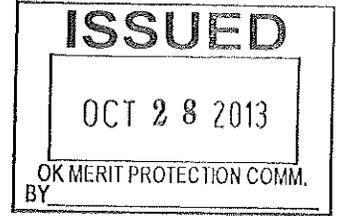


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION  
STATE OF OKLAHOMA**

**VIVIAN M. BROWN,** )  
Appellant, )  
 )  
v. )  
 )  
**OKLAHOMA DEPARTMENT** )  
**OF CORRECTIONS,** )  
Appellee. )  
 )

Case No. MPC 13-099



**FINAL ORDER**

This matter comes on for hearing on October 17, 2013 before the duly appointed, undersigned Administrative Law Judge (hereinafter “ALJ”) at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. The Appellant, Vivian M. Brown (hereinafter “Brown”), appears personally pro se. The Appellee, Oklahoma Department of Corrections (hereinafter “DOC”), appears by and through counsel, Michele Minietta. Also present for Appellee was Table Representative, Brian Thornburgh.

Appellant Brown was a permanent, classified employee of DOC, appealing an adverse disciplinary action of termination. During the administrative hearing, the sworn testimony of witnesses was presented, along with exhibits. Joint Exhibits 1 through 5 were offered jointly and were admitted. The Appellee offered Appellee’s Exhibits 1 through 13 and 15, which were all admitted with no objection. The Appellant offered Appellant’ Exhibits 7 through 10 and 13, which were all admitted with no objection. Appellee’s Exhibit 14 and Appellant’s Exhibits 1, 3, 4 and 5 were all admitted over the objections of the opposing party. Accordingly, the exhibits presented and admitted are made a part of the record herein.

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**

Background of Case

At the time of her termination, Brown was a Secretary III at Clara Waters Community Corrections Center, operated by DOC (hereinafter "Center"). Brown had been employed in various capacities with DOC since July, 2001. The parties stipulated that the Merit Protection Commission (hereinafter "MPC") has jurisdiction of this matter, that Brown was a permanent, classified employee of DOC, that Brown timely filed her appeal and that Brown was terminated effective December 4, 2012. Brown also stipulated that she has accepted other employment and is not seeking reinstatement, only back pay and benefits.

In April of 2012, Brown went to Tinker Air Force Base during her lunch break to apply for a second job. While there, Brown was arrested on several outstanding warrants from Oklahoma County, McClain County and Cleveland County. She was driving a co-worker's car and called the DOC office to make arrangements for the car to be picked up. Brown was jailed, first in Oklahoma County for several days, and then sent to McClain County. After she was able to post bail, she returned to work at DOC. Her supervisor, Carmen Jackson, met with her and stated that she needed to get all of her criminal cases resolved. Brown was given time off to go to court in an effort to support her efforts to resolve all of the outstanding matters. In June, 2012, her supervisor became concerned about her criminal record and Brown consented to a criminal background records check (Appellee's Exhibit 3). The report indicated that Brown's driver license had been revoked since 2011 for non-payment of traffic violations. A check of her state vehicle usage showed that she had been driving a state vehicle without a valid license in 2011 and 2012 (Appellee's Exhibit 8). Brown was immediately instructed to stop driving any state vehicles. In October, 2012, research indicated that she still had three outstanding bench warrants for her arrest pending in McClain and Cleveland Counties (Appellee's Exhibits 4 through 7).

On November 13, 2012, DOC provided Brown with notice of the proposed disciplinary action of termination (Appellee's Exhibit 10) and placed her on suspension with pay pending final action (Appellee's Exhibit 9). The notice alleged that Brown violated the DOC Code of Conduct as a result of her illegal activity, improper use of a state vehicle and insubordination for failing to resolve these issues as directed by her supervisor. The notice also contained citations of the specific provisions relied upon. It also included the details of the various bench warrants and the suspended driver license, as well as a recitation of Brown's prior discipline. Brown provided a written response to the proposed discipline (Appellee's Exhibit 11). A pre-termination hearing was held and Brown was given an opportunity to respond to the allegations.

