

work that morning, addressing her in a loud, combative, hostile manner that attracted the attention of others in the area.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with exhibits. Appellee's Exhibits 1, 3, 5, 6, 12, 15-17, 21-25, and 27-31 were admitted, incorporated herein, and made a part hereof. Appellant's Exhibits 3, 7, 11, 12, 14, and 19 were admitted, incorporated herein, and made a part hereof. Accordingly, after careful consideration of all evidence, testimony, exhibits, and briefs, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

Appellant is an Administrative Programs Officer II in the Local Government Division of ODOT. She has worked for ODOT for almost 15 years and has been the secretary to Shannon Sheffert, Local Government Division Engineer, since he became division engineer seven (7) years ago. In her role as secretary to Mr. Sheffert, Appellant is responsible for answering the division phone; greeting and assisting visitors; maintaining and distributing the division calendar; verifying time sheets; entering weekly payroll; processing personnel changes and expense reports; maintaining and ordering office supplies; scheduling conferences and education courses for division personnel; preparing the Commission agenda items and project award letters, and transcribing minutes of Commission meetings; and serving as the division's Insurance Coordinator, EEO Officer, Alcohol and Drug Coordinator, and Records Manager. (Appellee Exhibit 17)

On June 18, 2013 Appellant received a two (2) week suspension without pay for three incidents that occurred between March 13, 2013 and May 31, 2013:

(1) On March 13, 2013 Appellant's supervisor, Shannon Sheffert, sent her an email concerning the hours of operation of the Local Government Division, including Appellant, which read:

Ms. Fonda Brousseau,

Starting Monday, March 18th, 2013, your working hours are 7:30 to 4:30 with a 1 hour lunch period. Any deviation from that will be considered some form of leave. Any variance from the normal working hours will require advance written approval from either myself or Mark Scott. Variances will only be considered when an employee is within **8 hours** of going into **leave without pay status**. Also Doctors statements will be required for time off as per the ODOT leave policy.[sic].

Thank you
Shannon Sheffert, PE
Division Engineer

(emphasis in original)
Appellee Exhibit 16

For years Mr. Sheffert had struggled to get Appellant to adhere to the stated division work hours. On September 14, 2010 he admonished her in a memo:

Ms. Brousseau,

...Working hours for your job duties are Monday through Friday, 7:30 AM till 12:00 PM, a one hour lunch and then 1:00 PM till 4:30 PM. Any deviation from these hours will require advance permission from me or my designee in charge during my absence for each situation.

Appellee Exhibit 5, page 2

Again, on February 13, 2012, Mr. Sheffert wrote:

Ms. Brousseau,

...Working hours for your job duties are Monday through Friday, 7:30 AM till 12:00 PM, a one hour lunch and then 1:00 PM till 4:30 PM. Any deviation

from these hours will require advance permission from me or my designee in charge during my absence for each situation.

You have deviated off this policy over the past year due to some mitigating circumstances. Your time charges for the past several weeks [sic] shows many days of other working hours than the standard or normal working hours shown above.

Please note that these alternative work hours will now come to an end as of today.

Appellee Exhibit 5, page 1

In spite of these continued directives, Appellant's time sheets indicate that nine out of the 10 weeks following Mr. Sheffert's March 13, 2013 written instructions to her, Appellant worked hours outside the required 7:30-4:30 work day with a one hour lunch break. (Appellant Exhibit 3, pages 14-42; Appellee Exhibit 25, page 49) During that 10-week period, Appellant worked 42 days, and 32 of those days she worked outside the specified work schedule. (Appellant Exhibit 3, pages 14-42; Appellee Exhibit 25, page 49) Mr. Sheffert testified that on none of these occasions did he give Appellant prior approval to work outside the normal work hours.¹

(2) On April 17, 2013 Mr. Sheffert stepped out of his office to take care of some business. When he returned, Appellant confronted him concerning the accuracy of comments he had written in his personal journal concerning Appellant's behavior in the office earlier that day. The journal is a personal one that Mr. Sheffert had open on his desk, but did not intend for Appellant to

