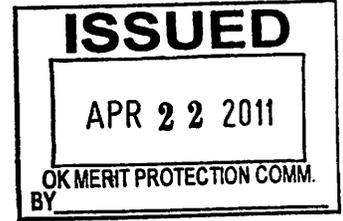


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**

CANDICE J. CHRISTIAN,)
Appellant,)
)
v.)
)
OKLAHOMA DEPARTMENT OF)
AGRICULTURE, FOOD &)
FORESTRY,)
Appellee.)
)

Case No. MPC 11-089



FINAL ORDER

This matter comes on for hearing on March 7, 2011 before the duly appointed, undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. The Appellant, Candice J. Christian, appears personally, pro se with her table representative Carmen Bowlan. The Appellee, Oklahoma Department of Agriculture, Food & Forestry, appears by and through counsel, Lee Dooley. Also present for Appellee was Table Representative, Cherry Williams. By separate Order, the record was held open until March 30, 2011.

Appellant Candice Christian is a permanent, classified state employee appealing an adverse disciplinary action of suspension without pay for fourteen (14) days. Whereupon the hearing began and the sworn testimony of witnesses was presented, along with exhibits. Regarding the exhibits, the parties stipulated to the admission of all of Appellee's Exhibits 1 through 57, labeled as "Joint Exhibits", and Appellant's Exhibits No. 1 through 5. Accordingly all exhibits presented and admitted are incorporated herein and made a part hereof.

After careful consideration of the record, including all relevant evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

Background of Case

Appellant Candice Christian (hereinafter "Christian") is a classified employee of the Appellee Oklahoma Department of Agriculture, Food & Forestry (hereinafter "ODAFF").

Christian is a Human Resources Management Specialist. The parties stipulated that the Merit Protection Commission (hereinafter "MPC") has jurisdiction of this matter, that Christian is a permanent, classified employee of ODAFF, and that Christian was suspended without pay for fourteen days in October, 2010.

On September 20, 2010, ODAFF provided Christian with notice of the proposed disciplinary action, originally proposing a thirty day suspension without pay (Exhibit 55). Christian was given an opportunity to respond at a hearing held on September 28, 2010. She appeared on that date, evidence and testimony was taken and the hearing officer made a recommendation that Christian be suspended without pay for two weeks (Exhibit 56). On October 6, 2010, ODAFF provided Christian with notice of final action, imposing discipline in the form of a fourteen (14) day suspension without pay (Exhibit 57). In the notice, ODAFF sets forth six specific incidents as the reason for this adverse action; Inappropriate Filing of Workers Comp Claim, Ineffective Actions Regarding Employee Benefits, Inappropriate Actions Pertaining to Oklahoma Public Employees Retirement System Step-Up Election Form, Inappropriate Actions Associated with Employee Retirement, Failure to Notify and Follow Established Protocol and Release of Confidential Information and Dishonesty. There have been prior disciplinary actions of oral reprimands, a corrective action plan and a written reprimand.

The Testimony

The testimony of twelve (12) witnesses was provided in this matter. Nine (9) witnesses testified on behalf of ODAFF and three (3) witnesses on behalf of Christian.

Cherry Williams is the HR Programs Manager for ODAFF and is Christian's supervisor. Her department handles all of the benefits, personnel, time, leave and payroll. Williams testified as to the circumstances of the charge of "Inappropriate Filing of Workers Comp Claim". She stated that unless it was a life-threatening or severe illness or injury, the accident report form should never be filed without completion of investigation and getting the comments and signature of the employee's supervisor. Here, Christian filed a report for "carpal tunnel" for Terri Wright without following this normal protocol. Williams discussed that this was a progressive injury that was not life-threatening and there was no justification to file without the supervisor's comments. She also discussed that the form was filed by the employee only and Christian proceeded to enter the report to CompSource system on 2-5-10, (Exhibits 1 and 3), but

the investigation and review was not completed until 2-9-10 and 2-17-10 (Exhibit 2). On the charge of Inappropriate Actions Pertaining to Oklahoma Public Employees Retirement System Step-Up Election Form, Williams testified that Christian had problems with two previous employees making the retirement step-up election and should have learned from those previous mistakes. She stated that Christian was to discuss all of the ramifications of the elections one-on-one with each employee to ensure that they understood it. This employee made the election, however failed to select a start date. Christian submitted the form but failed to ascertain the start date, and also failed to make the appropriate deductions from the employee's salary. The agency was liable to pay the retirement contributions as a result of Christian's mistake. (Appellant's Exhibit 3). Williams also provided testimony on the charge of Inappropriate Actions Associated with Employee Retirement. During a recent voluntary buy-out retirement incentive, an employee elected to continue his insurance but Christian failed to follow up in a timely fashion to be sure that all of the proper forms were completed and submitted. This mistake was caught after the employee's retirement date, but prior to the deadline to correct the election. Fortunately, there was no adverse result for the employee. (Appellee's Tab 4, Exhibits 19 – 23).

