Judgment and on May 18, 2009, Appellant filed a Response. Accordingly, after careful consideration of all pleadings and documents provided by both parties, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

**FINDINGS OF FACT**

Pre-Hearing was held regarding this matter on January 30, 2009. At that time, the parties agreed to sixty days to complete all discovery. Thereafter, the undersigned entered a Prehearing Conference Order setting the deadline for completion of discovery on March 31, 2009.

On March 4, 2009, Appellee's Request for Admissions was served by fax to Appellant with the original, signed document mailed on the same day. The certificate of mailing shows receipt by Appellant on March 6, 2009. Appellee received no response to the Request for Admissions within the 10 days specified in OAC 455:10-13-9 or prior to the discovery completion date of March 31, 2009.

On March 26, 2009, twenty days after receiving Appellee's request for Admissions and five days before the discovery completion date, Appellant faxed Appellant's Opening Discovery to Appellee. On March 30, 2009, one day before the discovery completion date, Appellee received Appellant's Opening Discovery by U.S. Mail. Appellant did not seek nor obtain from the Court, an order shortening the time for response. In addition, Appellant's document provided for a response time of forty-five days from receipt; a date which was after the date set for hearing on this matter.

On April 2, 2009, Appellee filed a Motion In Limine to Exclude Any Testimony or Evidence Contrary to Matters Admitted by Appellant's Failure to Respond to Requests for Admissions and a Brief in Support. Appellant, also on April 2<sup>nd</sup>, filed a Motion to Enlarge Discovery Response Time and Extension of Time to Submit Final Witness and Exhibit list. The Appellant did not file a request to withdraw or amend the admissions to Appellee's Request for Admissions.

On April 16, 2009, Appellant responded to Appellee's Motion In Limine stating, among other things, that Appellant had been "under a disability" since February, 2008, and due to health issues, Appellant had been unable to meet with legal counsel regarding discovery.

On April 17, 2009, the parties appeared before the undersigned and oral argument was heard regarding Appellee's Motion In Limine and Appellant's Motion To Enlarge Discovery Response Time. At that time, Appellant acknowledged that the parties had agreed to sixty days for discovery with a discovery completion date of March 31, 2009. Appellant acknowledged that at any time during the sixty day discovery period, a request for additional time for discovery could have been filed. Appellant further acknowledged that the Motion to Enlarge Discovery Response Time was filed two days after the discovery completion date. Also, although Appellant stated that Appellee's Request for Admissions had been responded to, those responses had not yet been received by Appellee as of April 17<sup>th</sup>. In addition, the Appellant had not yet responded or provided answers to Appellee's Interrogatories.

After hearing oral arguments and reviewing all pleadings filed by both parties, the undersigned granted Appellee's Motion In Limine and Appellee's Request for Admissions were deemed admitted. Appellee then withdrew its Motion for Protective Order and Appellant withdrew Appellant's Motion to Enlarge Discovery. The parties were then ordered to comply with new deadlines and a hearing date of June 19, 2009 was set.

On May 1, 2009, Appellant's attorney filed a Motion to Withdraw. A status conference was convened on May 8, 2009 at which time Appellee stated it would be filing a Motion for Summary Judgment by May 11, 2009. Appellant's attorney, Philip Watson, acknowledged he was to respond to that Motion for Summary Judgment by May 18, 2009, and he remained as attorney of record.

On May 11, 2009, Appellee filed a Motion for Summary Judgment and Brief in Support and on May 18, 2009, Appellant filed Appellant's Response to Appellee's Motion

for Summary Judgment and Brief in Support and filed a second document style "Brief in Support".

It is unclear why Appellant filed two briefs on May 18, 2009. The Response and Brief filed contained twenty-four "Propositions" twenty-two of which were Appellant's out-of-time responses to Appellee's Request for Admission.<sup>1</sup> The remaining two propositions stated that the Appellant was never given due process and that the Judge agreed on April 17, 2009 that "Appellant was still allowed to explain the answers" given in the Requests for Admissions. A review of the April 17, 2009 transcript actually shows counsel for Appellee and Appellant agreed Appellant could offer "mitigating circumstances". The Court, however, made no comment about "explaining answers".

The second Brief in Support filed by Appellant on May 18, 2009, did not present any legal authority supporting why Summary Judgment should not be granted but rather presented the Appellant's position that Appellee had purposely avoided any discussions with Appellant's counsel regarding his problems meeting discovery deadlines.<sup>2</sup>

Appellee, in its May 11, 2009, Motion for Summary Judgment and Brief in Support correctly states that its Requests for Admissions have been admitted and established pursuant to OAC 455:10-13- 9.

OAC 455:10-13-9, **Requests for Admissions** states in pertinent part:

**{a} General.** A party may serve upon any other party a written request for the admission of the truth of any matters that relate to statements or opinions of fact or of the application of law to fact...

**{b} Response.** Each matter for which an admission is requested shall be answered separately. The answer shall admit or deny the matter or state why the answering party cannot admit or deny the matter. A written response shall be made within 10 calendar days after the service of the request unless a shorter or longer time is ordered or agreed upon by the parties.

**{c} Effect of admission.** Any matter admitted is established unless withdrawal or amendment of the admission is permitted."

Appellee served Request for Admissions on Appellant within the parameters of the discovery period agreed to by the parties and set by the Court. Appellant did not answer Appellee's Request within the ten days set by Merit Rule or within the discovery period set by the Court. Appellant did not request a longer time to file responses.

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<sup>1</sup> It must be noted again that the Request for Admissions were already admitted on April 17, 2009, and no withdrawal or amendment of the admissions was requested.

<sup>2</sup> Appellant goes on in the brief to suggest what the proper behavior of Appellee would have been however, Appellant ultimately admits that none of the suggested behavior was "mandatory".

