

OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



PAULETTE HOUSTON,
Appellant

vs.

DEPARTMENT OF HUMAN SERVICES,
Appellee.

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CASE NO. MPC 10-307

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on December 8, 2010 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant, Paulette Houston, appeared in person and was represented by Daniel Gamino, Esq. Appellee, Department of Human Services (hereinafter referred to as "DHS" or "Appellee"), appeared by and through its counsel, John Douglas, Assistant General Counsel, and table representative, Rita Hart, County Director, Bryan County.

Appellant, a permanent classified employee of Appellee, was discharged from her position as a Social Services Specialist II / School Based Social Worker for violation of DHS: 2-1-7(i)(2) Misconduct, (B) Willful failure, (C) Violation of time and leave policy, (F) Dishonesty, and (H) Discourteous treatment of clients, other employees, or the general public; and DHS:2-1-7(i)(5) Conduct unbecoming a public employee, after Appellant left her work station and confronted a DHS client to get her to drop domestic violence charges against Appellant's son, and misrepresented such time on her timesheet.

Prior to opening statements, Appellee made an oral motion for a protective order to protect the identity of the subject DHS client, which motion was granted.

Argument was heard on Appellant's previously filed Motion for Summary Judgment seeking judgment for Appellant "based on DHS failure to meet jurisdictional time limitations in providing Ms. Houston with notice of this discharge action" in accordance with 74 O.S. § 840-6.4; Merit Rule 455:10-11-17. Appellant argues that failure to receive timely notice renders Appellant's discharge by Appellee null and void. Neither the statute nor the Merit Rule provides that failure to comply with these provisions renders an agency action null and void, and Appellant has provided no authority to support her position. Further, Appellant contends that she must *receive* Appellee's notice within the ten day requirement. However, the language of the statute requires an agency to "notify" an employee, "by actual delivery, or by certified or registered mail service" within ten days. The Merit Rule requires that the employee "shall be provided" written notice "by personal service or certified or registered mail". Neither provision requires that the employee "receive" such notice within the specified ten days. On the contrary, pursuant to common law standards, unless specified otherwise, the date that a document is placed in the mail is the date used to determine triggering dates and deadlines.¹ Notice of the final action was placed with UPS for delivery to Appellant within the specified ten days (Joint Exhibit 19) and was personally delivered to Appellant's home within the ten days specified. Appellant's Motion for Summary Judgment is denied.

¹ To the extent that Appellant's contention may be that the Merit Protection Commission lacks jurisdiction here because of the agency's untimely notice, Appellant is reminded that only the Executive Director and the Commission may determine jurisdiction, Merit Rule 455:10-3-2(a), and the Executive Director has already so determined in the Notice of Prehearing Conference, dated September 7, 2010.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with exhibits, which are incorporated herein and made a part hereof. Accordingly, after careful consideration of all evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

Appellant, a 29-year employee of DHS, is a Social Services Specialist II (SSS II) / School-Based Social Worker (SBSW) in Bryan County, where she spends half her time working with DHS and half of her time as a social worker in Colbert Elementary School. Appellant's school co-workers and administrators describe her as a hard-worker who goes above and beyond her job requirements, is empathetic with students and parents; works basketball games and attends school functions on her own time; uses her own money to buy shoes, glasses, and other necessities for kids whose families can't afford them; visits homes of families who may have suffered a loss; and works through her annual leave and overtime hours when there is work to be done. DHS County Director Rita Hart has described Appellant as an excellent employee, one whom she often seeks out to train and mentor new employees. Appellant has consistently received Performance Ratings of "Exceeds Standards" on her annual performance evaluations or PMP's (Joint Exhibits 4 and 5), and has received awards for excellence in her work. (Appellant Exhibit 8).

