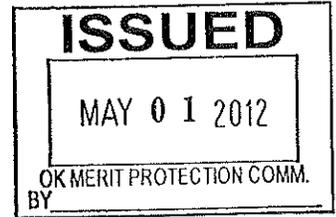


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



KAREN FORBES, )
Appellant )
vs. )
OKLAHOMA CORPORATION )
COMMISSION, )
Appellee. )

CASE NO. MPC 12-125

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on April 12, 2012 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant Karen Forbes appeared in person and was represented by Daniel Gamino, Esq. Appellee, Oklahoma Corporation Commission (hereinafter referred to as "OCC"), appeared by and through its Counsel David Lee and agency representative Christine Jolly, Director of Human Resources. Appearing also was Yasodhana Means, Esq. representing Joe Briley, Administrative Aide to Corporation Commissioner Bob Anthony and a witness in the case.

Appellant, a Public Utility Regulatory Analyst IV at OCC, was given a two-day suspension without pay because of her alleged failure to perform the critical functions of her position in a professional, respectful manner, her insubordination and inefficiency, and for conduct unbecoming a public employee, in accordance with Merit Rule 455:10-11-14.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with Exhibits, which were admitted and 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 had been employed with OCC since 1996 and is a Public Utility Regulatory Analyst IV, a senior level analyst. She holds an MBA from Oklahoma City University. As a Public Utility Regulatory Analyst (PURA), Appellant is responsible for analyzing, auditing, making recommendations, and providing expert testimony on public utility company rate change applications and other cases. As a senior analyst, she is sometimes assigned as a lead analyst or a sole analyst on a case, or may serve as a member of a team.

On November 15, 2011 Appellant was given a two-day suspension without pay for "insubordination, inefficiency, inability to perform the duties of the position in which employed, and conduct unbecoming a public employee for continued failure to successfully perform the crucial and essential functions of [her] position, and continued disregard for supervisory directives and the authority of management to assign work," all in accordance with Merit Rule 455:10-11-14. (Joint Ex. 3) Appellant filed this appeal of her two-day suspension without pay.

Appellant's Performance Management Processes (PMP's) from 2004 through 2009 all have an **Overall Performance Rating** of "Meets Standards". In 2004 and 2005 her **Performance Strengths** indicated:

Karen's attitude and work ethic are good. Karen takes care to be a good team player and performs her assigned duties professionally and within all established time frames.

Joint Ex. 10, pgs 89 and 94

**Performance Areas for Development** in 2005 stated:

Karen should be more proactive, ask more questions to aid in understanding immediate as well as related issues.

Joint Ex. 10, pg. 89

In 2006, Appellant was recognized as "the most experienced member of the EAR team."

Joint Ex. 10, pg. 83

Appellant's 2007 PMP identified her **Performance Strengths** as:

Karen has the ability to grasp complex issues while paying attention to the detail.

Joint Ex. 10, pg. 78

Joyce Davidson was Appellant's immediate supervisor from 2004 through most of 2007.

Fairo Mitchell became Appellant's new supervisor and completed Appellant's 2008 PMP. In 2008, Appellant received an "Exceeds Standards" for attending training dealing with wind concerns, and her **Performance Strength** indicated "Karen does detailed work." (Joint Ex. 10, pg. 73) **Performance Areas for Development** stated:

Karen is hesitant about taking on new assignments because she often states she has too much on her plate.

Joint Ex. 10, pgs. 71 and 73.

Even though Appellant was rated "Meets Standards" on **Teamwork**, and was noted for "helping take on some accounting areas when we were short-handed with auditors," Mr. Mitchell noted in the supervisor's "Additional Comments" section:

I believe Karen needs improvement on teamwork. While she eventually performs assigned tasks, such performance comes only after much complaining and resistance. Also Karen has a tendency to try to get others to do work she doesn't want to do.

Joint Ex. 10, pg. 74.

In her 2009 PMP, Appellant again received an "Exceeds Standards" for attending training and meetings dealing with wind concerns, but also received a "Needs Improvement" rating for performing analysis and review of assigned projects, with noted **Results** indicating:

While Karen has turned in her assignments, often a big production has been required to get testimony filed. Karen needs to concentrate on the material and task at hand so that intense review sessions are not required.

Joint Ex. 10, pgs. 51, 52.

Appellant's 2009 **Performance Strengths** section states:

Karen does a good analysis and is detailed on what she covers but sometimes does a cursory review in other areas that require the same detail. July 6, 2009

Karen does detailed work. December 1, 2009

Joint Ex. 10, pg. 54.

**Her Performance Areas for Development** state:

Karen needs to stay focused on the task at hand and not worry about other employee's assignments or how another person's work will affect her. Also, Karen needs to be mindful of the start-time of meetings because she has a habit of being late. July 6, 2009

In some instances Karen seems that she is merely familiar with the subject matter and [sic] not have the full working knowledge of the subject matter. December 15, 2009

Joint Ex. 10, pg. 54.

