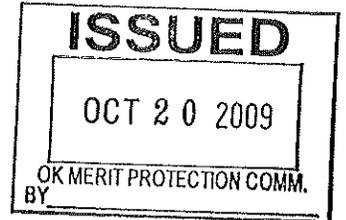


BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA

MARK MINTER,)
)
 Appellant,)
)
 vs.)
)
 DEPARTMENT OF HUMAN SERVICES,)
)
 Appellee.)

Case No. MPC-09-174



FINAL ORDER

This matter came on for hearing before Jami J. Fenner, Administrative Law Judge, on September 29, 2009, at the Oklahoma Merit Protection Commission's office in Oklahoma City, Oklahoma. Appellant, Mark Minter, appeared in person and through his counsel, Shanin M. Daron. Appellee, Department of Human Services ("DHS"), appeared through its counsel, Richard A. Resetaritz, Assistant General Counsel, and through the party-representative, Marie McCormick.

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 counsel. All exhibits offered by Appellant (Appellant's Exhibit Nos. 1-23) and all exhibits offered by Appellee (Appellee's Exhibit Nos. 1-16, 18 and 19),¹ many of which were the same, were admitted into evidence. At the conclusion of the evidentiary hearing, the undersigned held the record open and granted the parties 10 days, until October 9, 2009, to file closing briefs on an issue

¹ Several exhibits included social security numbers of Appellant and non-parties. In the future, the undersigned cautions counsel to redact such confidential information before filing or submitting documents as exhibits because they are then public record.

raised by Appellant at the inception of the hearing. The parties filed their closing briefs on October 8, 2009, whereupon the record was closed.

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

According to Appellant's Exhibit 14/Appellee's Exhibit 4, the Notice of Final Decision (Discharge), Appellant began his employment with DHS on October 6, 1989. DHS issued the Notice of Final Decision on March 13, 2009, signed by Marie McCormick, Director of Area II Field Operations Division, discharging Appellant effective March 13, 2009. At the time of his discharge, Appellant held the position of Family Support Specialist II in the Cleveland County Field Operations Division of DHS, located in Moore, Oklahoma.

According to the Notice of Final Decision, the grounds for Appellee's decision to discharge Appellant were violation of DHS policy. Specifically, the grounds identified in the final notice are violation of the following DHS policies: DHS:2-1-7(i)(2)(F), Dishonesty; DHS:2-1-7(i)(5), Conduct unbecoming a public employee; and, DHS:2-1-5(i)(8), Willful violation of the Oklahoma Personnel Act, Ethics Rules, or the Merit Rules by violating OAC 340:2-13-14.15(b)(1). The Notice does not cite Appellant's background in Family Support Service specifically as an aggravating factor (*see* 74 O.S. § 840-6.3(C)). Nonetheless, it appears from the Notice that the agency considered this factor in deciding to proceed to discharge.

The evidence showed Appellant completed and signed a SoonerCare Health Benefits Application on September 29, 2008, and submitted it to a worker at the Moore office. (Appellee's Exhibit 9). In the application, which asks the person completing it to identify

“everyone living in the household,” Appellant listed his wife, his wife’s granddaughter and himself. Mr. Minter did not list his step-daughter, although she had been living in the household since April 2008. Appellant’s testimony that he did not understand the meaning of “household” on the SoonerCare application was not credible based on his demeanor and in light of the other evidence.

Appellee also presented evidence showing Appellant and his wife received Temporary Assistance to Needy Families for his wife’s granddaughter after Appellant’s step-daughter, the child’s mother, began living in Appellant’s household. Appellee claims Appellant had a duty to report the change in his household and knew he had a duty, but did not report the change. Appellant testified he believed he had reported the change by having a conversation with his supervisor and he did not know whether his wife had reported the change because they had not discussed it. Again, Appellant’s testimony was not credible in this regard, but this fact is not significant given the findings below.

Appellant claimed his request for an accommodation for a disability and use of protected family medical leave were the real reasons Appellee discharged him. He further claimed DHS failed to account for his protected leave in setting performance standards. However, the evidence showed the reasons stated in the Notice of Final Decision were the actual grounds for the discharge.² Thus, the issue is whether those reasons amount to just cause to discharge Appellant.

DHS’s progressive discipline policy, DHS:2-1-7, provides DHS “when necessary takes disciplinary action against an employee for violations of statute, policy, practice, directive, standard, or procedure regarding work performance or conduct.” Conduct

² In any event, Appellee did not rely on Appellant’s performances as a basis for its final decision.

unbecoming a public employee and dishonesty constitute misconduct warranting discipline under the policy. Conduct unbecoming “includes any failure by an employee of good behavior . . . , which is of such a nature that it causes discredit to OKDHS.” Dishonesty includes “making false reports or claims” and “falsifying official forms.”

Under DHS:2-1-7(i)(8), willful violation of the Personnel Act, Ethics Rules or the Merit Rules also constitutes misconduct warranting discipline. The policy states this “includes conflicts of interest, prohibited political activities, and acts of discrimination, harassment, or retaliation of protected activity.” DHS:2-1-7(i)(8). The Instructions to Staff regarding OAC 340:2-13-14.15(b)(1), provides DHS employees must “demonstrate the highest standards of personal integrity, truthfulness, honesty and fortitude in all public activities in order to inspire public confidence and trust in public institutions.” Although violation of this provision does not appear to fall within DHS:2-1-7(i)(8), it nevertheless may constitute “just cause” for formal discipline. *See* OAC 455:10-11-14.

A preponderance of the evidence established Appellant engaged in dishonesty and conduct unbecoming a public employee and violated the policy requiring DHS employees to demonstrate the highest standards of truthfulness and honesty. Appellant did so by signing and submitting an application, which contains false information, to DHS, his employer. Violation of these policies constitutes misconduct and just cause for formal discipline and is therefore a basis for discharge. Based on the relevant circumstances, including specifically the nature of offense and Appellant’s position, Appellant’s offense justifies discharge without first proceeding through lower steps of discipline. *See* 455:10-11-4(b).

Appellant’s submitting the application is alone a sufficient basis for discharge of Appellant. Thus, the undersigned does not address whether a preponderance of the evidence

established Appellant's failure to report a change in his household for purposes of TANF benefits, separate from the SoonerCare application, also constitutes a violation of policy warranting discipline.

Likewise, the decision in Administrative Disqualification Hearing, H106628, H-53344, which was introduced as Appellant's Exhibit 23, has no effect on the issues for determination in this proceeding. In Appellant's opening statement and "Appellant's Brief on Issue Preclusion" filed October 8, 2009, Appellant claimed Appellee was precluded from raising the issues of dishonesty, misrepresentation, failure to report or fraud in this proceeding because the issue had been fully and finally determined in the Administrative Disqualification Hearing decision. However, the issue addressed in the prior administrative proceeding related to TANF, not SoonerCare, and whether Neva Minter's failure to report a change in household constituted an intentional TANF program violation. Appellant was not a party to the Administrative Disqualification proceeding, and the issue of his falsification of the SoonerCare application was not addressed.

Based on a preponderance of the evidence, the undersigned Administrative Law Judge finds just cause existed 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 the following: DHS:2-1-7(i)(2)(F), Dishonesty; DHS:2-1-7(i)(5), Conduct unbecoming a public employee; and OAC 455:10-11-14.

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

7. The Administrative Disqualification Hearing in H106628, H-53344 has no preclusive effect on the issues determined in this proceeding.

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

Signed this 19th day of October 2009.


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