JE² is a 24 year-old woman with three children, ages four, two, and six months old. She is a DHS client who currently is in an in-patient treatment center for substance abuse. Appellant has known JE since she was a teen-ager living with her grandmother. For years Appellant has befriended and supported JE in an effort to help her straighten out her life, previously paying for her to go through drug rehabilitation, and allowing her to stay rent-free in her rental house. (Testimony of Appellant; Joint Exhibits 13 and 14)

At some point, Appellant's son and JE entered into a relationship with each other; which led to him fathering her youngest child. That relationship has had its ups and downs: In July 2009 Appellant's son was charged in Bryan County with assault and battery with a deadly weapon, after allegedly stabbing JE's husband. That case was set for disposition on March 22, 2010. However, on the weekend of February 6, 2010 an incident occurred between Appellant's son and JE resulting in his arrest and charges being filed against him in Marshall County for domestic abuse – assault and battery.³ JE left Appellant's rental house and moved in with her grandmother after the incident.

On the morning of Tuesday, February 9, 2010, Appellant left her job at Colbert Elementary School to confront JE at the home of JE's grandmother. She had with her a statement addressed "TO: Marshall County Court Official; FROM: J---E---" concerning the domestic abuse case filed against her son. It stated in part:

Jason and I have been friends for several years. I have been married for several years and have two lovely children. Jason and I had been talking and during the conversation we started arguing, thus tempers became heated. After time passed, I began to gather my thoughts and I feel that I may have exaggerated what happened that night, thus resulting in Jason being arrested. Jason never

² "JE" is a DHS client whose privacy requires that her identity be protected. Therefore, throughout these proceedings she will be referred to as "JE" or "Julie".

³ Appellant's son, Jason, is alleged to have pushed JE out of a moving vehicle and dragged her for a distance, while she was five months pregnant with his child.

pushed me from the car. The injury to my leg was caused by an accident, not intentional harm. I wish to withdraw the charges against Jason concerning the domestic abuse.

Joint Exhibit 9

The memorandum had a place for JE to sign and have it notarized.

While Appellant was at the grandmother's house talking with JE about signing the statement, JE's mother, Jean Friesen, called the house. Upon learning that Appellant was there with a document for JE to sign recanting her statement against Appellant's son, Ms. Friesen asked to speak with Appellant. She told Appellant to leave the home immediately, and that JE was not going to sign the document. Ms. Friesen testified that she told Appellant three or four times to leave the home, and Appellant did not comply. When Ms. Friesen asked to speak again with JE, Appellant hung up the phone. Ms. Friesen called the home again and asked JE to read the document to her over the phone. While JE was reading the document, Ms. Friesen used another phone to call the Calera, OK police department to report an unwanted guest at the house who would not leave.

Calera Police Chief Don Hyde responded to the call from Ms. Friesen. Appellant was sitting in her car in the driveway when Chief Hyde pulled up behind her at approximately 9:07 a.m. When he entered the home he spoke with JE's grandmother who confirmed that Appellant was indeed an unwanted guest. JE was sitting and crying in a recliner inside the home. She told him about the incident in Marshall County with Appellant's son, and that Appellant had shown up at the door wanting her to sign a statement saying she wanted to withdraw charges against him. After ascertaining that Appellant's presence at the home appeared to be a civil, non-criminal situation, he

asked Appellant to leave and she complied. The time she left was approximately 9:40 a.m. according to his police log. (Appellee Exhibits 1 and 2) However, Appellant indicated on her time sheet that she left work at 8:40 a.m. and returned at 9:15 a.m. (Joint Exhibit 8)

Jean Friesen immediately reported Appellant's actions to County Director Rita Hart and, after investigating the allegations, on April 21, 2009 Appellee issued a Notice of Formal Disciplinary Action proposing Appellant's discharge and setting a pre-termination hearing for April 29, 2010, which was later rescheduled to May 18, 2010. (Joint Exhibits 1 and 10)

At the pre-termination hearing Appellant, represented by counsel, denied any wrongdoing and claimed that she intended to leave the document for JE to think about and to sign later, if she chose to do so. In a written statement she stated:

The people speaking against me all have motives against me and DHS, they are not credible. They all have their own problems.

