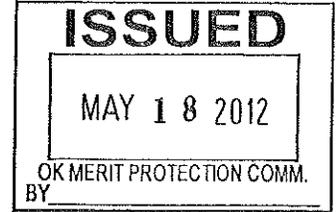


OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA



JEREMY FRANTZ,)
Appellant)
vs.) CASE NO. MPC 12-038
DEPARTMENT OF PUBLIC SAFETY,)
Appellee.)

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on May 9, 2012, at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant, Jeremy Frantz, appeared in person and was represented by Gary James, Esq. Appellee, Department of Public Safety (hereinafter referred to as "DPS" or "Appellee"), appeared by and through its Counsel, Stephen Krise, General Counsel and Christina Cornish, Assistant General Counsel, and table representative, Lt. Col. Greg Allen, Deputy Chief, Highway Patrol.

Appellant, a permanent classified employee working for Appellee, was discharged effective July 26, 2011 in accordance with Merit Rule 455:10-11-14 for violation of his disciplinary probation, when he received informal discipline for failure to complete and submit uniform crime reports as required. Appellant appealed his termination.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with Exhibits, which were admitted as Joint Exhibits 1 through 19, Appellant's Exhibit 1, and Appellee's Exhibit 1(A) pages 1-4, 1(B), 1(C), 1(D) page 1, 1(F), and 1(H), all of 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, Jeremy Frantz, had been a trooper with the DPS since June 2002, beginning his career in Troop A, Oklahoma City Metro and Oklahoma City Rural, before he was transferred to Troop K in 2006, and then Troop L in 2010. Both transfers were disciplinary transfers resulting from domestic altercations in which law enforcement was involved. The first altercation resulted in Appellant's conviction for domestic assault. Appellant's 2010 transfer to Troop L in Vinita was accompanied by a 40-day suspension without pay and a 12-month probation. The transfer, suspension, and 1-year probation were offered to Appellant in lieu of his termination, and Appellant signed an Acknowledgement of Probation and Requisite Performance of Duties agreeing to its terms. (Joint Ex. 5) The terms of the probation agreement state:

I acknowledge and agree that I am to be placed on probation for a period of one (1) year from my return from suspension and that any failure to perform any of my duties and obligations will result in my termination from the Oklahoma Highway Patrol. This includes but is not limited to . Any failure to comply will result in my termination. I also acknowledge and agree that any discipline

received during this period, whether formal or informal, shall be cause for my termination from OHP.¹

(blank space and emphasis in original)

Joint Ex. 5

The Acknowledgement is dated March 4, 2010, signed by Appellant, and witnessed by Cpt. Stephen Royster. Also on March 4, 2010, Appellant received a Notice of Disciplinary Action which stated:

You have agreed to the suspension and transfer, at your expense. You have also acknowledged and agreed to the terms of the probationary period and understand that any failure will result in your termination from this agency. You also understand and have agreed that the receipt of any other discipline, *in any form*, may be cause of termination. However, nothing in this agreement shall prevent this agency from imposing discipline up to and including termination after the expiration of the probationary period, if the conduct [sic] such warrants.

(emphasis in original)

Joint Ex. 6(A), pg 5.

On June 15, 2010 Appellant received an informal disciplinary action in the form of a verbal warning for his failure to notify troop headquarters and complete a written report of an accident with injury, after he had just been advised on June 2, 2010 of this requirement when he failed to complete a written report of another accident with injury that occurred on June 1, 2010. (Joint Ex. 6(B))

On April 12, 2012 Appellant received another informal disciplinary action, a verbal warning, for failing to complete and submit five of seven uniform crime reports (UCR's) from January 1, 2011 to March 29, 2011. (Joint Ex. 6(A)) This was Appellant's second disciplinary action during his probationary period. As a result of this disciplinary

¹ Although the Acknowledgement contained a blank space and other similar errors and omissions, such errors and omissions are not crucial to an understanding of the document, they do not affect the meaning and clear intent of the terms of the document, and they are not raised as an issue in this appeal.

action, and in accordance with the terms of his probation, Appellant was discharged effective July 26, 2011.

Appellant admits that he is well aware of the requirement to complete UCR's in a timely fashion, and further admits that he did not complete five of seven UCR's for which he received the verbal warning. Appellant argues, however, that just cause does not exist for his termination because (1) the April 12, 2012 verbal reprimand is not sufficient cause for termination; (2) Appellee failed to follow its own Disciplinary Matrix; and (3) mitigating circumstances were not taken into consideration.

