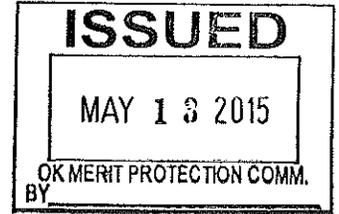


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**

CLARA GOLETTO,)
)
 Appellant,)
)
 VS.)
)
 OKLAHOMA DEPARTMENT OF)
 VETERANS AFFAIRS)
)
 Appellee.)

Case No. MPC-14-193



FINAL ORDER

This matter came on for hearing before R. Scott Thompson, Administrative Law Judge, on April 29 and May 5, 2015, at the Oklahoma Merit Protection Commission's office in Oklahoma City, Oklahoma. Appellant Clara Goletto ("Appellant") appeared in person and through her counsel, Dan Gamino. Appellee Oklahoma Department of Veterans Affairs ("ODVA"), appeared through its counsel, Kara Smith, and through party-representative, Bill Connolly.

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 Exhibits A1, A2, A3 (renamed D3), A4, A5, A6, A7, B1 (renamed D1 and excluding page 5), B2 (renamed D2), B3 and B4 (impeachment exhibit). After receiving all evidence and counsels' closing arguments, the undersigned closed the record on May 5, 2015.

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

Appellant testified she worked for ODVA from June 16, 2008, through May 30, 2014. At the time of her discharge, Appellant held the position of Accounting Technician II assigned to the Norman Veterans Center in Norman, Oklahoma. She had held that position since November 2010. She had previously served as an Administrative Technician III in Social Services at the same facility. On May 15, 2014, ODVA issued a "Pre-Termination Notice" ("Notice") notifying Appellant that ODVA was considering termination of Appellant's employment. (Exhibit A1). The Administrator of the Norman Veterans Center, Terry Wilkerson, conducted a pre-termination hearing, and sent a letter to Appellant, terminating her employment on May 30, 2014. (Exhibit A2) ("Termination Letter").

According to the Notice and Termination Letter, the basis for the adverse action was ODVA SOP#200 entitled "Progressive Discipline and Adverse Actions," (Exhibit A4), Merit Rule 455-10-11-14 and Merit Rule 455-10-11-17. It is undisputed that Appellant had received no previous formal discipline as an ODVA employee. It is also undisputed that ODVA did not utilize progressive discipline, but rather moved directly to termination. The Administrator characterized the termination as a stand-alone decision.

The Notice and Letter are detailed and explicit regarding the two circumstances which were considered in the determination regarding Appellant. One of the issues arose on April 29, 2014. The other occurred the following day. In order to understand the

two incidents, it is first necessary to understand Appellant's duties with respect to the meal ticket box and cash box.

As part of her job, residents, family members and employees came to Appellant to purchase meal tickets. The tickets were kept in a box at Appellant's desk and the money from the sale of the tickets was placed in the box. A log was kept showing who purchased tickets and how much money was received. Pages 10 and 11 of Exhibit D2 show such a log. Appellant had been handling the meal tickets since November 2010.

In January 2014, Appellant was given the additional duty of handling the cash box. Residents have trust funds from which they can withdraw money. If a request is over \$100, the resident fills out a request form which is sent to the bank for the funds. For smaller amounts, the residents can request money from the cash box. A log is kept showing the cash disbursed to each resident. The money is counted out to the resident, the resident would sign the form, Ms. Goletto would sign and finally another employee would countersign. The amounts from the logs would later be withdrawn from the residents' trust accounts.

I. APRIL 30, 2014, INCIDENT

Since the April 30, 2014, incident is simpler, it will be addressed first. A resident requested \$100 from Ms. Goletto and indicated he would need it in a couple of days ("Requesting Resident"). A written request was prepared and the money was obtained from the bank. It was placed in the cash box.

On April 30, 2014, the cash box contained \$80 plus the \$100 requested by the Requesting Resident. After several disbursements had been made, the cash box contained

\$20 and the \$100 requested by the Requesting Resident. When another resident requested \$40, Ms. Goletto provided the \$40, which included the last \$20 of the \$80 originally in the cash box, as well as \$20 from the \$100 obtained for the Requesting Resident. A replenishment request was made and additional funds were put in the cash box. The Requesting Resident was provided his \$100. All money disbursed was properly documented and debited against the appropriate residents' accounts.

Appellee asserts Appellant violated ODVA and USDVA regulations when comingling the funds generally present in the cash box with the specific resident's request, also present in the cash box. The only agency witness who could identify any specific regulation that was violated was Lisa White. Ms White, who was not employed at the Norman Veterans Center, identified SOP 322 as prohibiting comingling. However, that regulation was not entered into evidence, so the undersigned has no evidence of what it actually says. Moreover, Appellant testified she was never told of this policy, nor provided any written policy to follow with respect to this issue. The agency provided no contrary evidence indicating specific training or documentation related to this issue, such as a copy of SOP 322, was provided to Appellant. If this issue is as important as the agency's witnesses claim, the agency should have provided appropriate training and provided the policy that Ms. Goletto should have followed to her.

The comingling identified in this incident may or may not be a violation of policy or regulation. Regardless, it is clear that Ms. Goletto was not given sufficient information or training to make a violation of such policy or regulation, assuming it exists, subject to formal discipline, much less termination.