¹ Although the time sheets contain his signature approving the hours stated by Appellant, Mr. Sheffert indicated that this does not constitute the "advance written approval" specified in his March 18, 2013 email. He does not see the time sheets until the end of each week after the hours have already been worked. He signs them, he says, so that Appellant can get paid on time. He is not contesting the hours she has claimed, and accepts those hours without verification.

read. He testified that in the seven years she has worked for him, he has never given her access to his journal for any reason and Appellant had no legitimate reason to read it. Appellant claims that the journal was open, in plain view on Mr. Sheffert's desk, and her name in the journal caught her attention so she read the comment.

Appellant's witness, co-worker Terry Wade, testified that Appellant took a message in to put on Mr. Sheffert's desk, and when she came out of the office, called Ms. Wade into the office to look at the entry in Mr. Sheffert's journal. Ms. Wade testified that Appellant then got a camera and took a picture of the entry in the journal.²

(3) The third incident occurred on the afternoon of May 3, 2013 following a "road rage" encounter between Appellant and another ODOT employee on their way to work that morning. On her way to work the morning of May 3, 2013, ODOT employee Yletha Hart had stopped at a light when she heard the driver in the vehicle behind her honking. Realizing the light had changed, she proceeded through the intersection, but the vehicle behind her continued to honk and, pulling around to pass her, the driver flipped her extended middle finger at Ms. Hart as she sped past her. A few minutes later Ms. Hart encountered the car again. It moved into her lane in front of her, and the driver slammed on its brakes, causing Ms. Hart to have to stop suddenly to

² Appellant denies that she took a picture of the entry in Mr. Sheffert's journal. According to her, there was another occasion when she happened to see her PMP on his desk and did take a picture of the PMP.

avoid hitting it. This occurred a second time before the two vehicles parted ways.

Around 3:30 that afternoon, Ms. Hart was at the front counter in the Human Resources Department (HR) where she worked, when Appellant entered the office, walked up close to Ms. Hart and pressed her shoulder into Ms. Hart, forcing her back against the counter. Appellant accused Ms. Hart of floating a stop sign and needing to take driving lessons. Realizing for the first time that the "road rage" driver from that morning was Appellant, Ms. Hart exclaimed, "Oh, you're the crazy old lady with the handicapped sticker!" Appellant and Ms. Hart argued about whether Ms. Hart had floated a stop sign that morning, with Appellant repeatedly declaring that Ms. Hart needed to take remedial driving lessons. Appellant appeared to grow increasingly agitated, louder, and more insistent. Donna Copeland, the HR receptionist, in front of whose desk Appellant was standing, repeatedly asked Appellant to leave, however Appellant ignored her requests. (Appellee Exhibits 21, 22, 23, 24; Testimony of Kevin Lowe and Yletha Hart) Appellant did finally leave, repeating as she went out the door that Ms. Hart needed to take driving lessons. Ms. Hart stuck her head out the door and responded, stating that maybe they should take lessons together. Appellant continued yelling back at Ms. Hart as she went down the hall away from HR. (Appellee Exhibit 21, 24)

Kevin Lowe, Assistant Manager, Training, came out of his office when he heard Ms. Hart say, "Oh, you're the crazy old lady with the handicapped sticker!", and observed the interaction between the two employees. He

described Appellant as appearing agitated, intense, angry; her voice was raised and insistent; her behavior inappropriate in the workplace. (Testimony of Kevin Lowe; Appellee Exhibits 21 and 23) On the other hand, Ms. Hart was "remarkably calm", and kept her voice low, friendly, and non-confrontational, even as Appellant grew louder, angrier, and more insistent. (Testimony of Kevin Lowe; Appellee Exhibits 21 and 23)

