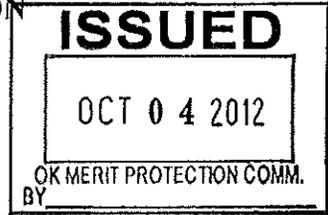


BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA



BRIAN M. WRIGHT,)
Appellant,)
v.)
OKLAHOMA DEPARTMENT)
OF HUMAN SERVICES,)
Appellee.)

Case No. MPC 12-209

FINAL ORDER

This matter comes on for hearing on the 20th day of September, 2012, before the undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. The Appellant, Brian M. Wright (hereinafter “Wright”) appears personally, pro se. The Appellee, Oklahoma Department of Human Services (hereinafter “DHS”), appears by and through counsel, Rick Resetaritz and Table Representative, Elizabeth Hodgen.

Appellant Wright is a classified employee of DHS, appealing an adverse disciplinary action of a five (5) day suspension without pay. Whereupon the hearing began and the sworn testimony of witnesses was presented, along with exhibits. Regarding the exhibits, the Appellant and the Appellee submitted Joint Exhibits 1 through 29 which were admitted with no objections. Accordingly, all Exhibits offered and admitted are made a part of the record herein.

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

ISSUES

1. Was there just cause to impose discipline in this matter?
2. If so, was the discipline imposed just and appropriate under the circumstances?

FINDINGS OF FACT

Background of Case

This matter arises from an appeal of the imposition of a five (5) day suspension without pay upon Wright. Wright is a permanent, classified employee of DHS, employed as a Direct Care Specialist (hereinafter "DCS") II. Wright was disciplined for Willful disobedience, Insubordination, Discourteous treatment of clients, other employees or the general public, and Conduct Unbecoming A Public Employee, in violation of DHS policies as further detailed in the Amended Notice of Final Disciplinary Action (Joint Exhibit 3). The Notice included the specific facts surrounding Wright's behavior in arguing with his supervisors, making numerous demands for access to the staff log book, and refusing to "hold-over" for shift coverage. He had one previous disciplinary action of an oral reprimand. Wright alleges that his behavior was warranted because of DHS' failure to follow its own policies and laws.

The Testimony

DHS offered the testimony of eight (8) witnesses. Wright offered his own testimony. All witnesses were properly sworn and provided testimony under oath.

Adele Anderson is a DCS V. She is a unit manager at Southern Oklahoma Resource Center (hereinafter "SORC") and reports directly to the Center's Director, Jeff Livingston. She explained that SORC was a facility designed to address the needs of individuals with severe mental and physical disabilities. The Center provides residential care, training and medical care to its residents.

Anderson testified that, in early December, 2011, she was approached by Wright, who demanded to see the staff log book. The staffing log book is where she keeps the schedules of who is working, who is off on leave, what kinds of leave they are taking, outside appointments of clients, and the list of volunteers for "hold-overs" for each shift as needed. Anderson stated that because of Wright's previous demands for access, she had been advised that the log book was not an "open records" because it contains confidential information. She stated that she refused his request, explaining that only supervisors had access to the book. She testified that Wright became very loud, yelling

that it was a violation of the law and that he had a right to see the book. This instance occurred in the hallway outside her office and was within earshot of the clients and others. He became so loud that another employee, Mr. Beaver, came out to intervene. Several days later, Wright again demanded to see the log book. Anderson said that Wright was very angry, was red in the face and was shaking. She said she was very uncomfortable and Wright was hostile and aggressive.

In February, 2012, Anderson was contacted by Robin Thomas. While on the phone with Thomas, she testified that she could hear Wright yelling in the background. Thomas confirmed that it was Wright and he was angry because he was asked to “hold-over” to the next shift due to staff shortages. He was yelling that the policy was not being followed correctly and demanding a written directive to stay. Joint Exhibit 5 represents her written statement about these events and is consistent with her testimony.