II. APRIL 29, 2014, INCIDENTS

On April 29, 2014, two incidents occurred. At the end of the day, the meal ticket box was \$15 short. Records showed \$262 in meal tickets had been purchased, but the meal ticket box contained only \$247. None of the agency witnesses claimed the money had been stolen or embezzled by an agency employee, including Ms. Goletto.

The second incident involved the cash box. The cash box began the day at \$380. The log records show that \$387 was disbursed from the cash box to residents. In addition, it is undisputed \$8 was disbursed for an activity fee. In total, the records show \$395 disbursed from the cash box, \$15 more than was there at the beginning of the day. The log, Exhibit D1, shows alterations to the last two disbursements of the day and to the total. The total has been changed and scribbled out at least twice. The final entry shows \$387 and is signed by Appellant. The last two disbursements show \$25 and \$12 respectively, but have had writeovers that appear to show that they were, at some point, \$20 and \$10 respectively.

Ms. Goletto testified that when she added up the total at the end of the day she wrote down \$387. She realized this was more than she had in the box to start the day. She testified she was not yet aware of the shortage in the meal ticket box and no agency witness contradicted that timeline. Ms. Goletto testified she panicked when she realized the log showed more money disbursed than she had had and she tried to fix the problem by marking out \$387 and changing it \$380 and then changing the last two entries to \$20 and \$10 so the sum of disbursements would equal \$380. She then realized this did not fix the problem because of the \$8 activity fee, so she changed everything back to the

original numbers and signed the total that appeared on the sheet to indicate it was correct.

Later, after the meal ticket box shortage was discovered, she testified she realized that at some point in the day, \$15 must have been put in the wrong box. This allowed her to disburse the extra \$15 from the cash box, while accounting for the meal ticket box \$15 shortage.

The agency, on the other hand, claims Ms. Goletto tried to cover up the \$15 meal ticket shortage by changing the total on the cash box log from \$380 to \$387 and the last two entries from \$20 and \$10 to \$25 and \$12, respectively. This, says the agency, was an alteration of accounting records prohibited by regulation and an attempt to cover up the loss. These actions were so egregious as to require skipping progressive discipline and proceeding directly to termination.

The problem with the agency's explanation is that it still requires a transfer of money from one box to the other. If the agency is correct that the last two entries were originally \$20 and \$10, the total disbursement from the cash box is still \$8 more than the amount that was in it because of the \$8 activity fee that also came out of the cash box. The agency provided no explanation for this discrepancy. It failed to even determine how much money was actually disbursed from the cash box on April 29. The claim the log was altered and the transactions were falsified is based solely on the numbers being scribbled out and numbers being written in. However, the agency had no evidence indicating the numbers actually submitted by Ms. Goletto at the end of the day were false or inaccurate.

This is because the agency conducted no independent investigation of the incident. The residents who received the funds with the rewritten entries were apparently not even asked how much money they received. This would seem to be a dispositive issue that could have easily resolved the disputed facts. It would have established whether the entries submitted by Ms Goletto were accurate as claimed by Appellant or fraudulent as claimed by the agency. Without knowing how much was actually disbursed, the agency had no evidence the log as submitted was fraudulent or inaccurate. In short, had the agency verified Ms. Goletto actually disbursed \$395 from the cash box, then her story would appear to be true. If, however, the agency had been able to prove she had only disbursed \$380 from the cash box, then her testimony and the logs would have appeared to be false.

Instead, at best, the agency is left with a potential policy violation for not properly handling corrections or changes to the log form. Even then, the agency was unable to identify a specific policy that was violated and no such policy was cited in the Notice or Termination letter. Nor, did the agency demonstrate any such policy had been provided to Ms. Goletto or that she had received adequate training on such policy. The agency argued that as an Accounting Technician 2, Ms. Goletto was responsible for knowing all of the accounting policies of ODVA, USDVA and the GAO. Besides being a ridiculous claim on its face, it was telling that Appellant's supervisor was unable to specifically identify any of these policies either.

If ODVA's concerns are correct, the incidents of April 29, raise significant issues regarding the honesty and trustworthiness of Ms. Goletto. If, on the other hand, Ms.

Goletto is believed, the end result was nothing more than a mistake, a misguided attempt in a panic to correct the mistake, followed by an acknowledgment of the mistake. The problem here is the agency acted before gathering the evidence that would likely have resolved the question. It did not do so and consequently lacks the evidence it needed to meet its burden of proof.

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 has failed to demonstrate that it was appropriate under the circumstances to fail to utilize its progressive discipline policy and move directly to termination.

9. Appellee has failed to meet its burden of proof that just cause existed to terminate Appellant for violating Merit Rule 455:10-11-14.

10. In accordance with OAC 455:10-9-2(f)(1)(B), upon a finding that just cause did not exist for the adverse action, a presiding official may order the reinstatement of the employee, with or without back pay and other benefits. A presiding official may also order that documentation of the adverse action be expunged from any and all of the employee's personnel records.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Appellant's appeal is hereby **SUSTAINED**. The discipline imposed upon Appellant is rescinded consistent with this Order. Appellant is to be reinstated to her previous position as an Accounting Technician II and receive all back pay and benefits to which she is entitled. Further, Appellant's personnel records are to be expunged consistent with this

Order.

This Order entered this 11th day of May, 2015.

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

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