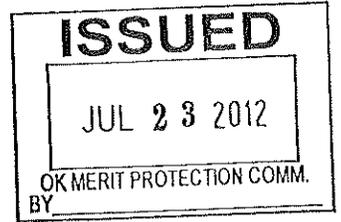


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



PATRICIA L. RODGERS,)
Appellant)
vs.)
DEPARTMENT OF CORRECTIONS,)
Appellee)

CASE NO. MPC 12-140

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on July 9, 2012 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant Patricia Rodgers appeared in person and was represented by Daniel Gamino, Esq. Appellee, Department of Corrections (hereinafter referred to as "DOC"), appeared by and through its Counsel Gary Elliott, Assistant General Counsel, and agency representative Lester Leroy Young, District Supervisor, Oklahoma County Community Corrections / Residential Services.

Appellant filed this appeal after she was terminated from her employment for violation of Merit Rule 455:10-11-14, concerning misconduct and conduct unbecoming a public employee; OP-110215, prohibiting workplace violence; and OP-110214 describing acts constituting workplace violence, after she injured a co-worker while venting to that co-worker and allegedly displaying acts of violence and aggression.

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, Patricia Rodgers, had been employed with DOC since 2007, and at the time of her discharge was a Business Manager III at the Clara Waters Community Correction Center. On November 8, 2011 Appellant entered the office of her friend and co-worker, Genie Gwinn. Appellant was angry, upset, and crying because office supplies she had purchased were not the desired items and had been returned to her. Appellant ranted that secretary Vivian Brown had failed to describe the desired items with specificity, and repeatedly referred to Ms. Brown in derogatory, unprofessional terms such as "dumb bitch," "that fucking bitch," "that stupid fucking bitch," "that fucking crazy bitch". (Joint Ex. 5) Ms. Gwinn told Appellant to calm down. Appellant slammed down the box of returned supplies on Ms. Gwinn's desk; she came around the side of the desk near the office chair where Ms. Gwinn was sitting, drew back her right arm, made a fist, and punched her hard in her upper left arm. Ms. Gwinn exclaimed that the punch hurt and again told Appellant to calm down. Caught off-guard by the punch, and not knowing what to expect next from Appellant, Ms. Guinn got up from the chair, squeezed past Appellant and moved toward her office door, with Appellant right behind her. (Joint Ex. 5)

Ms. Gwinn had her hand on the doorknob to open it, when it was opened from the outside by Vivian Brown. Ms. Gwinn told her she was busy and would call her when she was through. Appellant was still upset and crying. Again Ms. Gwinn told her to

calm down and take her medication; and asked if she had her Xanax¹ with her, suggesting to her that she needed something to help her calm down. Appellant replied that she thought she did have her medication with her. Appellant asked Ms. Gwinn if she would talk to Ms. Brown and Ms. Gwinn replied that she would not talk with Ms. Brown, but would talk with Ms. Carmen Jackson, the assistant district supervisor.

After Appellant left Ms. Gwinn's office, Ms. Gwinn went to Ms. Jackson's office and related to her what had just occurred in her office. Ms. Jackson told her that this needed to be reported to District Supervisor Leroy Young, and accompanied Ms. Gwinn to Mr. Jackson's office. Mr. Jackson told Ms. Gwinn she needed to write an incident report of what had occurred. That day Ms. Gwinn wrote and turned in a two-page report of the incident, in which she stated in closing:

...I'm still in total [sic] disbelieve that she actually hit me with her fist. Since this incident I am not sure now and I am leery of how Pat Rodgers may act or re-act to any situation. My upper left arm was red and hurting after Pat hit me and it is still red and hurting up into the rotator/shoulder area.

Joint Ex. 5

The next day, Ms. Gwinn completed a Form 2, *Employer's First Notice of Injury* to be filed it with the Workers' Compensation Court, in which she stated:

Pain and soreness in upper left arm, shoulder/neck area and elbow.

Was assaulted by staff person, she drew her fist back and hit me in my upper left arm area.

Upper left arm area was hit, shoulder, neck and elbow hurts.

Joint Ex. 10

¹ Xanax is a prescription drug used to treat anxiety disorders and panic attacks.(www.drugs.com/xanax.html)

Ms. Gwinn was issued a Return to Work, with medical restrictions requiring no lifting over five pounds; no pushing or pulling over ten pounds of force; no reaching above shoulders. (Joint Ex. 12) The restrictions were in effect until November 19, 2011.