On December 3, 2012, DOC provided Brown with written notice of termination (Joint Exhibit 4). Brown timely appealed the disciplinary action.

### ISSUES

1. Did DOC have just cause to impose discipline in this matter?
2. If so, was the discipline of termination just and appropriate under the circumstances?

### The Testimony

The testimony of three (3) witnesses was given in this administrative hearing, with each witness sworn and offered under oath.

Carmen Jackson is the Assistant District Supervisor at DOC, and was Brown's supervisor at the Center. She testified that in April, 2012, she received a call that Brown had been arrested at Tinker and was being taken to Oklahoma County jail. She later became aware of four outstanding bench warrants that were issued for Brown in Oklahoma, McClain and Cleveland Counties. While Brown was in jail, Jackson accepted collect telephone calls from her and visited her in jail in McClain County. Jackson stated that she also was able to let Brown use her cell phone during that visit to contact family members. Brown also gave Jackson's cell number to other inmates and had them call her on Brown's behalf. Jackson said that after Brown returned to work, she told her to get all of the cases resolved and allowed her time off to appear in court. Periodically, Brown told Jackson that she was working on getting the cases resolved. After three to four months, Jackson was concerned that there may be other issues pending. She also wanted to check on Brown's progress. With Brown's consent, she ran a background record check and discovered the driver license suspension. She confirmed that Brown had been driving a state vehicle and transporting inmates, which created a liability issue for DOC. She instructed Brown to immediately cease operating motor vehicles, state owned or otherwise. Jackson discussed the reports that she received. She said that the records indicated that Brown was making appearances and payments in the Oklahoma County Bogus Check case, but that she had taken no steps to resolve the McClain or Cleveland County cases. As of October, 2012, over six months after she had directed Brown to resolve the cases, there were still three outstanding bench

warrants for Brown's arrest. The McClain County warrant was for failure to appear and failure to pay costs or fines on a Bogus Check charge. There were two cases in Cleveland County, one for Bogus Checks and the other for Speeding and the warrants were for failure to appear and pay fines and costs. Jackson stated that she had worked with Brown since January, 2011. She denied that she ever called Brown lazy or that she hated her and was out to fire her. Jackson said that she thought they had a professional relationship and that Brown was very helpful, often volunteering to help in different areas. Because she thought highly of Brown, she gave her over six months to try to resolve these matters. Jackson discussed Brown's prior discipline (Appellee's Exhibit 12 through 15 and Joint Exhibits 2 and 3). She also provided testimony about Brown's performance ratings (Joint Exhibits 1 and 5). Jackson concluded that this was not a performance issue, but rather was misconduct by virtue of violations of the code of conduct for engaging in criminal or illegal activity. Jackson denied being aware that Brown was operating a state vehicle without a valid license and stated that she would have never let her drive if she had been aware. Jackson stated that she felt Brown was given every chance to resolve this and save her job, but she failed to do so. Jackson stated that she did not have the authority to terminate Brown, and the decision was made by her superiors.

Brian Thornburgh is the District Supervisor. He has been with DOC for 19 years in various capacities. When he took his current position in 2012, he was made aware of the situation with Brown. He stated that he had no preconceived ideas about her but was concerned that a person with outstanding criminal warrants was working in a DOC correctional facility. In November, 2012, Thornburgh reviewed Brown's file, consulted with the legal division and the DOC Deputy Director. He then made the decision to pursue termination of Brown, primarily due to the fact that she was not making an attempt to resolve her legal problems. He stated that he was very concerned about DOC being aware of an employee having outstanding bench warrants. He placed Brown on suspension with pay and proceeded with disciplinary action to terminate her. Thornburgh conducted the pre-termination hearing and listened to Brown's response. He considered her history and ratings but ultimately determined that there was sufficient cause for termination. Thornburgh stated that Brown's performance wasn't relevant because of the criminal activity. He was also concerned because she had previously been disciplined for outstanding warrants and knew or should have known how serious this violation was. He felt that they had made an extended effort to give her time to address these cases but

she failed to do so. Thornburgh stated that, even after she was given notice of the termination, she failed to take steps to resolve the warrants. He said that the combined misconduct of outstanding warrants and driving without a license justified the termination.

