



Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with exhibits. Joint exhibits 1 through 4 were admitted, incorporated herein and made a part hereof. Appellee's Exhibits 1, 3, 5-9, 12, and 21 were admitted, incorporated herein, and made a part hereof. Appellant's Exhibits 1, pages 16-21 only, and exhibits 3, 4, 10, and 11 were admitted, incorporated herein, and made a part hereof. At the end of the trial Appellant moved for a directed verdict, based upon Appellant's contention that progressive discipline had not been followed because Appellee wrongly considered a 2006 suspension without pay in violation of a settlement agreement concerning that suspension. The record remained open to allow the parties to submit briefs regarding the issues raised in Appellant's motion, and to submit written closing arguments. 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, a Park Ranger at Lake Murray State Park, was discharged from his position with OTRD August 31, 2013. As a Park Ranger, his job duties included providing law enforcement, safety and security for Lake Murray State Park facilities and guests, and assisting park visitors with area-related information, directions, and problems. (Appellee Ex 8-1) During the month of July, 2013 four separate complaints were made concerning Appellant's behavior, his manner, his attitude, and his approach toward various individuals – both guests and co-workers – during encounters with them in the course of his duties for OTRD:

(1) On the night of July 3, 2013, Appellant stopped a vehicle driven by a young woman traveling alone on a dark road, after standing in the opposite lane and shining a flashlight into the windshield of her oncoming car. Appellant was not in his vehicle and did not have on the vehicle emergency lights. As she approached the pedestrian with the blinding flashlight, she slowed to pass him and then accelerated to the proper speed. Appellant followed her in the state park vehicle with lights flashing and pulled her over, allegedly for not stopping when she saw the shining flashlight. She explained that she had no way of knowing he was a park ranger and that if he had wanted vehicles to stop in the middle of the road, he should have had the state vehicle's emergency lights flashing. Appellant detained her for "about 8 or 10 minutes" while they argued about the traffic stop. After looking more closely at her license and realizing she was the daughter of the undersheriff, he accused her of having an attitude, and radioed for his supervisor to come because he was having a problem with the undersheriff's daughter. Appellant continued the argument for a few more minutes, then told her she was free to leave and returned her license to her. In her written statement, the complainant states:

"The Ranger was very unprofessional and I felt like he was trying to threaten me with Obstruction because of defending myself with my knowledge of the law. I felt that he knew that he messed up and it wasn't a legitment [sic] traffic stop, but he was unaware that the driver knew anything about the law, or law enforcement for that matter. ... The Ranger has a bully attitude and I feel sorry for anyone that has to deal with him. I have taken it upon myself to go the long way home from now on because I am scared he will pull me over again now that he knows my car. Especially if he gets a talking to about this incident, I'm afraid he will retaliate.

I might add, that I am a young female driving home on dark roads by myself. I am not going to stop for anyone trying to blind me with a flashlight in the middle of the road. If I would have thought more about it

at the time, I probably shouldn't have even pulled over. How was I to know that it was a real Park Ranger pulling me over, and not someone posing as a cop."

Appellee Ex 1-2

This incident occurred between 9:00pm and 10:00pm. (Appellee Ex 1-1)

Appellant admitted that the complainant did nothing illegal to warrant the traffic stop. (Joint Ex 3-2)

(2) It was July 4, 2013 and the park was busy. Appellant and his partner, Danny Blackwell, a seasonal park ranger at the time, responded to complaints about a boat parked in the parking lot taking up several parking spaces. They approached the camper who owned the boat and advised her she needed to move it to the boat area and not leave it in the vehicle parking lot. When she told them that another named park ranger had told her she could park her boat there, Appellant and Ranger Blackwell advised her that the other ranger was incorrect, they had more experience than he did, and she just needed to do what they told her to do. (Joint Ex 3-2; Appellee Ex 8-6)

(3) On July 16, 2013 Appellant entered the front lobby area of the Lake Murray Lodge and, in the presence of several guests waiting in line to pay restaurant tickets and to check out, began yelling at the two employees working at the front desk for not responding to his radio calls. They apologized, stating that they were very busy and didn't hear the radio. Without stopping or hesitating Appellant went directly to the back office and turned up the radio. He returned to the front desk and asked for the telephone number to one of the cabins. He again yelled at the front desk employee, stating he could not hear

her response. Appellant called the guest in the cabin and threatened to shoot his dogs, after they had broken a cabin window and escaped. The guest came to the front desk to check out and pay for the window, and left very upset. (Joint Ex 3; Appellee Ex 3)