Mr. Mitchell attached several memoranda and e-mails documenting his concerns about Appellant's performance and her attitude, and added the following **Additional Comments to**

**Karen Forbes 2009 PMP:**

Karen attended the HRDS class that was required for her 2009. Karen has shown improvement on attending meetings on time, so tardiness is no longer a concern.

Karen has the ability to do great work, but she needs to learn and present subject matters on a level that is commensurate with PURA IV. I have high expectations from Karen especially given the compensation that she receives as a PURA IV. I need to be able to rely on Karen to perform the more complex assignments with the detail and attention that a person should have with her years of experience at the Commission.

Joint Ex. 10, pg 57.

In 2010 Appellant's **Overall Performance Rating** was "Needs Improvement". (Joint Ex. 10, pg. 49) She received "Needs Improvement" ratings in three **Accountabilities** areas -- one in performing analysis and review of assigned projects, a second such rating in preparing special reports as assigned, and a third such rating in attending training and professional organizations, an area in which she had received "Exceeds Standards" on her previous two PMP's. (Joint Ex. 10, pg. 46)

Additionally, Appellant was rated “Does Not Meet” Standards in three out of four **Behaviors** categories – teamwork, problem-solving initiative, and leadership. (Joint Ex. 10, pg. 48)

Problems with Appellant's work performance and attitude began to manifest soon after Fairo Mitchell became her new supervisor. Appellant seemed to resent his supervision and was very resistant to his directives. One of the earliest documented incidents was reflected in an August 7, 2008 memorandum from Mr. Mitchell memorializing a meeting he had with Appellant on August 6, 2008 in which he reassigned the Electric System Planning report she had been working on to a co-worker so that Appellant could complete newly assigned auditing work on the PSO rate case. Appellant complained about the reassignment and her workload, questioned the workload of her co-workers, argued about her assignments, questioned Mr. Mitchell's managerial judgment, accused him of having “tunnel vision”, and finally stated that she would relinquish the reassigned report, but would not assist the newly assigned co-worker in any way. (Joint Ex. 10, pg.64) In that same meeting Mr. Mitchell admonished Appellant about complaining to others about her workload and assignments and questioning his assignment of tasks to others in open staff meetings. (Joint Ex. 10, pg.64)

Despite such discussions, Appellant's attitude and behavior continued to be a constant problem, including:

- (1) repeated complaints about file cabinets, office size and OG&E rate case assignments (March 5, 2009 memo; Joint Ex. 10, pg. 67);
- (2) ignoring her supervisor's inquiries about assigned testimony that she was late submitting (April 24, 2009 memo; Joint Ex. 10, pg. 68);
- (3) needed corrections in her testimony that she did not make (April 28, 2009 memo; Joint Ex. 10, pg. 65);

- (4) her "chaotic" testimony process, waiting until the last minute to get her work product together and failing to follow the established procedure (December 7, 2010 memo; Joint Ex. 10, pg. 36);
- (5) involving others in her assigned work before she had approval from management to have such assistance (October 18, 2010 memo; Joint Ex. 10, pg. 34);
- (6) failure or refusal to follow her supervisor's instructions to conduct and document a mathematical review only of the PSO RVU quarterly review, rather than approving PSO's completed projects (February 24, 2011 memo; Joint Ex. 10, pg. 30);
- (7) refusal to follow Deputy Director Brandy Wreath's direction and Commission practice to use 10-year weather data in handling the Ft. Cobb issue, and instead talked with a co-worker and followed his contrary advice (May 10, 2011 memo; Joint Ex. 10, pg. 16).

On October 14, 2010 Appellant was assigned to handle two rate requests, Centerpoint Energy, PUD 201000148 and ONG, PUD 201000143. Often such assignments are given to a team of two to four analysts to complete. However, because Appellant is a senior analyst and her supervisors had questions about her ability to perform her own work at the level expected, these cases were assigned to her alone. On October 15, 2010, the day after the assignment was made, Appellant wrote a memo asking that two other analysts be assigned to work with her on these projects. (Joint Ex. 17) Mr. Mitchell denied her request as premature, in that she had not had sufficient time to review the cases to determine whether she needed help and what type of help she might need. (Joint Ex. 10, pg. 34)

On March 14, 2011 Centerpoint Energy, PUD 201000148 came before the Corporation Commission for action at its regular hearing. As the analyst assigned to the case, Appellant

was expected to be present as the state expert to answer any questions the Commissioners might have. Just before going into the Commission Signing Agenda for PUD 201000148, Appellant told Deputy Director Brandy Wreath that she needed his help before the Commission. This caught him off-guard, as he was not prepared to address questions about the case Appellant had studied and prepared for five months. Because of a lack of sufficient information, Chairman Murphy concurred with Vice Chairman Anthony's request to postpone the matter until later in the week to allow staff to obtain information the Commission needed in order to take action on the rate request. As a result of her unpreparedness, Appellant received a formal written reprimand on April 25, 2011. (Joint Ex. 5) <sup>1</sup>

On May 18, 2011 Deputy Director Brandy Wreath presented Appellant with a Corrective Action Plan, citing her insubordination, disrespect of her supervisor, and her less than satisfactory work performance as cause for the Plan. Mr. Wreath indicated that Appellant was to work independently on all assignments, not help others or seek the help of others without first working with supervisor Mitchell. Specifically, the Corrective Action Plan provided:

1. Fairo is Karen's primary supervisor. All issues will be taken to him first.
2. Fairo will make assignments, give guidance, direction and instructions.
3. Karen will not go to anybody for help without permission.
4. If given a policy position, scope or direction, Karen will not change such position, scope or direction without permission from the person giving her the original policy position.
5. Karen will prepare independent supported recommendations on all assignments.
6. Karen will not help others on their causes without permission.