Robin Thomas is a DCS III and is a supervisor at SORC. She testified that on February 25, 2012, she advised Wright that he was needed to stay over to cover the next shift because he was the only staff member available with less than 24 hours of overtime. He became very angry, refusing to stay over because she was not following policy. She advised him on several occasions to stop yelling and to calm down. She told him that it was an emergency situation, he was needed, and he could not use his right of refusal. He then demanded that she put the directive in writing. Wright was very angry, shaking his finger at her and had fists clenched. She stated that she informed him that she was a supervisor, was giving him a directive and that it did not need to be in writing. He still refused and left the facility. Joint Exhibit 8 represents her written statement about this event and is consistent with her testimony.

Jeff Livingston is the Director at SORC. He testified that he has responsibility for the entire facility. Livingston stated that Wright’s actions justified a higher level of discipline due to the seriousness of the behavior. The refusal to hold-over and leaving the facility with a staffing shortage alone would have warranted at least a written reprimand. As a result of this action being based upon several incidents and Wright’s anger and behavior in front of others escalated this offense to a suspension without pay. Livingston testified that Wright provided him with a written response for his consideration prior to the imposition of this disciplinary action. (Joint Exhibits 16 and 17). He stated that a

previous Step-2 decision maker had ruled that the log book was not subject to the Open Records Act and that Wright's demand was to see the entire book, not a particular page or entry that could be redacted.

Gary Beaver is a DCS IV at SORC. He testified that he witnessed Wright's behavior in December of 2011 when he became angry that Anderson would not give him access to the staff log book. He stated that there were clients of the Center in close proximity and that Wright's yelling could easily be heard. Joint Exhibit 6 represents his written statement about this event. Beaver also testified that a Corrective Action Plan was instituted as part of this discipline, requiring Wright's immediate supervisor, Cindy Turner, to meet with him at least once every thirty (30) days. He stated that this never occurred.

Ricky Jackson, a DCS III at SORC, testified that Wright approached him in December of 2011. Wright asked to see the log book so that he could choose his days to volunteer for overtime. Jackson said that he refused and Wright demanded to see it and argued that it was his right to see it and DHS was violating policy. He stated that Wright was very mad but did leave the office. Joint Exhibit 15 represents his written statement about this event.

Darren Owens is a DCS III at SORC. He was on duty on February 23-24 when Wright failed to stay over as assigned. On the 24th, he asked Wright to give him a written statement as to why he failed to stay. He said that Wright simply asserted that he did not have to stay because policy was not being followed. When Owens questioned him, Wright could not point to a specific part of the policy for this alleged violation. Joint Exhibit 7 represents his written statement about this event and Joint Exhibit 11 represents Wright's his written statement response.

Jerry Tomlinson is the head of the Human Resources Department. He testified that he reviewed the procedure used in this disciplinary action and confirmed that it was in compliance with DHS policy. He stated that the original Notice of Proposed Disciplinary Action was superseded because it erroneously included a reference to an oral reprimand in November, 2010, that was withdrawn (Joint Exhibit 12). The revised Notice was correct (Joint Exhibit 1) and included a reference to an oral reprimand in January, 2011, which was valid (Joint Exhibit 13).

Elizabeth Hodgen provided testimony about the hold-over policy at SORC. She stated that it was revised in March, 2011 (Joint Exhibits 23 and 28). She discussed the staff-to-client ratios and the need to maintain proper staffing levels for each shift. Hodgen stated that she believed that Wright's action warranted this level of discipline due to the threatening nature of his behavior. She stated that she believed this indicated potential workplace violence, as well as constituting harassment.