(4) From July 25 through 28, 2013 the Villalobos family from Ft. Worth, TX held its 11<sup>th</sup> consecutive family reunion at Lake Murray. There were over 400 family members and friends who attended. Clara Russell, the coordinator of the reunion, testified about an incident she witnessed on Thursday, July 25, 2013 soon after her arrival at the lake. She testified that she and her husband were unpacking their car in front of their cabin and their cousin was putting his five-year-old granddaughter's shoes on her at the rear of his pick-up truck parked in front of his cabin, which was directly across from hers. A ranger vehicle came speeding up the road and stopped near the cousin's pick-up. Appellant jumped out of the driver's side, leaving the door open, and "aggressively" approached her cousin, yelling at him that the speed limit was five (5) mph and that he had witnessed the cousin driving in the park without having the granddaughter properly protected in a child restraint.

According to testimony from Ms. Russell and from her husband, Johnny Russell, Appellant continued to address the cousin in a loud, belittling and demeaning voice, pointing his finger at him as he spoke, while the cousin remained calm and respectful. When Mr. Russell asked Appellant why he was addressing the cousin so rudely, Appellant turned on him yelling that it was none of his business, threatened to arrest him for interfering, and

demanded to see Mr. Russell's identification. When one of the grandchildren opened Ms. Russell's cabin door and her two small dogs ran out, Appellant yelled at her that he was going to issue her a citation for not having her dogs on a leash. Ms. Russell tried to explain that she was the coordinator of the family reunion and wanted to offer assistance. Appellant yelled at her to "get inside". Ms. Russell indicated that the officer with Appellant was calm and polite and suggested she go back inside, and told her that her cousin was going to receive a citation. In her written complaint, Ms. Russell stated:

"Let me be clear, we are not opposing any infraction which merits a citation. ...The manner in which he spoke to my cousin (in front of a child who is taught to respect Law Enforcement) and the manner in which he treated my husband and finally the derogatory manner in which he spoke to me seemed to set a precedent for the way he interacted with many of our family members for the remainder of the 3 days. ...

...we must state clearly and without reservation that we feel as though we were without a DOUBT "profiled" for being Hispanic (many of our family and friends noted that none of our Caucasian family members and friends were not being stopped for the SAME things, after driving right passed [sic] Officer David."

Appellee Ex 6-1 and 6-2

Appellant has had difficulties with his interactions with people throughout his tenure with OTRD. (Testimony of Michael Vaught, Chief, Ranger Law Enforcement Department, OTRD) Every PMP since 2008 has counseled Appellant concerning his interpersonal communication skills, including "the manner in which he approached individuals" (Appellee Ex 21-1, 21-3 – 2008 PMP); the "need[s] to improve on demeanor and ways he approached the general public as a Park Ranger." (Appellee Ex 21-4 – 2008 PMP); "the 'perceived' manner in which he dealt with someone ... and to always present a professional image" (Appellee Ex 21-9 – 2010 PMP); his "need[s] to improve

his communication skills in order to alleviate complaints and misunderstandings” (Appellee Ex 21-11 – 2012 PMP); “Gary has been counseled for several years regarding his contact conflicts. He must improve his communication skills and delivery.” (Appellee Ex 21-14 – 2012 PMP) In Appellant’s 2011 PMP it was noted that Appellant “tends to have a ‘rough’ stance and demeanor, which is often mistaken for him being rude” and “unless you know Gary, some of the things he says and the manner in which he says them comes off as rude and almost insubordinate.” (Appellant Ex 1-18 – 2011 PMP) Appellant’s 2013 PMP *Development Plan* included his attending additional training to improve his communication skills, and increased supervisor oversight related to his reports, the information he relays to the DA’s offices, and his traffic stops “to determine the next step in resolving these issues”. (Appellee Ex 21-14 – 2012 PMP)