Failure to meet the expectations and requirements of this corrective action plan may result in further disciplinary actions.

Joint Ex. 6

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<sup>1</sup> There were many problems cited concerning Appellant's work on this case and its presentation before the Commission. While there was much testimony at the trial about this event, it will not be discussed in detail here since that matter is not an issue in this case. Appellant had previously received a written reprimand for her unpreparedness at the Signing Agenda, and any disagreement with or discussion of that discipline is moot.

Because of her continuing problems, Appellant was given a mid-year review on June 1, 2011 in which her unsatisfactory performance and attitude during the first part of the PMP period was reviewed with her and documented. This mid-year review reiterated those items addressed in her Corrective Action:

The main items in need of correction are as follows:

1. Respect for Fairo Mitchell as her direct supervisor
2. Deal directly with her supervisor when in need of assistance
3. Perform her own analysis on cases as assigned
4. Prepare a thorough, supported work-product commensurate with her position and tenure
5. All other items as addressed in the corrective action documents prior to this meeting

Joint Ex. 2

Even with the Corrective Action and the Mid-Year Review, Appellant's performance and attitude did not improve to a satisfactory level. On October 11, 2011 Deputy Director Wreath issued a Notice of Possible Adverse Action – Suspension without Pay, in which he proposed a three-day suspension without pay for insubordination, inefficiency, inability to perform the duties of the position in which employed, and conduct unbecoming a public employee. (Joint Ex. 7) Citing Appellant's continued failure to perform the critical functions of her position in a professional, respectful, and competent manner, Mr. Wreath stated:

Specifically, you have contacted a regulated utility after being directed to NOT do so. You question assignments, complain that you have "too much" on your plate, and request that others be assigned causes that should be assigned to you.

In addition, you have made little to no progress on independently reviewing and researching issues and preparing supported recommendations. You rely on the analysis of the regulated entity instead of performing an independent analysis, as required. You are not able to explain how or why you prepare your recommendations to staff or to the Commissioners, and are unable or unwilling to give concise, accurate testimony on your assigned causes. It has become clear that you lack a fundamental understanding of the accounting, financial, and energy related concepts that are crucial to performing the essential functions of your position.

Joint Ex. 7

Mr. Wreath testified that reference is made here to a PSO review by Appellant in which she was directed to perform the analysis herself rather than relying on information supplied by the utility. She was specifically directed not to contact the utility, but did so anyway. Deputy Director Wreath ended up having to perform the analysis Appellant was assigned to do.

Appellant responded to the Notice of Possible Adverse Action with a 12-page Response to Notice of Possible Adverse Action (Joint Ex. 8) listing purported mitigating factors that Appellee should consider prior to taking final action. After considering and addressing each of the points raised in Appellant's 12-page Response, on November 15, 2011 Appellee gave Notice of Final Action and suspended Appellant without pay for two days for insubordination, inefficiency, inability to perform the duties of the position in which employed, and conduct unbecoming a public employee, for her continued failure to successfully perform the crucial and essential functions of her position and continued disregard for supervisory directives and the authority of management to assign work. (Joint Ex. 3)

Having considered all the evidence presented, including the mitigating factors raised by Appellant, this administrative law judge finds that Appellee has proven by a preponderance of the evidence that Appellant violated Merit Rule 455:10-11-14, that just cause exists for disciplinary action, and that the two-day suspension imposed was just under the circumstances.

### **CONCLUSIONS OF LAW**

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and subject matter in the above-entitled matter.
2. Any findings of fact that are properly conclusions of law are so incorporated herein as conclusions of law.

3. Merit Rule 455:10-11-14 states that a permanent classified employee may be suspended without pay for up to 60 calendar days for insubordination, inefficiency, inability to perform the duties of the position in which employed, conduct unbecoming a public employee, and any other just cause.

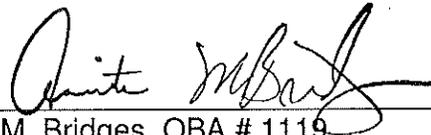
4. Merit Rule 455:10-9-2(f)(1) states that the Appellee bears the burden of proof in an adverse action and must prove by a preponderance of the evidence that just cause exists for adverse action and that the discipline imposed was just.

5. Appellee, Oklahoma Corporation Commission, has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Appellant Karen Forbes and that the discipline imposed – suspension of pay for two days – was just under the circumstances.

**ORDER**

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

DATED: this 30<sup>th</sup> day of April, 2012.



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Annita M. Bridges, OBA # 1119  
Administrative Law Judge  
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