Pete Bournes is a supervisor in the Lab Services area of ODAFF. He testified that he had concerns about the carpal tunnel injuries in his department and that he was not given the Workers Comp form for his employee until after it was filed with CompSource. Mike Talkinton is the Director of Lab Services and he testified that Workers Comp claims were always held for his review unless it was life threatening. He was on leave the week that Christian filed the carpal tunnel claim and he was surprised that it was already filed when he returned.

Dinah Dean is the ODAFF Administrative Assistant in HR. She coordinates with Christian to perform her duties. She testified regarding the charge of Failure to Notify and Follow Established Protocol. She stated that it is Christian's responsibility to notify her of the change of leave/workers comp status of employees. This can affect the payroll and here, it specifically resulted in the overpayment of 2 employees who were on Workers Comp leave and also received full pay for several months. (Appellant's Tab 5, Exhibits 24 – 52). Dean testified that it is Christian's responsibility to place the employees on supplemental payroll so this overpayment does not occur.

Stanley Strait is the ODAFF payroll accountant who coordinates with Christian to ensure that the payroll is correct. Christian failed to inform him that one employee was on leave

without pay, and benefits were incorrectly calculated and paid. This error could have resulted in an agency liability of \$3800.00 but the witness was unsure if that was resolved. Strait also testified that he gave the payroll reports to Christian to verify and confirm. The payroll department needs to be notified of how much pay to include for employees on Workers Comp leave. He testified that it is Christian's responsibility to notify payroll of such adjustments. As a result of Christian's errors, the payroll was inaccurate and steps had to be taken to correct it, which caused problems for the employees and the agency.

Billy Ray Taylor testified that Christian gave him a grievance that contained documents which contained confidential information of employees in the agency. These documents contained social security numbers and other confidential data on the employees. He said he immediately redacted the confidential information and informed the General Counsel's office of this issue.

Carmen Bowlin testified that she was Christian's assigned grievance representative and was helping her with a previous grievance. She testified that she received the unredacted information packet in the same form as Mr. Taylor. She stated that she learned of this before she had opened and reviewed the documents. When she received a telephone call from the General Counsel, she opened the packet and confirmed to him that it contained the unredacted information. She then re-sealed the packet and it was retrieved by ODAFF staff. She acknowledged that she should not have received this confidential information.

Larry Harden is the former General Counsel at ODAFF. He testified that Billy Ray Taylor notified him that as a part of Christian's grievance paperwork, she included documents containing confidential information regarding ODAFF employees, including their Social Security numbers and personal information. Harden testified that Taylor redacted the confidential information from the grievance, but that unredacted copies had been disseminated outside the agency. Harden stated that he contacted Carmen Bowlan, who confirmed that she was in possession of the unredacted, confidential information. He made arrangements to retrieve the documents from Bowlan. Harden testified that he called Christian in to his office to discuss the release of information. He testified that Christian denied including confidential information with her grievance. Harden testified that Christian specifically stated that she "had pulled all confidential information" before filing the grievance and sending it out of the agency and denied

releasing the information. She admitted to Harden that she knew that this information was confidential and it would be inappropriate to use it.

In April, 2010, Mitch Broiles was the Director of Administrative Services at ODAFF. He testified that a Workers Compensation claim was uploaded into the CompSource system without the supervisor's comments and approval. He reiterated that the only time this action was permitted was in life-threatening situations. He testified that in this instance, because there was no immediate risk to the employee, Christian should have waited to get the supervisor's approval before submitting the claim. Broiles discussed the role of the benefit coordinator. He said that it was Christian's responsibility to follow through on employee elections and to make sure everything is done correctly and completed in a timely manner. He said that Christian performs these duties on a day-to-day basis and is expected to be familiar with the forms and processes. Broiles testified that he personally retrieved the grievance packet containing the confidential information from Carmen Bowlan. He stated that he was also present when Harden questioned Christian and she "emphatically" denied releasing the information, saying that she specifically remembered removing the documents before submitting the grievance. Broiles testified that later when Christian was confronted with the packet of information, she finally admitted her mistake. He provided testimony regarding the voluntary buy-out program at ODAFF. He stated that the agency held several meetings with employees and gave them a packet of information, including all of the forms and documents necessary to accept the incentive. All of these accepted packets were sent to Christian to finalize and make sure that everything was in order. He said that the insurance election form was not included in the packet, and that if, on the retirement form, an employee elected to retain insurance, it was Christian's responsibility to follow-up and obtain all of the necessary forms completed. Broiles stated that this was the essential role of the benefits coordinator.

