

BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA

JANET BULLOCK,)	
)	
Appellant,)	
)	
vs.)	Case No. MPC-14-156
)	
DEPARTMENT OF HUMAN SERVICES,)	
)	
Appellee.)	

FINAL ORDER

This matter came on for hearing before R. Scott Thompson, Administrative Law Judge, on August 26, 2014, at the Oklahoma Merit Protection Commission’s office in Oklahoma City, Oklahoma. Appellant Janet Bullock appeared in person and through her representative, Amelia Henderson. Appellee Department of Human Services (“DHS”), appeared through its counsel, John Douglas and through party-representative, Nancy Ballinger.

Appellant was a permanent, classified employee of Appellee, appealing from an adverse disciplinary action of discharge. The undersigned heard the sworn testimony of witnesses, viewed the exhibits admitted into evidence, and heard argument from counsel. The undersigned admitted into evidence Joint Exhibit Nos. 1-10. Appellant attempted to introduce a recording of her entire unemployment hearing. The exhibit was not admitted, but Appellant was given until August 29, 2014, to submit relevant excerpts. Appellee was given until 5:00 PM on September 3, 2014, to object to some or all of the submission. The undersigned ordered the record closed at 5:00 PM on September 3, 2014. Appellant submitted no excerpts, so only the evidence presented at the hearing was considered.

Upon consideration of the record, the undersigned Administrative Law Judge issues the

following findings of fact and conclusions of law pursuant to 74 O.S. § 840-6.7(B).

FINDINGS OF FACT

The facts in this case are largely undisputed. Appellant is a nineteen (19) year classified employee with DHS. She has an excellent work record. Her last three PMPs were introduced into evidence (Exs. 5-7). Two show an overall performance of "Exceeds Standards" while one shows "Meets Standards." There was no evidence of any issues with respect to Appellant's work at DHS.

Instead, Appellant was terminated because she pleaded guilty to a misdemeanor crime of "Embezzlement – Under \$500." The charges were filed against Appellant for stealing money on five occasions from the cash register at Kohl's department store where she was employed part time. Appellant does not deny she committed the crimes charged, nor that she pleaded guilty to them. Appellant was given an eighteen (18) month deferred sentence and ordered to pay restitution. (Ex. 9).

Appellant's supervisor Donnie Checotah testified he first learned of the charges in July 2013, when four or five employees brought them to his attention. He stated he verified the charges via the Oklahoma Supreme Court Network and continued to monitor the situation, but took no further action at that time. He testified he continued to assign cases to Appellant because at that time they were just charges and she had not been found guilty of anything.

Checotah testified that in November 2013, he saw a notation on OSCN that Appellant had pleaded guilty. At that time, he contacted Lee Ann Saunders and Nancy Ballinger. Saunders is the employee relations manager and is tasked with reviewing corrective discipline issues and making recommendations as to the appropriate level of discipline in individual cases. Ballinger is

the Regional Director, Region 5 – Adult and Family Services Division and the final decision maker here.

Checotah and Saunders both recommended discharge. Saunders testified she takes a number of elements into account when recommending discipline. These include: (1) review of the acts of the employee, (2) a review of the employee's personnel file, (3) a review of the employee's PMPs and (4) discipline imposed in similar circumstances. Saunders testified a number of issues led her to recommend termination. There were multiple instances of theft, not one lapse in judgment. Thus, there were opportunities to act differently that were not taken. She also stated the crimes involved dishonesty, making them worse than other types of misdemeanors because the public has to trust the agency.

Ballinger determined discharge was appropriate. A Notice of Proposed Formal Disciplinary Action (Discharge) signed by Ballinger was served on Appellant on January 6, 2017. (Ex. 3) Additional supporting documentation was supplied the following day. (Ex. 2). The Notice recited the criminal incidents as related in the officer's affidavit and deferred sentencing order. Ballinger asserted the incidents violated DHS policies OKDHS:2-1-7(i)(2) Misconduct, OKDHS:2-1-7(i)(2)(F) Dishonesty, and OKDHS:2-1-7(i)(5) Conduct unbecoming a state employee. She recommended termination under OKDHS:2-1-11.

A pretermination hearing was held. The hearing officer issued a report recommending a suspension without pay. (Ex. 8). Ballinger rejected this recommendation and issued a Notice of Final Formal Disciplinary Action (Discharge). (Ex. 1) Ballinger testified she had not previously rejected the recommendation of a hearing officer, but she had also only been a final decision maker for about two years. Ballinger testified she believed allowing Appellant to remain employed would bring discredit to DHS. She stated people knew about the crimes and she

needed to be able to trust staff that can access case records. Checotah testified that personnel with Appellant's level of access could steal money by making fictitious accounts.

Saunders put on evidence of several other DHS employees who had been charged or accused of theft or embezzlement, including both misdemeanors and felonies. Some of the criminal activity took place at DHS and some were unrelated to the agency. All of the employees were terminated by DHS.