Both Ms. Hart and Mr. Lowe were surprised at the intensity of Appellant's reaction to the road incident that had occurred some eight to nine hours earlier in the day. Mr. Lowe was concerned that Appellant had brought such behavior into the workplace and asked Ms. Hart if she knew where the HR panic button is located, and to make sure it was operational. (Testimony of Mr. Lowe) The incident was reported to the General Counsel, who called for an investigation. William A. "Skip" Nicholson, a trained investigator, conducted the investigation and, based on the witnesses' testimony and Appellant's admission that she had initiated the road rage incident earlier that morning, he concluded that Appellant had been the aggressor in the HR incident. (Appellee Exhibit 21)

DISCUSSION

Appellant has argued that the two week suspension is inappropriate and in retaliation for her having filed several grievances. She claims, too, that she is treated differently from other employees by Mr. Sheffert by him not allowing her to work additional hours so she won't have to use her sick leave or other accrued leave. She

further denies that there was any incident in HR which required investigation or for which she should have received any discipline at all. As to the calendar, Appellant states that it was open on Mr. Sheffert's desk and her name on the journal page caught her eye. She did not rummage on his desk to see the entry concerning her.

Appellant's arguments might be more compelling if she did not have a history of failing to comply with specified work hours and of loud, unprofessional and inappropriate outbreaks in the workplace. In addition to the two previously recited admonitions to comply with department work hours – in 2010 and in 2012 – in May of 2012 Appellant and Mr. Sheffert engaged in mediation because Appellant believed she was not being treated fairly with regard to work hour adjustments. (Appellant Exhibit 12) That mediation resulted in an agreement for Mr. Sheffert to “adjust Fonda's work hours as needed for her to care for her sister, her mother, and her own health.” (Appellant Exhibit 12, page 3) There has been no evidence introduced, and no allegation made by Appellant, that Mr. Sheffert has refused to allow Appellant time off during the work day to care for her sister, her mother, or her own health issues. In fact, it appears from the record that Mr. Sheffert allows Appellant to take whatever time she needs, for whatever reason, including a standing weekly church function for which she leaves 20 minutes early at the end of the day each Monday so she won't be late for the function. (Appellant Exhibit 3, pages 1, 2, and 4)

Appellant is not complaining that she is not allowed time off when requested. She is complaining that she is not allowed to make up that time by working during non-work hours. Mr. Sheffert has explained that employees are only allowed to make up time during non-work hours if they are within eight hours of going into leave without pay

status. (Appellee Exhibit 16; Appellant Exhibit 3, page 13) Appellant admits that she has paid leave that can be used, but she doesn't want to use it. She wants to make up her time by working during non-work hours. She points to co-worker Terri Wade as an example of someone allowed to work non-work hours to make up time off for health reasons. Both Terri Wade and Mr. Sheffert acknowledge that Ms. Wade is allowed to work outside the normal work day because, due to her health situation, she has exhausted all paid leave as well as all shared leave. (Testimony of Terri Wade and Shannon Sheffert) In any event, Appellant's belief – whether warranted or unwarranted³ – that she is being treated unfairly does not excuse her blatant, deliberate, and defiant total disregard of her supervisor's direct and unequivocal instructions concerning her work hours.

Appellant has denied that the May 3, 2013 incident in Human Resources with Yletha Hart was even an "incident". Yletha Hart, Donna Copeland, and Kevin Lowe, all of whom witnessed Appellant's outburst, disagreed. Kurt Harms, the pre-disciplinary hearing officer, disagreed. (Appellee Exhibit 28; Testimony of Kurt Harms) Brian Kirtley, HR Director, who testified that it was probably he who referred the matter to the General Counsel, disagreed. Investigator William A. "Skip" Nicholson disagreed. And this administrative law judge also disagrees. Again, Appellant's history of inappropriate and unprofessional conduct in the workplace is a matter of record. On March 13, 2013 she received a written reprimand for such behavior in three separate instances: (1) On January 17, 2013, Appellant was upset about changes made in accounting/claims responsibilities and her "rant was heard throughout the Division office." (2) A verbal and

³ In this instance, Appellant's belief that she is being treated differently than Terri Wade has no basis and is unwarranted.

written complaint was received on January 24, 2013 from a manager of a local company concerning Appellant's unprofessional and disrespectful conduct on the phone when the manager was attempting to contact a division employee. (3) On February 8, 2013 Appellant complained loudly and negatively about Mr. Sheffert's decisions and authority in making work assignments. When admonished about her loud and inappropriate comments, Appellant continued to argue about the situation. In reprimanding Appellant, Mr. Sheffert stated:

Your actions create conflict and discord among the employees in the division creating an inefficient and unpleasant workplace. Also, you have treated a member of the public disrespectfully and unprofessionally. You have a history of handling disagreements unprofessionally. You raise your voice, become condescending and accuse others of wrongdoing. ...