Following the testimony of Broiles, ODAFF concluded its case and rested.

Treva Morgan is a former ODAFF employee. She testified that she received disability insurance benefits in April, 2010. She stated that there were several payrolls where her deductions were not covered by her pay. As a result, 3-4 of her payrolls had to be reexamined. She testified that Christian talked to her before she went off work on disability and explained everything to her. Morgan admitted that she had no idea of how the pay system works and relied upon Christian and ODAFF to handle it.

Margaret Ann Phillips worked in the lab at ODAFF. She stated that she knew Terri Wright and worked with her. She stated that they performed seed analysis, which is tedious work using one's hands and tweezers. Phillips testified that as a result of this tedious work, her hands hurt and she began to drop samples, which caused the entire process to begin again. She stated that she was also diagnosed with Carpal Tunnel and had filed a Workers Compensation form. Phillips testified that this condition is progressive, and went on for several years before she received treatment. She testified that she was aware that Terri Wright had the same problem and that she got progressively worse. Phillips stated that she elected the voluntary buy-out and retired. She indicated that she was very concerned about keeping insurance coverage for herself and her daughter and Christian helped her and answered all of her questions. Phillips admitted that when she filed her Workers Compensation claim, she took it to her supervision to be completed before filing it with Christian.

The last witness to testify was Bonnie Davis, an administrative assistant in one of the ODAFF field offices. She stated that her duties include maintaining the time reports and reporting injuries to the OKC office. She testified that emergencies occasionally require immediate medical attention before all the necessary documents are completed. Davis testified that she interacts with Christian on employee issues and thinks that she does a "thorough" job. She stated that she has never had a problem with Christian or her work.

Christian was given several opportunities to provide her own testimony, which she declined. Christian rested.

ISSUES

1. Did ODAFW have just cause to impose discipline in this matter?
2. If so, was the discipline of a 14 day suspension without pay a just and appropriate under the circumstances?

DISCUSSION

Charge 1. Inappropriate Filing of Workers Compensation Claim. (Tab 1, Joint Exhibits 1-4)

The record contains substantial evidence that Christian submitted Terri Wright's On-the-Job Accident Report form to CompSource on February 5, 2010, the same day that the employee

submitted it to Christian, without completion by the investigating official, supervisor or Division Director. (Joint Exhibits 1 -3). There is no evidence that this injury required immediate or emergency treatment. To the contrary, the evidence shows that this was a progressive injury, resulting from several years of tedious hand work. In addition, the record supports that Christian added unauthorized comments concerning the employee's "need to be seen right away", without proper evidence or information. (Joint Exhibit 3, page 3). Further, Christian's e-mail response concerning this report indicates that she was aware that the employee had been to a doctor almost two weeks before filing the report, further indicating that this was not an "emergency" necessitating immediate action. (Joint Exhibit 4). Based upon the record, the undersigned finds that ODAFF has met its burden of proof that just cause existed for the discipline imposed for Inappropriate Filing of Workers Compensation Claim.

Charge 2. Ineffective Actions Regarding Employee Benefits (Tab 2, Joint Exhibits 5-11)

The record contains substantial evidence that Christian failed to properly review and report errors with the payroll register for employee Treva Morgan. The issue related to insurance premiums for Ms. Morgan for May, June and July, 2010. Ms. Morgan was on approved Leave Without Pay. Although it was unclear if the error resulted in a liability to the agency, it caused a hardship on the agency and the employee to correct the error. The evidence shows that Christian was supplied with the payroll register for May on May 24, 2010 and June 4 and 7, 2010 (Joint Exhibit 11, pages 1-3, 5), for June on June 23, 2010 and July 6, 2010 (Joint Exhibit 11, pages 4 & 6), and for July on July 23, 2010 (Joint Exhibit 11, page 7). There was no evidence that Christian properly reviewed those payroll reports or that she verified or reported the leave status of Treva Morgan. Based upon the record, the undersigned finds that ODAFF has met its burden of proof that just cause existed for the discipline imposed for Ineffective Actions Regarding Employee Benefits.