Vivian Brown testified that she had worked for DOC since July, 2001, progressing from Correctional Officer to Secretary III. She discussed the various criminal cases at length, stating that she didn't have the money or transportation to travel to McClain and Cleveland Counties to try to resolve the cases. She said when she contacted the county clerks, she was told that she had been turned over to a collection agency. The collection agencies added charges and wouldn't give her any records of payments. She said she disputed the amounts they wanted so she couldn't get anywhere with resolving them. Brown claimed that her records and receipts were in storage and she had not been able to go through the various boxes to locate them. She claimed that she was dealing with various health issues and the death of her mother in 2010 and had not been able to take care of the cases. Brown stated that she was confused and overwhelmed and admitted that she had made mistakes, but she was trying. She said that Jackson never liked her and called her names, stating she was lazy and couldn't be trusted. She said that she felt that this was just part of Jackson's plan to get rid of her. Brown claimed that in 2011 she told Jackson that her license had been suspended but Jackson ordered her to drive anyway. Brown discussed a plan of action and letter of instruction dealing with performance issues (Appellant's Exhibits 1, 4 and 5). Brown also stated that in June, 2012, she complained to the previous District Supervisor about alleged hostile workplace but never filed a formal grievance (Appellant's Exhibit 3). She also discussed her payments in Oklahoma County (Appellant's Exhibits 7 through 10). She stated that she could only afford to make payments on one case at a time. Brown admitted that four of the bogus checks were written at bingo halls (Appellant's Exhibit 8). She also admitted that Jackson told her to get all of the outstanding warrants resolved but that she was not able to do so.

### DISCUSSION

There is generally no dispute as to the basic facts of this case. Brown had four outstanding bench warrants in April of 2012. Brown was verbally instructed to resolve these matters or face further action. By November, 2012, Brown still had three outstanding bench

warrants. Brown had her driver license suspended and drove state vehicles anyway. Brown had been previously disciplined for a similar violation of the code of conduct. DOC has met its burden of proof that it had just cause to impose discipline in this matter for Brown's misconduct.

DOC argues that there was no evidence that Jackson was retaliating against Brown. The evidence indicated that Jackson was not involved in the decision to terminate Brown. Furthermore, it appears that Brown's complaints about Jackson arose only after Jackson became aware of the outstanding warrants and was directing her to resolve them. Despite Brown's repeated references to the motivation of Jackson, there was no evidence presented, except Brown's personal opinion, to support her claim of retaliation or harassment. The cumulative effect of the misconduct as well as the seriousness of the misconduct justifies the level of discipline imposed. This is particularly true given Brown's prior disciplinary history for similar misconduct.

#### **CONCLUSIONS OF LAW**

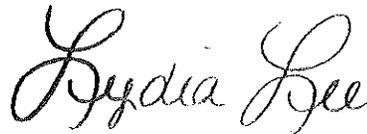
1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause and the filing of the Petition for Appeal was timely.
2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.
3. Merit Rule 455:10-9-2 states that the Appellee DOC 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. OAC 455:10-11-14 provides that an employee in the classified service may be discharged for misconduct.
5. Appellee DOC has met its burden to prove, by a preponderance of the evidence that just cause exists to discipline Brown for violations of the DOC Code of Conduct for illegal activity and for insubordination as discussed herein.
6. Appellee DOC has met its burden to prove, by a preponderance of the evidence, that the discipline imposed was just under the circumstances considering the seriousness of the conduct as it relates to the employee's duties and responsibilities, the consistency of action taken with

respect to similar conduct by other employees of the agency, the previous employment and disciplinary records of the employee and other mitigating circumstances.

**ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition for appeal of Appellant Vivian M. Brown, MPC 13-099 be DENIED.

This Order entered this 25th day of October, 2013.

A handwritten signature in cursive script that reads "Lydia Lee".

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Lydia Lee  
Administrative Law Judge