...

Your comments, actions, and attitude are unacceptable. Your actions cause stress around the office with co-workers.

Appellee Exhibit 15

Appellant's inappropriate and unprofessional outburst did not begin in January 2013. In April 2009 she blew up at the Right-of-Way Division personnel, speaking loudly and abusively and unprofessionally concerning a matter about which she was displeased. (Appellee Exhibit 1)

Either one of the two above-discussed grounds for Appellant's suspension without pay – either her disregard of her supervisor's directive concerning work hours, or her unprofessional conduct in Human Resources -- constitutes sufficient grounds for discipline, in and of itself. Appellant claims that the suspension is retaliation for the six (6) grievances she filed in less than two months. There is no evidence to support

Appellant's allegations, and she offered no evidence. 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-week suspension without pay imposed was just under the circumstances.

CONCLUSIONS OF LAW

1. Any findings of fact that are properly conclusions of law are so incorporated herein as conclusions of law.

2. Merit Rule 455:10-11-14 states that a permanent classified employee may be discharged for misconduct and for conduct unbecoming a public employee, for insubordination, and for any other just cause.

3. Merit Rule 455:10-9-2 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 the action taken.

4. 74 OS §840-6.3(B) provides that the progressive discipline policy is designed to ensure consistency, evenhandedness, and predictability, along with flexibility where justified by aggravating or mitigating circumstances.

5. ODOT Policy B-303-1 E. states that normal work hours and work days are from 7:30 a.m. to 4:30 p.m. Monday through Friday, and may be adjusted upon approval of the Division Engineer/Division Head.

6. ODOT Policy B-307-1 B. 1. provides that sick leave is to be used during those periods of time that an employee is unable to work due to illness, or for medical, surgical, dental, or optical examinations or treatment.

7. ODOT Policy B-307-1 C. 1. and 2. provide that enforced leave, charged against an employee's sick leave, may be used when caring for an ill or injured member of the employee's family.

8. Appellee, Oklahoma Department of Transportation, has met its burden to prove, by a preponderance of the evidence, that Appellant Fonda Brousseau violated Merit Rule 455:10-11-14 and that just cause exists for her two-week suspension without pay.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant is hereby **DENIED** and the two-week suspension without pay of Appellant by Appellee is sustained.

DATED this 22nd day of October, 2014.



Annita M. Bridges, OBA # 1119
Administrative Law Judge
OKLAHOMA MERIT PROTECTION COMMISSION
3545 N.W. 58th Street, Suite 360
Oklahoma City, Oklahoma 73112
(405) 525-9144

6. ODOT Policy B-307-1 B. 1. provides that sick leave is to be used during those periods of time that an employee is unable to work due to illness, or for medical, surgical, dental, or optical examinations or treatment.

7. ODOT Policy B-307-1 C. 1. and 2. provide that enforced leave, charged against an employee's sick leave, may be used when caring for an ill or injured member of the employee's family.

8. Appellee, Oklahoma Department of Transportation, has met its burden to prove, by a preponderance of the evidence, that Appellant Fonda Brousseau violated Merit Rule 455:10-11-14 and that just cause exists for her two-week suspension without pay.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant is hereby **DENIED** and the two-week suspension without pay of Appellant by Appellee is sustained.

DATED this 16th day of October, 2014.



Annita M. Bridges, OBA # 1119
Administrative Law Judge
OKLAHOMA MERIT PROTECTION COMMISSION
3545 N.W. 58th Street, Suite 360
Oklahoma City, Oklahoma 73112
(405) 525-9144