During his mid-year review on July 16, 2013, supervisors Carol Conrad and Richard Keithley discussed with him four (4) complaints that had been received concerning Appellant, including the incidents on July 3, 2013 and July 4, 2013, referenced above. (Appellee Ex 8-6) In addition, in a third reported incident, Appellant’s poor handling of a repeated noise complaint by a park guest left the complaining guest fearful of retaliation, when his actions caused her to be identified by the noisy group as the complainer. (Appellee Ex 8-6) In the fourth situation, Park Manager Richard Keithley had given permission to “camp hosts” to use the ATV Ranger gator to pick up trash in the riding area of the park, however Appellant tried to countermand his supervisor’s decision by urging the hosts not to take the vehicle, telling them they were putting themselves at risk and could delay an emergency response. When Mr. Keithley explained that the proper action by Appellant would have been to talk with him, since he is the supervisor and he made the decision, Appellant responded

simply stating that he disagreed with Mr. Keithley's decision. (Appellee Ex 8-6) Appellant's response to all of the complaints discussed in his mid-year review was to either blame the complaints on co-workers or others who don't like him, or insist that the complaints were based on overreactions by guests, or defend his actions on grounds that decisions made by other rangers and his supervisor were incorrect decisions. At no time did Appellant acknowledge that he may have acted in any way to cause or contribute to the complaints, nor was he receptive to his supervisors' instructions on how he should have handled the situations. (Appellee Ex 8-6)

Additionally, Appellant had poor working relationships with the Carter County Sheriff's office and with the District Attorney's offices in both Carter County and Love County, all agencies with whom he was required to work. (Appellee Ex 8-2) Chief Vaught testified that the District Attorney's Office did not trust the information received from Appellant; they had "credibility" issues with Appellant, and did not want to work with him, as several complaints brought by Appellant were unable to be prosecuted: For example, there was the complaint brought by Appellant against a woman with a suspended license whom Appellant required to move her car and then arrested for driving with a suspended license. There was a case in which Appellant inappropriately detained a minor for an excessive amount of time without allowing her to contact her parents and failing to report that he was holding the minor so that a parent or guardian could be notified, as is required. Then there was the physical altercation Appellant had with a female teacher from Ardmore. In each case, the DA was unable to prosecute Appellant's complaints due to his behavior during these encounters.

Chief Vaught testified that he truly wanted to see Appellant succeed at OTRD, but that Appellant had been transferred to many parks and continuously collected

complaints wherever he went. According to Chief Vaught, Appellant had “extraordinary difficulty with interpersonal skills.” Appellant’s “never-ending problems” with the public and with co-workers caused Chief Vaught to genuinely fear, not only for the public’s safety, but for Appellant’s own safety as a law enforcement officer who can’t be trained, counseled, or supervised.<sup>1</sup> In fact, Appellant testified to an encounter he had with a camper in which an altercation ensued, the camper overpowered Appellant, and “choked-out” Appellant, rendering him unconscious.

Appellant received a hand delivered Notice of Pretermination Hearing dated August 6, 2013 advising of a scheduled hearing on August 13, 2013 to determine if reasonable grounds exist to support a proposed termination of his employment. (Joint Ex 1) The hearing was conducted as scheduled before Hearing Officer Joan Henderson who found the evidence sufficient to support a conclusion that the proposed penalty of termination for the stated charges is justified, and recommended Appellant’s employment be terminated. (Joint Ex 4) OTRD Executive Director agreed with the hearing officer’s determination and discharged Appellant effective August 31, 2013. Prior discipline considered by OTRD included a 60-day suspension without pay from May 2006 for misconduct arising from threatening violence against a co-worker, and a March 15, 2013 written reprimand for not being truthful with his supervisor. (Joint Ex 3-3) Appellant exercised his rights under The Merit Rules to appeal this decision.

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<sup>1</sup> Chief Vaught impressed this administrative law judge as a very sincere witness, genuinely concerned for Appellant’s well-being, who finally had to resign himself to the fact that Appellant is not going to change his behavior.

## **DISCUSSION**

The evidence is overwhelming that Appellant has had continuous problems and complaints against him arising from his interactions with the public, with co-workers, with partnering organizations such as the Sheriff's Office and the District Attorney's Office, and virtually with anyone with whom he comes into contact. As Chief Vaught stated, Appellant has "extraordinary difficulty with interpersonal skills," causing him "never-ending problems" with the public and with co-workers. Unfortunately, the job of a Park Ranger requires him to come in constant contact with the public and to work closely with other law enforcement agencies such as sheriff's offices and DA's offices. The evidence is uncontroverted that these problems have plagued Appellant for many years and have been continuously documented and called to his attention since at least 2008. Appellant's approach to people with whom he comes in contact has been described as "abusive", "disrespectful and demeaning", "rude and condescending", "intimidating", and "bullying". The evidence also shows that in the six years that this behavior has been addressed with Appellant, it has not changed, suggesting that this is an ingrained part of Appellant's personality.