Appellee counters that Appellant was discharged for violation of the probation agreement, not for failing to turn in five UCR's; and, the Disciplinary Matrix does not apply in this instance. This ALJ agrees. Further, as noted by Assistant Commissioner Adams, the mitigating circumstances Appellant argued are questionable as factors favorable to Appellant. For example, Appellant points to his PMP's as mitigating factors, yet only three of the five most recent PMP's had overall ratings of "Meets Standards", while the 2008-2009 PMP had an overall rating of "Needs Improvement", and the 2009-2010 PMP rating was "Does Not Meet Standards". (Joint Ex. 1(B) through (F)) Likewise, other exhibits offered as "mitigating documents within personnel file" consisted of training certificates, an oath of office, Law Enforcement Code of Ethics, and a January 2003 letter from an assistant cub master to Troop A Commander (and the Troop Commander's return acknowledgement) expressing his thanks for Appellant's and another trooper's visit to his cub scout pack. (Joint Ex. 3) Assistant Commissioner Ricky Adams testified that he did consider such "mitigating evidence" prior to rendering his decision to terminate.

Appellant also argues that the language used in the Acknowledgement of Probation and Requisite Performance and the language used in the March 4, 2010 Notice of Disciplinary Action are in conflict and are misleading. Further, Appellant states that he was told by his superiors at the time he received the March 4, 2010 disciplinary action, and again when he received his first and second verbal warning, that minor violations would not count as violations of his probation that would result in his termination. This administrative law judge rejects both arguments.

Appellant states that the Acknowledgement of Probation states that "...any discipline received during this period, whether formal or informal, **shall be cause** for my termination from OHP." (second emphasis added) (Joint Ex. 5) Whereas, the Notice of Disciplinary Action states that "...the receipt of any other discipline, **in any form, may be cause** of termination." (second emphasis added) (Joint Ex. 6(C)) Appellant argues that the use of "may" in one document and "shall" in another is ambiguous. However, in the context in which they appear, the use of "shall" or "may" is of little importance, as they both relate to "the cause" for termination. In neither event is termination itself mandated. Any discipline received by Appellant "may" be cause for termination, should the Appointing Authority choose to terminate him, or it "shall" be cause for termination, but again at the discretion of the Appointing Authority. Every cause for termination does not result in termination. More important than the use of "may" or "shall" is the language emphasized in both documents: "any" discipline received, "**in any form**" may result in termination, at the discretion of the Appointing Authority. The Appointing Authority did not choose to terminate Appellant's employment when Appellant received the June 15, 2010 verbal warning, although he could have done so.

Appellant also argues that, in spite of the clear and unambiguous language emphasized in both documents, they do not really mean what they say. Really, Appellant argues, according to his superiors, there would be no termination considered for minor infractions such as the verbal warnings Appellant received. However, this is not what the language of both documents state. This tribunal cannot consider ancillary evidence to change the meaning of the agreement where the language is clear and unambiguous on its face.²

For all the reasons stated, this Administrative Law Judge finds that Appellee has proven by a preponderance of the evidence that just cause exists for Appellant's termination in accordance with Merit Rule 455:10-11-14.

CONCLUSIONS OF LAW

1. Any findings of fact that are properly conclusions of law are incorporated herein as conclusions of law.
2. Merit Rule 455:10-11-14 states that a permanent classified employee may be discharged for misconduct, insubordination, inefficiency, inability to perform the duties of the position, willful violation of Merit Rules, or any other just cause.
3. 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.

² Additionally, it is noted that Appellant had legal representation throughout the 2010 disciplinary proceeding. Appellant's representative could have raised any issues or questions about the argued language in 2010 when such issues could have been resolved. He did not do so.

4. Troop L Operating Procedures states that reports are due by 12:00 p.m. on Thursdays and that each trooper is to ensure his/her reports are submitted on time, regardless whether he/she is on days off or on leave.

5. Appellee, Oklahoma Department of Public Safety, has met its burden to prove, by a preponderance of the evidence, that Appellant, Jeremy Frantz has violated the terms of his probation and that just cause exists for his discharge.

ORDER

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

DATED this 16th day of May, 2012.



Annita M. Bridges, OBA # 1119
Administrative Law Judge
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