

Welfare Specialist II at the Carter County Field Operations Division. The parties stipulated that the Merit Protection Commission (hereinafter "MPC") has jurisdiction of this matter, that Harding was a permanent, classified employee of DHS, that the appeal is timely and to the application of Merit and DHS rules.

Harding is in the Permanency Planning area, which is a critical position, responsible for long-term care for the children in custody of DHS. Harding has been employed with DHS since 2005. Throughout her employment at DHS, Harding has had a series of disciplinary actions, primarily resulting from her unsatisfactory performance in keeping up the required paperwork for cases assigned to her. The final disciplinary action alleges that Harding failed to submit a required Independent Living Plan, followed by letters of complaint from the District Judge. It was also alleged that Harding failed to properly document a referral on the DHS system in a timely fashion, failing to prepare and submit court reports in a timely fashion and failed to update her supervisor about pending court appearances during a period of suspension.

On January 14, 2009, DHS provided Harding with Notice of Proposed Discipline, proposing to discharge her from her position (Appellee's Exhibit #1). This disciplinary action alleges Unsatisfactory Performance, Willful Failure, Willful Disobedience and Discourteous Treatment. The Notice included copies of the DHS policies, as well as copies of the supporting documentation (Appellee's Exhibit #2). DHS certified five (5) previous disciplinary actions including written and oral reprimands and a suspension without pay (Appellee's Exhibit #3). A pre-termination hearing was scheduled and held on February 3, 2009. The hearing was conducted by a hearing officer who concluded that Harding failed to satisfactorily perform her duties and, upon that basis, discharge was warranted (Appellee's Exhibit #4).

On February 13, 2009, DHS provided Harding with Notice of Final Discipline, discharging her from her position as a Child Welfare Specialist II effective at 5:00 pm on February 17, 2009 (Appellee's Exhibit #6). Harding appealed this action and the hearing proceeded.

The Testimony

The testimony of ten (10) witnesses, including the Appellant, was provided.

Judge Thomas Walker, a District Judge in Carter County, testified regarding Harding's professional performance in his courtroom. Judge Walker is the senior-most juvenile judge in Oklahoma, having served over 34 years on the bench. Judge Walker testified regarding the responsibilities of the DHS workers who appear before him. He testified that the DHS workers coordinate all services for the child and the family and are expected to be the most knowledgeable about the child, the parents and the situation. As such, the Judge will rely particularly upon that worker in making decisions. Judge Walker described Harding as "sub-par" and that timeliness was a huge problem for her. He stated that more than half the time, necessary required court reports were not submitted prior to hearings as required by statute. He also testified that Harding was often vague at hearings and that getting her to answer specific questions was like "pulling teeth". He said that he did not trust her judgment and that her performance significantly affected her credibility. He testified that he had seen no improvement in her performance over time and that resulted in his written complaints. (Appellee's Exhibits #7 through 11). Judge Walker provided testimony on the details of each of the written complaints. Judge Walker concluded with his opinion that no amount of training could make Harding an acceptable worker and that her deficiencies could have horrendous consequences in the life of a child. On cross-examination, Judge Walker stated that he had barred Harding from appearing in his courtroom and had only done that one other time in his career. He admitted that other workers had timeliness issues and that the workers are overloaded. He also stated that he was not aware of any actual physical harm that occurred as a result of Harding's performance.

Heather Cooper is the Assistant District Attorney in Carter County. She is assigned to all juvenile matters and has worked there since January, 2005. Cooper testified that she has worked with Harding on a regular basis and that she had tried to counsel her to improve her performance. She classified Harding's performance as "sub-standard". She stated that she has written three (3) letters complaining about Harding. Her complaints primarily are that Harding constantly gave vague answers in testimony, failed to properly report factual circumstances and often made her own decisions, ignoring the directions of others. Cooper stated that she never saw improvement in

Harding, despite instructions and coaching. She stated her opinion that children could be at risk because of Harding's inability to adequately communicate.