Appellant did not request withdrawal or amendment of the admissions to Appellee's Request.

The Oklahoma Supreme Court has held that unanswered requests for admissions may be a basis for granting summary judgment. *Heath v. Engle*, 2005 OK 68, 123 P.3d 1. See also *Ross v. Pace*, 2004 OK 13, 87 P.3d 593.

In addition, the material facts set forth in those requests were established when Appellee's Motion in Limine was granted on April 17, 2009. Therefore, the undersigned is entitled to rely on them in ruling on Appellee's Motion for Summary Judgment. See, *Bohm, Inc. v. Michael*, 2002 OK CIV APP 60, 46 P.3d 1286 (Div.4 2002)

Accordingly, those admissions serve as the record actually presented and the undersigned finds that the admissions cover all of the elements of Appellee's cause of action. Specifically, the admissions are:

"1. Appellant lied to Pam Gee and to Christi Edwards by claiming to be engaged in work related activity on the morning of January 15, 2008.

2. Appellant on January 9, 2008, spent a \$75 Oklahoma Department of Human Services ("OKDHS") clothing voucher intended for the use of D.J. on clothing to be used by Appellant.

3. Appellant spent a \$40 Christmas gift card intended for D.J. to refuel Appellant's own vehicle.

4. Appellant falsely documented a case contact for December 21, 2008, in which she wrote that she had given the Christmas gift card to D.J., which [was] then placed in the Parkside office of Katherine Bishop.

5. On December 19, 2007, Appellant requested and received \$40 Wal-Mart Christmas gift cards intended for custody children D.J., C.B., B.C., K. H., D. R., T. S., D.S., and A.S.

6. On December 21, 2007, Appellant requested and received \$40 Wal-Mart Christmas gift cards intended for custody children L.S. and R.W.S.

7. Appellant never delivered or mailed the \$40 Wal-Mart gift cards obtained by Appellant on December 19, 2007, to the custodial children D. J., C.B., B.C., K. H., L. S., T. S., D.S., R.W.S., and A. S., the intended recipients.

8. Appellant never returned \$40 Wal-Mart gift cards obtained by Appellant for custody children D.J., C.B., B.C., K.C., K.H., T.S., D.S., R.W.S., and A.S., to OKDHS.

9. Appellant falsely documented in a case report on December 21, 2007, that Appellant had a face-to-face contact with B.C. at Shadow Mountain Riverside presenting the card to B.C. and that Shadow Mountain Riverside signed [a] receipt for the card.
10. Appellant gave an emptied Wal-Mart gift card to custody client B.R. at the Crewson Youth Home on December 27, 2007.
11. Appellant falsely documented in a case report of December 21, 2007, that she gave T.S. his gift card.
12. Shadow Mountain administration did not sign for receipt or place a gift card intended for T.S. from Appellant in a safe.
13. Appellant falsely documented in case report for December 21, 2007, that Appellant delivered a \$40 Christmas card and that A.S. and Shadow Mountain signed receipts for the card.
14. Custody child A.S. and Shadow Mountain administration never signed receipts for a gift card intended for A.S.
15. After the date of her discharge, Appellant entered a plea of guilty in CF- 2007- 1651, in the District Court of Tulsa County.
16. The Office of the Inspector General ("OIG") report 080116005 and its attachments are admissible in MPC 09-057.
17. Exhibit 5 to OIG report 080116005 accurately state items purchased by Appellant on the clothing voucher for client D.J.
18. Exhibit 10, 15, 16, 17, 18, 19, 20, 21, 22, and 23 to OIG report 080116005 are true and correct copies of case reports entered by Appellant and are documents kept in the ordinary course of business of OKDHS.
19. Exhibit 6 and 7 to OIG report 080116005 are true and correct copies of therapeutic passes issued by Parkside Psychiatric Hospital for January 16 and 17, 2008.
20. Exhibit 12 to OIG report 080116005 is a true and correct copy of Appellant's business card left with Ross by Appellant when Appellant sought to have tax removed for items purchase of [sic] Appellant's own use by means of a clothing voucher. "

Appellant was served with Requests for Admissions on March 4, 2009 (by fax) and March 6, 2009 (by US Mail), with ten days to respond. Appellant failed to file written answers within the ten days has specified in OAC 455:10-13-9 or prior to the Court ordered discovery completion date of March 31, 2009.

The Appellant has not, at any time, requested to withdraw or amend the Admissions to Appellee's Requests; thus, the material facts set forth in those requests were established when Appellee's Motion in Limine was granted on April 17, 2009. Therefore, the undersigned is entitled to rely on them in ruling on Appellee's Motion for Summary Judgment.

### CONCLUSIONS OF LAW

1. The Oklahoma 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 so incorporated herein as a conclusion of law.
3. OAC 455:10-13-9, **Requests for Admissions** states in pertinent part:

{c}. **Effect of admission.** Any matter admitted is established unless withdrawal or amendment of the admission is permitted.

4. OAC 455: 10-9-2, **Hearing** states in pertinent part

(h) **summary judgment:** the Administrative Law Judge may decide appeals based on summary judgment when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only question of law is involved.

5. Based on the facts admitted in this case, the Appellant committed the acts for which she was discharged. Further, there were no facts presented which proved the discipline was arbitrary or outside the scope of Appellee's authority.
6. Accordingly, summary judgment is proper in this case and based on the findings and conclusions stated above, the undersigned grants Appellee's Motion for Summary Judgment.

### ORDER

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** by the undersigned Administrative Law Judge that the appeal of Appellant Pamela Gillette, be **DENIED**.

Dated this 9<sup>th</sup> day of June, 2009



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P. Kay Floyd, OBA #10300  
Administrative Law Judge  
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