Appellant testified that because her crimes were not a felonies, she did not legally have to report them to her supervisors. She noted she called the legal department at DHS to verify this. She states she was a good employee who never did anything wrong at DHS. She admits the theft, but noted she needed the money because of medical bills related to her husband's illness.

The policies upon which DHS relied for termination are OKDHS:2-1-7(i)(2) Misconduct, OKDHS:2-1-7(i)(2)(F) Dishonesty, and OKDHS:2-1-7(i)(5) Conduct unbecoming a state employee. OKDHS:2-1-7(i)(2) defines misconduct as including "any failure to comply with statute, policy, practice, directive, standard, or procedure directly governing performance and conduct." It is clear from the context of the policy that the failure to comply relates to job conduct and performance, neither of which are at issue here.

OKDHS:2-1-7(i)(2)(F) defines dishonesty. Subsections i-iv, vi and vii clearly refer to job-related issues. Subsection vii states "failure to report a finding of guilt, plea of guilty, or nolo contendere to a felony charge." Thus, it is the failure to report a felony to the employer, not the crime itself, which is covered.¹ The only subsection remaining is v which states "criminal acts." Since all of the other enumerated actions refer to conduct on the job, it is reasonable to interpret subsection iv to be limited to criminal acts performed as an employee, not criminal acts in

¹ Pleading guilty or nolo contendere to a felony or conviction of a felony results in automatic termination under OKDHS:2-1-7(i)(6).

general. This interpretation is supported by the fact both the reporting requirement and the automatic termination provision explicitly reference felony acts. OKDHS:2-1-7(i)(2)(F)(v) and OKDHS:2-1-7(i)(6).

OKDHS:2-1-7(i)(5) states that discipline may be imposed for conduct unbecoming a public employee which “includes any failure by an employee of good behavior either during or outside duty hours, which is of a nature that it causes discredit to DHS.” This provision clearly applies to conduct outside of the workplace. There was evidence that the crimes were known at DHS and the guilty plea to the crimes was public record. There was evidence that DHS believed Appellant’s actions had brought discredit to the agency, particularly where, as here, Appellant’s job involved the awarding of money and Appellant had pleaded guilty to stealing money.

Based on a preponderance of the evidence, the undersigned Administrative Law Judge finds just cause existed to discipline Appellant and the discipline imposed was just.

CONCLUSIONS OF LAW

1. Any finding of fact that is properly a conclusion of law is hereby incorporated as a conclusion of law.
2. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause.
3. The burden of proof in this matter was on Appellee to show by a preponderance of the evidence that just cause existed for the adverse action and the discipline imposed was just. 74 O.S. § 840-6.5(C); OAC 455:10-9-2.
4. An appointing authority is required to establish a written progressive discipline policy designed to ensure consistency, impartiality and predictability with penalties ranging from

informal discipline to formal discipline, up to discharge. 74 O.S. § 840-6.3; OAC 455:10-11-4 – 455:10-11-11.

5. Absent mitigating circumstances, repetition of an offense generally is accompanied by progression to the next higher level of discipline, but, dependent on the circumstances, a single incident may justify proceeding to a higher step before going through the lower steps. OAC 455:10-11-4.

6. An agency may impose formal discipline on an employee to correct violations of statute, rule, policy, practice or procedure regarding work performance or behavior. OAC 455:10-11-11.

7. An agency may discharge, suspend without pay for period not to exceed 60 days, or demote a permanent, classified employee for, among other things, misconduct, insubordination, inefficiency, inability to perform the duties of the position, willful violation of the Oklahoma Personnel Act or the Merit Rules, conduct unbecoming a public employee or any other just cause. OAC 455:10-11-14.

8. Appellee failed to meet its burden of proof that just cause for discharge existed under OKDHS:2-1-7(i)(2).

9. Appellee failed to meet its burden of proof that just cause for discharge existed under OKDHS:2-1-7(i)(2)(F).

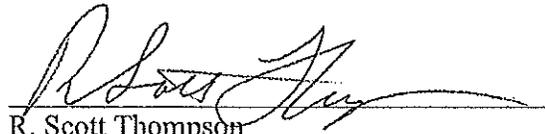
10. Appellee met its burden of proof that just cause for discharge existed under OKDHS:2-1-7(i)(5).

11. Appellee has met its burden of proof that the discipline imposed – discharge – was just.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the decision of

the Department of Human Services to discharge Appellant is affirmed and Appellant's appeal is hereby **NOT SUSTAINED**.

Signed this 5th day of September, 2014.

A handwritten signature in black ink, appearing to read "R. Scott Thompson", written over a horizontal line.

R. Scott Thompson
Administrative Law Judge
Oklahoma Merit Protection Commission
3545 N.W. 58th Street
Oklahoma City, OK 73112