Brian Wright testified on his own behalf. He stated that he is a DCS II and is also a CMA, so in addition to the general care of residents, he can also give medications. He stated that he works the 3rd shift at night and there is not as much interaction because the residents are asleep. When Anderson took over as Unit Manager, she prohibited the staff from watching television while on duty. Wright began to spend his time on the internet, reading the various DHS policies and the laws governing his job. As a result, he felt that he was more versed in the policies than his supervisors and that they always got mad when he pointed out violations to them. Wright is adamant that he has the right to view the staff log book because he felt it was an open record. He also is adamant that the policy on hold-over is not being followed properly. Wright admits to being angry and frustrated about these issues, but denies ever acting in a threatening manner. He stated that the volunteer lists are not posted, but are in the staff log book, which is the basis for his request to see the book. (See Joint Exhibit 23, pg. 1, 2.b.). He also stated that on February 24-25, the Administrator had not declared an Emergency Staffing situation so his mandatory hold-over was not required. He admits that he received a directive to stay, but he was justified to ignore it since he did not agree with it. He discussed his prior grievances and stated that he did not agree with the outcomes of those matters and therefore, was justified in continuing to assert his positions. On cross examination, he admits that he was very angry with Anderson, was yelling and red-faced and probably shaking. He admits that it occurred in close proximity to residents and others, but denies that they could see or hear the argument. Wright claims that he has the "right" to get angry and yell if he feels that his rights are being violated or when people do not listen to him. He stated that his supervisors are not better than him and that he resents being "talked down to". He feels that he is their equal. He asserts that he is following his interpretation of the laws and policies, and he doesn't have to follow any directives that

he believes are not right. He denies doing anything wrong or inappropriate. He specifically stated that he resents it when supervisors “puff up their chests” at him or gives him “attitude” through non-verbal clues. He stated that he has the right to “stand his ground”. Wright admits that he never made a formal written request for records under the Open Record Act, even though he was aware of the DHS forms to do so. He states that he is not “the public” and those requirements did not apply to him.

Discussion of Evidence

DHS provided substantial evidence that Wright yelled at his supervisors in an angry, threatening manner. DHS also provided substantial evidence that Wright refused a specific directive from supervisors to hold-over to the next shift. Wright did not deny that he engaged in such behavior. The standard of proof in this matter is preponderance of the evidence. DHS has met its burden of proof that Wright’s behavior constitutes the following misconduct: willful disobedience and insubordination by refusing the directive to hold-over; discourteous treatment of clients or other employees by yelling and acting in a threatening manner which could be observed or heard by other employees or clients; and conduct unbecoming a public employee by refusing the directive and behaving in a angry and threatening manner. This misconduct is a violation of DHS policies as further detailed in the Amended Notice of Final Disciplinary Action (Joint Exhibit 3).

As mitigating circumstances, Wright argues that his supervisors’ actions were in violation of DHS policy, the Open Records Act and the Nursing Home Act. Wright is convinced that DHS is acting outside of these law and the policies. He is very adamant that this excuses his behavior. This argument is not persuasive. There is no record that that he appealed any prior grievance decisions. This was the proper method if he believed that they were decided in error. He admits that he never made a formal, written request for documents under the Open Records Act. Furthermore, Wright was unable to articulate the exact nature of the violation or to point to a specific section or provision of law. Even if an agency is not following policy, the employee is obligated to pursue a remedy through appropriate channels. Acting in a rogue manner will not be permitted. Specifically, acting in a threatening or abusive manner is never appropriate.

DHS has met its burden of proof that Wright's action warrants disciplinary action. Given the gravity of the misconduct, the prior disciplinary history and Wright's failure to acknowledge the gravity of his behavior, the discipline of imposed of a Suspension without Pay is appropriate.

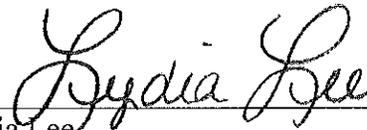
CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause.
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. §840-6.5 and OAC 455:10-9-2 states that the Appellee DHS 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. 74 O.S. §840-6.5 and Merit Rule 455:10-11-14 and 455:10-11-15 states that a permanent classified employee may be suspended without pay for the reasons of 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. Appellee DHS has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Wright for his misconduct and his appeal on that ground is denied.
6. Appellee DHS has met its burden to prove, by a preponderance of the evidence, that the discipline imposed was just, considering all of the circumstances.
7. The record herein supports the imposition of formal discipline of a five day suspension without pay as just and appropriate considering all of the facts and circumstances of this matter.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant Brian M. Wright, MPC 12-209 be **DENIED** and the appeal is hereby dismissed.

This Order entered this 1st day of October, 2012.

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