Linda Moore is a County Director in Carter County and was Harding's reviewing supervisor. Moore stated that on Harding's latest PMP that she received a "Does Not Meet Standards" rating. (Appellee's Exhibit # 32). She testified that she worked with Harding and her supervisors on three corrective action plans. She also participated in monthly meetings in an attempt to improve Harding's performance. She also approved a supervisory transfer for Harding from Regina Benson to Juanda Walker at Harding's request. During the monthly meetings with Harding, Moore testified that they discussed her duties and clarified expectations. She also provided a "consultant" to coach Harding on ways to improve her performance. Moore provided information about Harding's previous disciplinary history. She admitted that Harding was not the only employee with timeliness issues, but other employees seemed to improve, while Harding showed little to no improvement. Moore stated that Harding was provided training opportunities. She said that Harding admitted to being "burned out" and her supervisor recommended various methods for her to use to improve, to avoid duplication of effort and to avoid procrastination. Moore admitted that Harding had a number of supervisors during her employment. She stated that Judge Walker's complaints alarmed her. Moore supported Harding's discharge because of the numerous efforts undertaken (corrective action plans, coaching, discipline, and counseling), all of which had failed to improve her performance.

Angela Ivey was the first of Harding's previous supervisors in Carter County. When Harding was hired in 2005, she was sent to CORE training for five weeks and Harding completed her Level I training. She also shadowed other employees. She said that Harding received adequate training for a new employee. Ivey recommended that Harding be transferred from Intake to Permanency Planning.

Regina Benson supervised Harding from July, 2005 to October, 2007. She testified about the purpose of the Permanency Planning workers. Benson stated that the workers are responsible for the placement of the child, for the possibility of the reunification of the family or, in the alternative, the adoption or independent living plan for the child. Benson stated that she coached Harding throughout her supervision on

issues relating to time management and filing required court reports. She said that Harding often appeared to have her own agenda and often resisted the termination of parental rights due to her personal beliefs. Harding was also resistant to advice and direction. Benson testified that Harding had the same caseload as other employees, but could not keep up. She met with her several times a week in an effort to provide training and assistance. Benson stated her opinion that it was not in the best interest of children for Harding to be reinstated. She had personally observed Harding in court and she appeared vague and unresponsive when she should have known the answers. Benson stated that sometimes it appeared that Harding was purposefully vague when her personal opinion conflicts with Department positions. Benson discussed the grievance that Harding filed against her in 2007. Benson called Harding at home one night and her son hung up the phone on her. Harding claimed that Benson was harassing her and her son. Benson testified that she apologized to Harding and her son for any rudeness that took place. There was no finding of hostile workplace as a result of that grievance, but Benson was coached on ways to improve her performance. (Appellee's Exhibits # 18-22).

Betty Johnson became Harding's supervisor in December, 2008. She was required to attend the court hearings because of Harding being barred from Judge Walker's courtroom. Harding had failed to properly complete the necessary reports, Case Summaries and preparation for the Judge, resulting in Johnson being unprepared when she appeared in court. (Appellee's Exhibits # 13-14).

Cecil Boydston is a Field Liaison overseeing the Child Welfare Program. He filled in as Harding's supervisor from September to December, 2008. He testified that Harding's work was substandard, especially on easy tasks, compared to other workers he had supervised. In October, 2008, while Harding was on suspension, Boydston appeared in court for her. He testified that Harding failed to advise him of a crucial court hearing, which resulted in the delay of Guardianship for one child. (Appellee's Exhibit # 12). He testified that he expected much more from a "seasoned" worker.

Gary Huckabay has been with DHS for 37 years. He is the Assistant Area Director. He testified about his denial of Harding's grievance from 2007 alleging a "hostile work environment". He stated that he did find that there was room for

improvement and required Regina Benson to undergo coaching on team building, in an effort to make the unit better. Huckabay offered testimony regarding the details of Harding's previous disciplinary history, and specifically about how Harding's delays and performance deficits affected children. He also discussed how three separate Corrective Action Plans failed to improve Harding's performance. Huckabay testified that the DHS data system showed that there were 25 training sessions that Harding was supposed to attend that she either failed to show up for or that she cancelled. He admitted that Harding had had a number of supervisory changes but that her problems were not related to supervisory issues. Huckabay admitted that a grievance filed by "Mrs. M" against Harding was not processed properly, but stated that it appeared that it was resolved informally and was withdrawn. He stated that in any event, that grievance was not used as part of the final discipline.