Charge 3. Inappropriate Actions Pertaining to Oklahoma Public Employees Retirement System (OPERS) Step-Up Election Form (Tab 3, Joint Exhibits 12-18)

There is substantial, uncontroverted evidence that Christian failed to properly complete and process the retirement Step-Up election made by employee Stacy Lovell. In an e-mail, Christian admits that the form was completed in May, 2010 without the start date being selected

by the employee. Christian admitted that she “assumed” the start date would be June 1, without verification from the employee. She also admits that she never followed up with the employee, but submitted the form to OPERS and also failed to notify payroll to begin the increased retirement contributions. (Joint Exhibit 16). This error was apparently discovered in late July, 2010. Christian petitioned OPERS to change the effective date to August 1, admitting her administrative error in processing the form. (Joint Exhibit 14). OPERS denied the request to change the effective date, explaining that the election is irrevocable and binding when submitted. OPERS also noted that it is the agency’s responsibility to pay for the unpaid contributions and interest when the deductions are not properly commenced. (Joint Exhibit 12). ODAFF was invoiced, and is required to pay \$139.24 in contributions and interest as a result of Christian’s error in processing this form. (Joint Exhibit 18). It is also important that Christian’s supervisor testified that Christian had made 2 other Step-Up Election errors before this incident and, as a result, she was directed to discuss all aspects of the election one-on-one with employees in the future to avoid this type of error. Based upon the record, including Christian’s admissions of error, the undersigned finds that ODAFF has met its burden of proof that just cause existed for the discipline imposed for Inappropriate Actions Pertaining to Oklahoma Public Employees Retirement System (OPERS) Step-Up Election Form.

Charge 4. Inappropriate Actions Associated With Employee Retirement System (Tab 4, Joint Exhibits 19-23)

The record indicates that employee Don Stockton retired under the voluntary buy-out program, effective May 1, 2010. Mr. Stockton completed his retirement application indicating his authorization for insurance premium deduction. (Joint Exhibit 23, page 9). On May 19, 2010, he contacted ODAFF because his doctor had been informed that his health insurance through Oklahoma State and Education Employees Group Insurance Board (OSEEGIB) had terminated at the end of April, 2010. (Joint Exhibit 19). The inquiry was referred to Christian and on May 24, 2010, she mailed him the necessary OSEEGIB forms to continue his insurance. (Joint Exhibit 20). Several witnesses testified that it was Christian’s responsibility to provide all of the necessary forms to the employee as a part of the retirement process. Christian did not dispute that it was her responsibility nor did she provide any evidence that she fulfilled that responsibility at any time before the lapse of the insurance at the end of April. In fact, the

evidence clearly shows that she provided the form only after the problem was discovered in late May. The OSEEGIB instructions indicate that these insurance forms are to be completed and submitted during the month prior to retirement and that the forms can be obtained from the Benefits Coordinator. (Joint Exhibit 21). Luckily, this mistake was discovered in time to prevent the employee from losing eligibility for coverage. Avoiding the adverse result does not abrogate Christian's responsibility. Based upon the record, the undersigned finds that ODAFF has met its burden of proof that just cause existed for the discipline imposed for Inappropriate Actions Associated With Employee Retirement System.

Charge 5. Failure to Notify and Follow Established Protocol (Tab 5, Joint Exhibits 24-52)

The evidence indicates that employees Delbert Reynolds and Curtis Steelman were off work and receiving TTD Workers Compensation benefits. Although Christian was aware of this, she failed to notify the payroll division to place these employees on supplemental payroll as instructed to avoid overpayments to the employees. As a result of Christian's failure to notify, both employees were overpaid, causing a hardship to the employee to repay the incorrect payroll as well as to the agency which must cancel the payroll and attempt to recoup the overpayment. Christian did not address this allegation but there was testimony that it was Christian's responsibility to approve the placing of an employee on supplemental payroll. Based upon the record, the undersigned finds that ODAFF has met its burden of proof that just cause existed for the discipline imposed for Failure to Notify and Follow Established Protocol.