At the end of the trial Appellant moved for a directed verdict, based upon Appellant's contention that progressive discipline had not been followed since Appellee's consideration of a 2006 suspension without pay violated the settlement agreement concerning that suspension. Appellant argues that the settlement agreement to discipline Appellant "for misconduct only" prohibits any mention of the underlying facts giving rise to that misconduct. This administrative law judge disagrees. The Release and Settlement Agreement reads in relevant part:

#### COVENANTS OF ODTR

...

4. ODTR agrees to issue a letter disciplining David for misconduct only *due to the events of October 3, 2005* by suspending David 60 calendar days without pay. ...

#### COVENANTS OF DAVID

1. David agrees to a 60-day suspension without pay to be issued disciplining him for general misconduct *due to the events of October 3, 2005*.

(Appellant Ex 3-2; *emphasis added*)

The language of the Covenants of both parties makes it clear that “the events of October 3, 2005” are relevant to the discipline imposed, but that the grounds stated for such discipline will be limited to “misconduct”. The events of October 3, 2005 might support other grounds for discipline, such as *conduct unbecoming a public employee*, or any of the other grounds enumerated in Merit Rule 455:10-11-14; or might support a charge of violating the “no tolerance” workplace violence provisions. However, the Settlement Agreement limits the grounds stated for the discipline to “misconduct.” Separate from the grounds stated for imposing discipline are the underlying facts supporting that discipline -- the events of October 3, 2005. The settlement agreement does not seal the record on those events nor contain any prohibition on reciting those events. On the contrary, reference to those events is made to explain and define the reason for the discipline imposed for misconduct – to explain and describe the facts giving rise to the misconduct.

Having considered all the evidence presented, this administrative law judge finds that Appellee has proven by a preponderance of the evidence that Appellant violated Merit Rule 455:10-11-14 and 530:10-11-91(a), and OTRD Operating Procedures P-135(III)(1)(3) and RP30-5-304(a) and (b), that just cause exists for disciplinary action, and that discharge of Appellant was just under the circumstances. Even assuming,

*arguendo*, that the May 2006 60-day suspension without pay was not considered as part of the prior discipline imposed, the evidence in this case is so overwhelming, so compelling, and the actions of Appellant are so persistent and so egregious that termination of Appellant's employment would be just under the circumstances presented here.

### **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, and for any other just cause.

3. Merit Rule 530:10-11-91 states that every classified employee shall behave at all times in a manner befitting the office or position he/she occupies and shall pursue the common good, acting in an impartial manner and in a manner where there can be no question of impartiality.

4. 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.

5. 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.

6. 74 OS §840-6.3(D) provides that threats or acts of violence against employees in the workplace that occurred longer than four (4) years prior to the subject offense may be considered in order to move to a higher level of discipline.

7. OTRD OP P-135III(B)(1)(3) indicates all employees shall be treated courteously and with respect and shall not be subject to abusive, intimidating, offensive, embarrassing, insulting language, and that serious offenses may result in termination for the first offense.

8. OTRD RP30-5-304(a) and (b) indicates that rangers shall conduct themselves at all times in a manner that reflects most favorably on the Ranger Program and the OTRD.

9. Appellee, Oklahoma Tourism and Recreation Department, has met its burden to prove, by a preponderance of the evidence, that Appellant Gary David violated Merit Rule 455:10-11-14 and 530:10-11-91(a), and OTRD Operating Procedures P-135(III)(1)(3) and RP30-5-304(a) and (b), and that just cause exists for termination of his employment with OTRD.

#### **ORDER**

***IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED*** by the undersigned Administrative Law Judge that the petition of Appellant is hereby **DENIED** and the discharge of Appellant by Appellee is sustained.

DATED this 3rd day of October, 2014.



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Annita M. Bridges, OBA #1119

Administrative Law Judge

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