On November 9, 2011, the day after the incident, District Supervisor Young issued Appellant a Cease and Desist Letter instructing her not to engage in any intimidating, threatening, harassing behavior or any behavior of a physical or verbal manner toward Ms. Genie Gwinn or other employees. Appellant was placed on leave with pay indefinitely, until the issue was resolved. (Joint Ex. 6) On November 16, 2011 Appellant received a Notice of Pre-Termination Hearing (Joint Ex. 8) and on December 20, 2011 Appellant received a Letter of Termination, effective December 26, 2011. (Joint Ex. 9)

DISCUSSION

Appellant filed this appeal to the Merit Protection Commission alleging that (1) the Clara Waters Community Corrections Center is a stressful environment and that stress, created by Assistant District Supervisor Carmen Jackson, caused Appellant to become frustrated; (2) Appellant was not angry with Genie Gwinn, but was frustrated with other coworkers, and was simply venting when she hit Genie Gwinn in the arm; (3) Genie Gwinn was coerced and under duress to make the written report of the incident; (4) Genie Gwinn was not intimidated or fearful of Appellant and they are good friends, socializing together often.

At the hearing Ms. Gwinn gave testimony that was inconsistent with her written statement made the day of the incident. There is no indication and no facts to support

allegations that Ms. Gwinn was pressured into making a false statement on November 8, 2011. On the contrary, Ms. Gwinn felt strong enough about the assault to seek medical attention for injuries suffered, to repeat on the medical report that she had been assaulted by a staff person, and to describe the assault. (Joint Ex. 10) While Ms. Gwinn may think differently about the incident today than she did on November 8, 2011, it is clear that Appellant's actions on that day were sufficiently severe to cause physical pain and suffering to Ms. Gwinn to the extent that she felt it necessary to seek medical attention.

This administrative law judge accepts Appellant's assertion that she was not angry with Ms. Gwinn on November 8, 2011 and did not intend to hurt her. However, it is Appellant's actions and behavior which are prohibited and for which she received discipline, not her intent. Additionally, even assuming that the workplace is stressful, stress in the workplace is no excuse for violent actions. In fact, where stress is part of a work environment, it is even more critical to immediately address every situation of verbal or physical action so that the situation does not escalate into a workplace tragedy. District Supervisor Young testified that his actions in this case are consistent with actions he has taken in the past when incidents of unwanted physical contact occur. Although Appellant did not intend to harm Ms. Gwinn, Appellant's actions did cause injury to Ms. Gwinn, requiring her to seek medical attention, and did leave her feeling unsure and "leery of how [Appellant] may act or re-act to any situation." (Joint Ex 5)

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

discharge in accordance with Merit Rule 455:10-11-14 concerning misconduct and conduct unbecoming a public employee; OP-110215, prohibiting workplace violence; and OP-110214 describing acts constituting workplace violence, after she hit with her fist causing injury to Genie Gwinn while venting to her about another co-worker.

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 discharged for misconduct, 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. DOC Policy OP-110215, Section I A(2) *Rules Concerning the Individual Conduct of Employees*, requires employees to engage in conduct which affords respect, courtesy and preserves the dignity of others.

6. DOC Policy OP-110215, Section I A(7) *Rules Concerning the Individual Conduct of Employees*, requires employees to conduct work in a manner that contributes to and supports a safe, healthful work environment.

7. DOC Policy OP-110215, Section VIII *Prohibited Activity and Relationships with Employees*, prohibits employees from engaging in any workplace conduct which threatens, frightens, intimidates, or causes physical harm to others, and subjects any employee who engages in such conduct to disciplinary action up to and including termination.

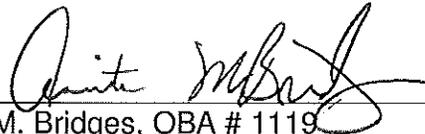
8. DOC Policy OP-110214 *Workplace Violence*, provides that employees who inflict physical injury on other employees will be appropriately disciplined and may be referred for criminal prosecution.

9. Appellee, Department of Corrections, has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Appellant Patricia Rodgers for her actions of physical violence and aggression toward Ms. Genie Gwinn on November 8, 2011, and that the discipline imposed, termination, 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 19th day of July, 2012.



Annita M. Bridges, OBA # 1119
Administrative Law Judge
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