Charge 6. Release of Confidential Information and Dishonesty (Tab 6, Joint Exhibit 53)

There was a substantial portion of the hearing devoted to this serious allegation. It is undisputed that Christian attached confidential information for 184 current and former ODAFF employees to her grievance. Copies of the grievance and confidential information were then disseminated outside the agency. Christian claims that she was rushed and not given enough time to complete her grievance, resulting in the inadvertent release of this information. Two credible witnesses testified that Christian was not honest in her response when confronted about this release, noting that she specifically said that she removed the confidential information from the grievance. Later, when the documents were produced, Christian then claimed that it was a copy mistake. Christian offered no evidence to mitigate her behavior. Based upon the record,

the undersigned finds that ODAFF has met its burden of proof that just cause existed for the discipline imposed for Release of Confidential Information and Dishonesty.

Having found that just cause exists to discipline Christian for these acts of misconduct, the undersigned must consider the appropriateness of the level of discipline imposed. ODAFF initially proposed a 30 day Suspension Without Pay. (Joint Exhibit 55). Following a show cause hearing, a Hearing Officer considered all of the evidence. At that hearing, Christian repeatedly blamed others for the problems and errors or claimed that she was not properly trained. (Joint Exhibit 56). The Hearing Officer recommended a 14 day Suspension Without Pay, which was ultimately imposed. (Joint Exhibit 57).

ODAFF has properly utilized progressive discipline with Christian, including a corrective action plan, oral reprimand and written reprimand. (Joint Exhibit 54, pages 185, 203-210). These prior disciplinary actions in 2007, 2008 and 2009 each attempt to address similar types of behavior and performance issues, without success. Christian's PMPs indicate that a critical accountability is to respect and maintain the confidentiality of records. The PMPs also include accountabilities to complete and submit benefit forms in a timely manner with minimal errors, to process all retirement-related forms, conduct one-on-one counseling for the step-up program, and to correlate workers comp benefits with payroll. These responsibilities have been a part of Christian's job since October, 2006. (Joint Exhibit 54, pages 186 – 202).

Christian fails to acknowledge or appreciate the nature of her actions. Her attitude deflects responsibility and minimizes the consequences of her behavior, which can diminish the effectiveness of the disciplinary process. There is no evidence of mitigating circumstance to reduce the discipline. Given the seriousness of the incidents and Christian's previous progressive discipline, the discipline of a 14 day suspension without pay imposed herein is appropriate. Therefore, ODAFF has proven, by a preponderance of the evidence, that the level of disciplinary action imposed was just given all of the circumstances.

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.

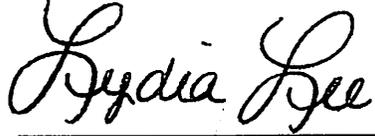
2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.
3. Merit Rule 455:10-9-2 states that the Appellee ODAFF has the burden of proof in an adverse action and must prove by a preponderance of the evidence that just cause exists for the adverse action and that the discipline imposed is just.
4. Merit Rule 455:10-11-15 states that a permanent classified employee may be suspended without pay for any of the reasons set forth in 455:10-11-14, which are misconduct, insubordination, inefficiency, habitual drunkenness, inability to perform the duties of the position in which employed, willful violation of the Oklahoma Personnel Act or the Merit Rules, conduct unbecoming a public employee, conviction of a crime involving moral turpitude or any other just cause.
5. ODAFF Department Policy 10.5.1 states that unacceptable performance includes failing to meet standards of critical job duties, violating policies, failing to perform duties, including inefficiency or error, and failing to devote full attention and effort to duties.
6. ODAFF Department Policy 10.5.2 states that misconduct includes the unauthorized disclosure of confidential information, violations of policies, and acts of dishonesty.
7. Appellee, ODAFF, has met its burden to prove, by a preponderance of the evidence that just cause exists to discipline Christian for unacceptable performance and dishonesty.
8. Appellee, ODAFF, has met its burden to prove, by a preponderance of the evidence, that it acted in compliance with its Progressive Disciplinary Procedure.
9. Appellee, ODAFF, has met its burden to prove, by a preponderance of the evidence, that the discipline imposed was just under the circumstances considering the seriousness of the conduct as it relates to the employee's duties and responsibilities; the consistency of action taken with respect to similar conduct by other employees of the agency, the previous employment and disciplinary records of the employee and other mitigating circumstances.
10. The discipline imposed in the form of a 14 day suspension without pay is proper under the circumstances of this case.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned

Administrative Law Judge that the petition for appeal of Appellant Candice Christian, MPC 11-089 be, and it hereby is, **DENIED**.

This Order entered this 11th day of April, 2011.

A handwritten signature in cursive script that reads "Lydia Lee". The signature is written in black ink and is positioned above a horizontal line.

Lydia Lee
Administrative Law Judge