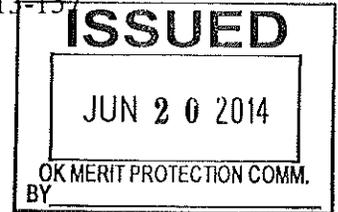


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**

GENEVA KIRKPATRICK,)
Appellant,)
v.)
DEPARTMENT OF CORRECTIONS,)
Appellee.)

Case No. MPC 13-157



FINAL ORDER

This matter comes on for consideration of Appellee’s Motion for Summary Judgment and the Appellant’s Cross-Motion for Summary Judgment. The Appellant, Geneva Kirkpatrick (hereinafter “Kirkpatrick”), appears by and through her attorneys Gary James and Matthew Frisby. The Appellee, Department of Corrections (hereinafter “DOC”), appears by and through counsel, Michele Miniotta. After careful consideration of the pleadings, and considering all relevant arguments and authority, the undersigned Administrative Law Judge issues the following order.

FINDINGS OF FACT

1. Kirkpatrick was a permanent, classified employee of DOC. The parties have submitted and filed in the record a Joint Stipulation of Facts, which is set forth herein.
2. Kirkpatrick began her employment with DOC on March 5, 2004, as a Correctional Security Officer I (Cadet) at Oklahoma State Penitentiary. On September 5, 2004, Kirkpatrick career-progressed to Correctional Security Officer II (Officer). On September 5, 2005, Kirkpatrick career-progressed to Correctional Officer III (Corporal).
3. On April 16, 2007, Kirkpatrick sustained an on-the-job injury, was placed was placed on temporary total disability (TTD) status and taken off work. Kirkpatrick was released by her treating physician, with restrictions and returned to work on July 13, 2007. On March 17, 2008, due to her on-the-job injuries/treatment

Kirkpatrick was again placed on temporary total disability (TTD) status and taken off work. On March 10, 2009, Kirkpatrick's treating physician released her with permanent restrictions, stating she had reached maximum medical improvement ("MMI"). On March 26, 2009, DOC allowed Kirkpatrick to return to work, accommodating her permanent restrictions. Kirkpatrick continued to work with DOC until July 18, 2011, when DOC determined it could not accommodate her continued restrictions.

4. On February 5, 2010, following a trial of her workers' compensation claim, the Workers' Compensation Court awarded Kirkpatrick permanent partial disability benefits and disfigurement.
5. On July 19, 2011, Kirkpatrick began using her paid leave programs, which were exhausted on August 19, 2011. Kirkpatrick's leave accruals were used on September 1 and 2, 2011. Due to leave exhaustion, DOC placed Kirkpatrick on leave without pay. On September 21, 2011, Kirkpatrick filed a motion to reopen her workers' compensation claim, resuming on-going workers' compensation litigation. On April 11, 2012, following an Order for an Independent Medical Examination by the Oklahoma Workers' Compensation Court, Dr. Eugene Field determined Kirkpatrick had reached maximum medical improvement on her original injury, yet indicated a change of condition had occurred.
6. On May 16, 2012, DOC received notice of Kirkpatrick's claim for unemployment, asserting her last day to work was July 19, 2011. On June 11, 2012 the Oklahoma Workers' Compensation Court entered an Order finding that Kirkpatrick sustained a change of condition for the worse to her neck, reopening her workers' compensation claim. On November 1, 2012, Kirkpatrick entered unauthorized absence, an unapproved leave status, and remained on unauthorized absence until her discharge on March 6, 2013. On March 6, 2013 Kirkpatrick was terminated by DOC. On March 21, 2013 the Oklahoma Workers' Compensation Court entered an Order finding that Kirkpatrick's medical condition was such that she should be placed on temporary total disability status effective February 28, 2013, unless DOC was able to provide a light duty position for her.
7. Each party seeks Summary Judgment as there are no material factual disputes.

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 this 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. OAC 455:10-9-2 (h) provides that the Administrative Law Judge may decide appeals based on summary judgment when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only question of law is involved. The parties are in agreement that there are no disputes as to either material facts or inference to be drawn from undisputed facts, and only questions of law are involved making this matter appropriate for a grant of summary judgment pursuant to OAC 455:10-9-2.
4. 74 O.S. §840-2.21 provides that a state employee who is injured in the course of his or her employment with the state is entitled to be placed on leave without pay if they request. This is an entitlement that prohibits state agencies from denying leave without pay to injured workers. Here, DOC voluntarily placed Kirkpatrick on Leave Without Pay without requiring her to make a formal request and she apparently acquiesced in that decision. After one (1) year and two (2) months, DOC cancelled her approved Leave Without Pay, placed Kirkpatrick on unapproved Leave Without Pay and she apparently acquiesced in that decision.
5. 74 O.S. §840-2.21 goes on to provide that “*notwithstanding the provisions of Section 1 et seq. of Title 85 of the Oklahoma Statutes*, the employee may be separated in accordance with the Oklahoma Personnel Act and Merit Rules if the employee has not returned to the original position of the employee or some other position within the agency within one (1) year from the date of the start of leave without pay” (emphasis added).
6. It is undisputed that Kirkpatrick not been physically at work since July 19, 2011 and had remained on some form of leave without pay from September 2, 2011 to March 6, 2013, a period of approximately one (1) year and six (6) months.

7. At the time of her termination, Kirkpatrick was on unapproved leave without pay. Also at the time of her termination, she was not on temporary total disability status. The Oklahoma Workers' Compensation Court's Order finding that Kirkpatrick should be placed on temporary total disability status effective February 28, 2013, did not occur until after she was discharged and cannot be used to retroactively invalidate the discharge, a decision which was proper at the time it was made.
8. The record of this matter, including all pleadings and Motions filed, supports the finding that DOC had the authority and ability to take the action to discharge Kirkpatrick as a result of her status at that time. As a result, the final disciplinary action to discharge Sanders is affirmed.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the Motion for Summary Judgment of Appellant Geneva Kirkpatrick, MPC 13-157 is **DENIED**, as provided in this Order.

This Order entered this 19th day of June, 2014.



Lydia Lee
Administrative Law Judge