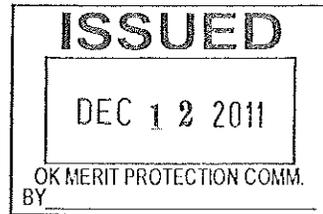


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**

CANDY MONROE,)
)
 Appellant,)
)
 v.)
)
 OKLAHOMA TOURISM AND)
 RECREATION DEPARTMENT,)
)
 Appellee.)

Case No. MPC 11-248



FINAL ORDER

This matter comes on for hearing before the undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. The Appellant, Candy Monroe (hereinafter “Monroe”), appears not. Oklahoma Tourism and Recreation Department (hereinafter “OTRD”) appears by and through General Counsel, Claudia Connor, and Table Representation Scott Lange.

Appellant Monroe is a permanent, classified employee of OTRD, who has filed a payroll claim protest. Noting that Monroe had received proper notice of the hearing date and time and having failed to appear, OTRD requested to proceed with the administrative proceeding. Whereupon the hearing began in Monroe’s absence and the sworn testimony of witnesses was presented, along with exhibits. Appellee OTRD’s Exhibits 1 through 5 were admitted into the record. Accordingly, these exhibits presented and admitted are incorporated herein and made a part of the record 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

1. Monroe is employed as a maid at Lake Murray State Lodge. OTRD alleges that, due to an administrative error, Monroe was overpaid on three consecutive payrolls, namely; May 6, 2011 (payroll “B22”), May 20, 2011 (payroll “B23”), and June

3, 2011 (payroll "B24"). OTRD alleges that the overpayment amount for each payroll is: B22-\$631.42, B23-\$545.02, and B24-\$496.54; for a total overpayment of \$1672.98.

2. This matter is a Payroll Claim Protest pursuant to 74 O.S. §840-2.19. OTRD gave proper notice to Monroe of the amount of the overpayment, including the amounts paid in error, the dates of said payments, the options for repayment and her right to protest the decision.

3. Monroe protested said overpayment determination. The matter was set for Prehearing Conference on September 7, 2011. At the Conference, the parties agreed on the hearing date and the issues for determination. At the scheduled time for the hearing, Monroe failed to appear and failed to contact either the OTRD or the Commission to request a continuance or to report and explain her absence.

4. OTRD offered the testimony of two witnesses. Denise Edwards is the Payroll Manager. She testified that the payroll error occurred when Monroe transitioned from a seasonal employee to a permanent employee in May of 2011. Monroe is an hourly, tip-adjusted employee. The error was not detected until the third payroll. Edwards testified that Monroe attempted to question whether the wages were correct, but the error was not discovered. Edwards certified the methods used in the overpayment calculation and that the calculations were correct.

5. After the error was discovered, Monroe was given notice of the error and repayment options (Appellee's Exhibit "1"). The Notice also included the amounts paid in error, the dates of the overpayments, and the right to protest the findings.

6. Monroe responded, indicating that she was unable to repay under the options given and that she was unsure of the correct payroll amounts (Appellee's Exhibit "2").

7. Monroe was provided the payroll deposit advice forms for each of the pay periods (Appellee's Exhibit "3").

8. On June 28, 2011, OTRD submitted the payroll protest to MPC for determination (Appellee's Exhibit "4").

9. Scott Lange, OTRD Human Resources Director, testified that OTRD has tried to resolve this overpayment, however, Monroe has been off work since mid-June due to a work related injury. He stated that Monroe appears to have no means to re-pay

the overpayment as she has no accrued leave nor is she receiving pay. Lange discussed the OSF notice regarding overpayments that are collected in the next calendar year (Appellee's Exhibit "5"). He stated that if the repayment is made after December 31, 2011, Monroe will be required to pay the federal taxable gross amount.

10. Based upon the evidence in the record, Monroe received an overpayment of wages, said amount being over and above the amounts which were due and owing to her as compensation. There appears to be no dispute as to the material facts of this overpayment.

11. If the overpayment is recovered before December 31, 2011, the overpayment amount is B22-\$631.42, B23-\$545.02, and B24-\$496.54, for a total overpayment of \$1672.98. If the overpayment is recovered after December 31, 2011, the overpayment of the federal taxable amount is B22-\$720.00, B23-\$641.25, and B24-\$569.25, for a total overpayment of \$1930.50

12. OTRD is entitled to recover the overpayment in any manner provided by law.

CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause. The filing of the Payroll Claim Protest was timely.

2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.

3. Title 74 O.S. §840-2.19 and OAC 455:10-9-2 state that OTRD as the appointing authority has the burden of proof in payroll claim protests and must prove by a preponderance of the evidence that an overpayment occurred

4. The preponderance of the evidence shows that Monroe received payment of wages over and above the amounts which were due and owing to her and that OTRD has properly followed the statutory provisions for recovery of said overpayment.

5. OTRD has met its burden to prove, by a preponderance of the evidence, that it is entitled to recover its overpayment of wages to Monroe.

6. In accordance with the provisions of 74 O.S. §840-2.19 and OAC 455:10-9-2, OTRD may recover such overpayment by receipt of a lump sum repayment, by a salary reduction agreement or payroll deduction, by a reduction in accrued annual leave, or any combination thereof as permitted by law. The recovery period may be extended, at the discretion of OTRD, if Monroe fails to have sufficient payroll or is in a leave without pay status for any reason. Provided, if Monroe terminates her employment before the entire over payment is repaid, OTRD has the right to deduct the remaining balance from any final pay, leave balance or other amounts owed to Monroe.

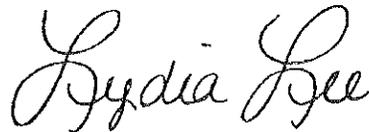
7. Nothing in this Order limits OTRD's right to collect this overpayment in any other manner permitted by law, in the event that the payroll recovery provided for herein is not successful in a complete recovery.

8. If the repayment is not paid by December 31, 2011, OTRD shall recover the full gross amount as an overpayment.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the payroll overpayment determination of the Oklahoma Tourism and Recreation Department in this payroll claim protest, MPC 11-248 be AFFIRMED and the Objection of Candy Monroe is DENIED. The overpayment of wages is to be recovered pursuant to the terms of this Order.

This Order entered this 9th day of December, 2011.



Lydia Lee
Administrative Law Judge