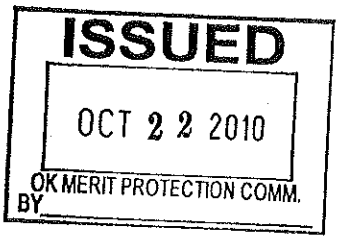
BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA

BRIAN D. BRACHER,	)	
	)	
Appellant,	)	
	)	
vs.	)	Case No. MPC-10-314
	)	
DEPARTMENT OF CORRECTIONS,	)	
	)	
Appellee.	)	



FINAL ORDER

This matter came on for hearing before Jami J. Fenner, Administrative Law Judge, on October 8, 2010, at the Oklahoma Merit Protection Commission's office in Oklahoma City, Oklahoma. Appellant Brian Bracher appeared in person and represented himself. Appellee Department of Corrections ("DOC"), appeared through its counsel, Gary Elliott, Assistant General Counsel, and through the party-representative, Teresa McCoin.

Appellant was a permanent, classified employee of Appellee, appealing from an adverse action of discharge. The undersigned heard the sworn testimony of witnesses, viewed the exhibits admitted into evidence, and heard argument from Mr. Bracher and Mr. Elliott. After receiving all evidence and closing arguments, the undersigned closed the record on October 8, 2010.

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

On May 3, 2010, DOC issued a "Notice of Pre-Termination Hearing, signed by Teresa McCoin, then Acting District Supervisor for the Northeast District Community Corrections, informing Brian Bracher that DOC was considering terminating his employment. After a pre-

termination hearing on May 14, 2010, DOC issued a "Notice of Termination of Employment," signed by Ms. McCoin, terminating Mr. Bracher's employment effective May 24, 2010. At the time of his discharge, Mr. Bracher held the position of Probation and Parole Officer III.

According to the two Notices, the reason for the termination was inability to perform the duties of the position in which employed as provided in OAC 455:10-11-14. More specifically, in taking the adverse action, DOC relied on 74 O.S. § 840-2.21(D) and OAC 530:10-15-49(j)(2), which provide an agency may discharge an employee, who is on leave without pay due to a work-related illness of injury, if the employee has not returned to the original position within one year from the date of the start of leave without pay.

The evidence showed Mr. Bracher had a work-related accident, resulting in an injury, in December 2008. Additionally, the evidence showed Mr. Bracher was on leave without pay from April 14, 2009, through the time of his discharge.

On April 6, 2010, the physician treating Mr. Bracher for the injury wrote a letter that stated Mr. Bracher "remains unable to work." Nonetheless, the physician issued two releases, each dated May 11, 2010, indicating Mr. Bracher could return to work but with restrictions. Prior to his pre-termination hearing, Mr. Bracher provided the releases to DOC.

Ms. McCoin testified Mr. Bracher could not be returned to duty in the District with the restrictions imposed by the physician. She had nothing available in the District that could accommodate his restrictions. Additionally, the evidence showed DOC's central office notifies employee on workers compensation leave of open positions throughout DOC.

Based on the record, DOC established, by a preponderance of the evidence, just cause existed to discharge Mr. Bracher for failure to return from leave without pay within one year.

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. The burden of proof in this matter was on Appellee to show by a preponderance of the evidence that just cause existed for the discharge. 74 O.S. § 840-6.5(C); OAC 455:10-9-2.

4. An agency may discharge a permanent, classified employee for, among other things, inability to perform the duties of the position or any just cause. OAC 455:10-11-14.

5. The Oklahoma Personnel Act provides an agency may discharge a state employee, who is on leave without pay due to a work-related illness or injury, in accordance with the Oklahoma Personnel Act and the Merit Rules if the employee has not returned to the original position within the agency within one year from the date of the start of leave without pay. 74 O.S. § 840-2.21(D).

6. The Rules of the Merit System of Personnel Administration ("Merit Rules") provide:

> If an employee does not return to the original position or an alternate position within 1 year after the start of leave without pay, the Appointing Authority may terminate the employee under Section 840-2.21.

OAC 530:10-15-49(j)(2).

7. Appellee met its burden of proof that just cause existed to discharge Appellant for failure to return to work from leave without pay within one year.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the decision of the Department of Corrections to discharge Appellant is affirmed and Appellant's appeal is

hereby **NOT SUSTAINED.**

Signed this 22nd day of October, 2010.

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