Joint Exhibit 15

At this appeal hearing Appellant claimed that she drew up the statement at JE's request. Whether such a request was made is disputed, and to this administrative law judge does not appear credible. Regardless of what words may have been uttered by JE, the evidence clearly shows a young woman, confused and vulnerable, easily manipulated, who lacked the *mens rea* necessary to make a knowing, informed request such as that of her own volition. County Director Rita Hart testified that JE had a history of problems with abusive, unhealthy, manipulative relationships, and was working with a social worker on her individual service plan (ISP) to become empowered to get out of such relationships. Appellant testified that JE and her mother often did not see eye-to-

eye and that Appellant has served as a surrogate mother to JE. It follows, then, that Appellant would have had a considerable amount of influence over JE. As a mother whose son was facing the possibility of a prison term for assault and battery⁴, it is understandable that Appellant might use whatever means possible to keep her son out of prison, including taking advantage of her relationship with JE⁵. It was Appellant who reached out to JE, not JE reaching out to Appellant. Appellant testified that, at her son's request, she tried repeatedly to get in touch with JE after JE filed the assault charges, and called JE's grandmother's home repeatedly before she finally made contact with JE.

Appellant may be a caring mother and an excellent employee, however, neither of these things excuses her serious lapse in judgment and her behavior in contacting JE, a DHS client and complaining witness in a criminal case, and attempting to persuade JE to drop assault and battery charges against her son⁶. The preponderance of evidence presented in this case supports the allegations by Appellee that Appellant violated DHS: 2-1-7(i)(2) Misconduct, (B) Willful failure, (C) Violation of time and leave policy, (F) Dishonesty, and (H) Discourteous treatment of clients, other employees, or the general public; and DHS:2-1-7(i)(5) Conduct unbecoming a public employee, after Appellant left her work station and confronted a DHS client to get her to drop domestic violence charges against Appellant's son. This administrative law judge finds that just

⁴ Appellant's son had a disposition hearing on the assault and battery of JE's husband scheduled in Bryan County for March 22, 2010. Having charges filed in Marshall County for assault and battery of JE would not have served him well at the March 22 disposition hearing.

⁵ Ms. Friesen testified that Appellant also threatened to have JE arrested for breaking and entering when she went back inside the rental property to get some of her belongings after the alleged assault, if she refused to sign the affidavit recanting her complaint against her son.

⁶ Appellant might have been charged with witness tampering. She is fortunate that she was not.

cause exists for discipline of Appellee for her actions and that the discipline imposed in this case was just.

CONCLUSIONS OF LAW

1. Any findings of fact that are properly conclusions of law are so incorporated herein as conclusions of law.

2. Merit Rule 455:10-11-17(c) states that within ten working days after a pre-termination hearing an employee shall be provided with written notice of the final action by personal service or certified or registered mail.

3. Merit Rule 455:10-11-14 states that a permanent classified employee may be discharged for misconduct, willful violation of Merit Rules, conduct unbecoming a public employee, and any other just cause.

4. Merit Rule 455:10-9-2 states that the Appellee bears the burden of proof in an adverse action and must prove by a preponderance of the evidence that just cause exists for the action taken.

5. DHS:2-1-7(i)(2) **Misconduct** states that an employee may be disciplined for misconduct, including **(B) willful failure, (C) Violation of time and leave policy, (F) Dishonesty, and (H) Discourteous treatment of clients, other employees, or the general public.**

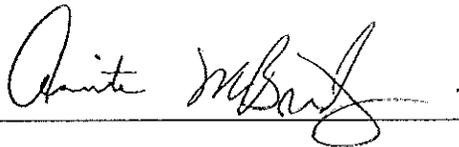
6. DHS:2-1-7(i)(5) **Conduct unbecoming an employee** states that an employee may be disciplined for any failure by the employee of good behavior either during or outside duty hours, which is of such a nature that it causes discredit to OKDHS.

7. Appellee, Department of Human Services, has met its burden to prove, by a preponderance of the evidence, that Appellant, Paulette Houston, has violated DHS: 2-1-7(i)(2) Misconduct, (B) Willful failure, (C) Violation of time and leave policy, (F) Dishonesty, and (H) Discourteous treatment of clients, other employees, or the general public; and DHS:2-1-7(i)(5) Conduct unbecoming a public employee, for her actions on February 9, 2010, and that just cause exists for Appellant's discharge.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant is hereby **DENIED** and the discharge is sustained.

DATED this ^{27th} 21st day of December, 2010.



Annita M. Bridges, OBA # 1119
Administrative Law Judge
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