Marie McCormick is the Area II Field Operations Director, which includes supervision of Carter County. She testified that she was the decision maker in this disciplinary action. She considered all of the information and Harding's history in coming to a final decision to discharge her.

Evronia Harding testified that she had not had a job since her termination in February, 2009. She provided her explanation of the events detailed in the Notice. (Appellee's Exhibit # 6). She stated that the Independent Living Plan that was cited in paragraph (1) was not her responsibility and the Plan was not completed because her supervisor failed to properly transfer the case. Harding stated that the referral listed in paragraph (2) was never necessary, that the children were never at risk. She also stated that the referral was completed a day late because she was unfamiliar with the "KIDS" system. Harding admits that the allegations in paragraph (3) were correct and that she failed to report a court date to her supervisor, but claims that she was under stress from the impending suspension. Harding testified that she was intimidated by going to court and that she had to fight for her job from the beginning. As a result, she stated that she tended to "over-think" and delayed completion of her duties. Harding testified that she believed that she did not receive proper training and that she could do the job properly if she was not so overworked. Harding did not recall the previous written reprimands and admitted that she never paid much attention to the prior disciplinary actions because she

was just “too tired”. Harding concluded that all of the other witnesses’ testimony was inaccurate.

ISSUES

1. Did DHS have just cause to impose discipline against the Appellant?
2. If so, was the action taken by DHS in terminating her employment appropriate under the circumstances?

DISCUSSION

Each witness detailed deficiencies in Harding’s performance. There is substantial evidence that statutorily required reports were not being completed by Harding in a timely manner, and in some cases, were not being done at all. By all accounts, Harding’s performance in court appearances is seriously lacking. Although a grievance against Harding was not handled appropriately, it was not used as part of the final action.

Harding takes little to no responsibility for her performance problems. Her position appears to be that since no child has been injured or died, that it is not a problem that she doesn’t get her paperwork done. Harding places the blame upon everyone else, claiming retaliation or a lack of training.

DHS has properly embarked on a lengthy series of progressive disciplinary steps in an endeavor to remedy the performance problems. Since Harding admits that she paid little attention to these efforts, it is unlikely that further efforts would result in the desired improved performance. The evidence supports DHS’ assertion that Harding poses a risk for the children in the custody of the Department.

The undersigned has considered the facts and circumstances of this case, the testimony of the witnesses, and the prior disciplinary actions. Based upon the entire record, DHS has met its burden of proof that just cause existed to impose discipline as set forth in the Notice of Final Discipline. It is clear that DHS exhausted all other options, having imposed a number of progressive disciplinary actions prior to taking this action. As such, the discipline of discharge imposed herein is appropriate and was consistent

with the progressive disciplinary procedure. The undersigned cannot reasonably find that the discipline imposed was unjust given the totality of the circumstances. Therefore, DHS has proven, by a preponderance of the evidence, that there was just cause to impose discipline and that the level of discipline imposed was appropriate.

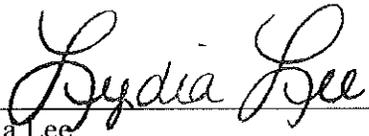
CONCLUSIONS OF LAW

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. Merit Rule 455:10-9-2 states that the Appellee DHS has the burden of proof in an adverse action and must prove by a preponderance of the evidence that just cause exists for the adverse action and that the discipline imposed is just.
4. Merit Rule 455:10-11-17 states that a permanent classified employee may be discharged for any of the reasons set forth in 455:10-11-14, which include misconduct, inefficiency, inability to perform the duties of the position in which employed or any other just cause.
5. DHS policy DHS: 2-1-7 state the causes for disciplinary actions, to include unsatisfactory performance and misconduct.
6. Appellee, DHS, has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Harding for her unsatisfactory performance and misconduct.
7. Appellee, DHS, has met its burden to prove, by a preponderance of the evidence, that because of the relevant circumstances of this case, discharge or termination is an appropriate and just level of discipline. Further, DHS has properly engaged in appropriate steps of progressive discipline which have resulted in continued violations with no improvement in performance. Therefore, the requirements of DHS' Progressive Disciplinary Policy are met.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition for appeal of Appellant Evronia Harding, MPC 09-161 be DENIED.

This Order entered this 30th day of December, 2009.



Lydia Lee
Administrative Law Judge