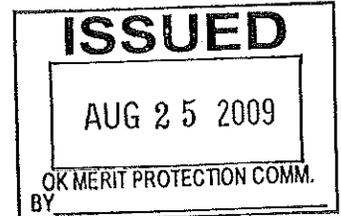


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION  
STATE OF OKLAHOMA**

JUDITH A. TARVER, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 OFFICE OF JUVENILE AFFAIRS, )  
 )  
 Appellee. )

Case No. MPC-09-089



**FINAL ORDER**

This matter came on for hearing before Jami J. Fenner, Administrative Law Judge, on August 14, 2009, at the Oklahoma Merit Protection Commission's office in Oklahoma City, Oklahoma. Appellant, Judith Tarver appeared in person. Appellee, Office of Juvenile Affairs ("OJA"), appeared by and through its counsel, Wayne L. Johnson, Assistant Attorney General, and through the party-representative, Cynthia Hollier.

Appellant is a permanent, classified employee of Appellee, appealing from an adverse disciplinary action of discharge. The undersigned heard the sworn testimony of witnesses, viewed the exhibits admitted into evidence, and heard argument from Ms. Tarver and Mr. Johnson. The undersigned admitted into evidence Joint Exhibit Nos. 1-32. After receiving all evidence and closing arguments, the undersigned closed the record on August 14, 2009.

Upon consideration of the record, the undersigned Administrative Law Judge issues the following findings of fact and conclusions of law pursuant to 74 O.S. § 840-6.7(B).

## FINDINGS OF FACT

Appellant began her employment with OJA on September 16, 2002. OJA issued its Final Notice of Formal Discipline – Discharge on September 28, 2008, signed by Gary P. Bolin, Chief of Staff, discharging Appellant effective October 3, 2008. At the time of discharge, Appellant held the position of Licensed Practical Nurse II.

According to the Notice of Proposed Action and the Final Notice of Formal Discipline, the grounds for OJA's discharge of Appellant were violation of OJA policy. Specifically, the grounds identified in the final notice are violation of OJA procedure P-03-05-801(2)(C), Violation of time and leave rules and policies, and violation of P-03-05-801(2)(Q), Dereliction of duty.

The evidence showed Appellant did not report to work after January 24, 2008, through the time of her discharge. On May 15, 2008, Appellant's physician sent a statement to OJA via facsimile, stating Appellant could return to light duty on June 23, 2008. However, other evidence (testimony and Exhibit Nos. 12, 14, 16 and 17) shows Appellant was disabled or otherwise unable to work due to a chronic health condition from January 24, 2008, through October 10, 2008, and possibly is still unable to work. Additionally, evidence showed Appellant called her supervisor on June 22 and 29, 2008, and stated she could not return to work. (Exhibit 15). Regardless, Appellant did not return to work, and OJA demanded she return to work at least once after January 24, 2008. (Exhibit 11).

OJA's progressive discipline policy provides time and leave violations include "unexcused, unapproved or excessive absences" and "[d]ereliction of duty is the failure of an employee to appear for duty for three consecutive working days" and failure to

contact the agency during that period. The evidence showed Appellant violated these policies, which constitutes just cause and is therefore a basis for discharge. Additionally, the evidence established Appellant was unable to perform the duties of her position, which also is a basis for discharge.

Based on a preponderance of the evidence, the undersigned Administrative Law Judge finds just cause exists for discipline of Appellant and the discipline imposed was just.

#### CONCLUSIONS OF LAW

1. Any finding of fact that is properly a conclusion of law is hereby incorporated as a conclusion of law.

2. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause.

3. Under the Merit Rules, the burden of proof in this matter was on Appellee to show by a preponderance of the evidence that just cause existed for the adverse action and the discipline imposed was just. OAC 455:10-9-2.

4. A permanent, classified employee may be discharged for, among other things, misconduct, insubordination, inefficiency, inability to perform the duties of the position, willful violation of the Oklahoma Personnel Act or the Merit Rules, conduct unbecoming a public employee or any other just cause. OAC 455:10-11-14.

5. Appellee has met its burden of proof that just cause existed to discipline Appellant for violating OJA procedure P-03-05-801(2)(C), Violation of time and leave rules and policies, and P-03-05-801(2)(Q), Dereliction of duty.

6. Appellee has met its burden of proof that the discipline imposed – discharge – was just.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that the decision of the OJA appointing authority to discharge Appellant is affirmed and Appellant's appeal is hereby **DENIED**.

Signed this 24<sup>th</sup> day of August 2009.



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Jami J. Fenner  
Administrative Law Judge  
Oklahoma Merit Protection Commission  
3545 N.W. 58<sup>th</sup> Street  
Oklahoma City, OK 73112