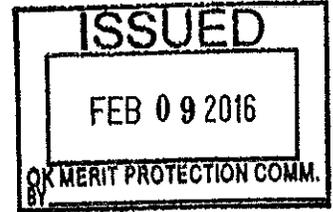


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



LEMERLE ROBINSON,)
Appellant)
vs.)
DEPARTMENT OF HUMAN SERVICES,)
Appellee.)

CASE NO. MPC 15-094

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on January 14, 2016 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant, Lemerle Robinson, appeared in person *pro se*. Appellee, Department of Human Services (hereinafter referred to as "DHS" or "Appellee"), appeared by and through its counsel, Richard Resetaritz, Assistant General Counsel, and table representative, Anne Lawrence, Managing Attorney, El Reno Child Support Services Office.

Appellant, a permanent classified employee of Appellee, was discharged from his position as a Child Support Specialist II in the El Reno Child Support Office for alleged violation of DHS: 2-1-7(i)(5), Conduct unbecoming a public employee, after he was arrested and charged with felony child neglect of his children and step-children, and the case and circumstances received wide-spread publicity by local media.

Whereupon, the sworn testimony of witnesses was presented, along with exhibits, which are incorporated herein and made a part hereof. Appellant presented no

witnesses or exhibits and did not testify in his behalf. Accordingly, after careful consideration of all evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

Appellant was a Child Support Specialist II at El Reno City Child Support Services. As one of nine child support specialists on the El Reno office, Appellant interacted with the public, the courts and attorneys, and with other agencies and social service organizations to help parents provide the financial support to their children that is necessary for the children's health and well-being.¹

On November 20, 2014 an Affidavit for Issuance of Arrest Warrant was filed in Canadian County District Court against Appellant for criminal child neglect. (Jt. Ex. 2) The affidavit was based on unsanitary and unsafe conditions of Appellant's home where he lived with his wife and five children, ranging in age from two to 12 or 13. On September 11, 2014, DHS Child Welfare Worker Chelsea Parker and Canadian County Deputy Sheriff / Investigator Renee Kendrick had gone to the home to investigate a report of two suspicious burns on the twelve year-old boy. Deputy Sheriff Kendrick testified that the conditions of the home were unsanitary, unfit to live in, and posed safety and health issues. She found clothes, food, trash and feces on the floors throughout the house, and a pocket knife accessible to the children. Child Welfare Worker Parker testified that there were no toothbrushes, toothpaste, or toilet tissue in the children's bathroom, no edible food in the kitchen, and molded food and growth

¹ <http://www.okdhs.org/careers/Pages/cssspecialist.aspx>

inside the refrigerator. By contrast, she said, the parents' bedroom and bath, and living room were clean and well-kept.

The affidavit, signed by Deputy Kendrick, stated that:

"...a hallway [was] covered in copious amounts of clothes, trash, and carpet stains.

"On the way to the bedroom, we passed a bathroom covered in feces, trash, flies, clothes, and clutter. The feces appeared to be human in nature, and located directly in front of the toilet, as well as mashed into the carpet in the doorway where the linoleum meets the carpet. There was no toilet paper, and the bathtub was covered in what appeared to be black mold.

"Inside the bedroom were bunk beds with only a mattress on the top bunk, and a box spring with a foam pad on the bottom bunk. There were no sheets on either bunk, and the bottom bunk was the only one with a pillow, which had no pillowcase on it. The support slats from the top bunk were broken and hanging down into the bottom bunk's space. The bottom bunk was covered in trash, junk, and clothes. The top bunk mattress had a stuffed animal on it, and several straight, vertical cuts on it, which caused the inside matting to be exposed. ...

"The floor was covered in clothes, food, trash, urine, and feces. There was a folded knife on the floor, which was consistent with the cuts on the top mattress. Gnats and flies were swarming around the bedroom, when we disturbed them from the food, feces, and garbage. The room smelled of urine, and there was feces on a sock, as if the sock had been used to wipe. This may have been due to the lack of toilet paper in the kids' bathroom. There was also feces on the clothes that were piled up on the floor."

Jt. Ex. 2, pg. 4

Deputy Kendrick concluded that:

"The house was completely unsanitary, and unfit for anyone to visit, or live in. The house was a physical safety risk for the children, as well as a health risk to everyone."

Jt. Ex. 2, pg. 6

All of the children were removed from the home and placed in emergency protective custody.

Managing Attorney Anne Lawrence testified that on November 21, 2014, the day after the Affidavit was filed and Appellant arrested, her office began receiving inquiries

from local media concerning Appellant's arrest. The matter was highly publicized and was carried on channels 4, 5, 9, and Fox; private attorneys were overheard discussing the matter at the courthouse. Appellant was placed on suspension with pay before discharge proceedings were initiated.

A pre-termination hearing was held on December 22, 2014, and Appellant was discharged effective January 8, 2015 for violating policy OKDHS 2-1-7(i)(5), Conduct unbecoming a public employee, by failing to provide for his child's and step-children's health, safety, and welfare. (Jt. Ex. 3, pg, 1)

Appellant appealed his discharge and argued that the action should be reversed because Appellee failed to perform an internal investigation; progressive discipline was not followed; mitigating circumstances were not considered; Appellant's response was not considered; PMP's were not considered; the hearing officer's recommendation was not considered; and managing attorney Anne Lawrence did not have authority to impose discharge. Further, he argued, discharge action was taken before a conviction was entered.

Ms. Lawrence testified that she did consider all circumstances, including Appellant's most recent PMP, his prior corrective action, the pre-termination hearing, including Appellant's apology and all information presented at the hearing. She also considered court documents, conditions found in the home, local news coverage, and negative fall-out in the courthouse among attorneys. Ms. Lawrence testified that, as managing attorney for the district office, she has been delegated by the division Director as appointing authority for the office and, therefore had authority to impose the discharge. Appellant presented no evidence to refute Appellee's evidence.

Concerning Appellant's argument that there was no conviction, it is noted that discharge was not based on a felony conviction, but on conduct unbecoming. No felony conviction is required for action taken pursuant to findings of conduct unbecoming a public employee. Additionally, the conduct was not conduct, the nature of which repetition could be tolerated, but was of such a serious nature that progressive discipline is not appropriate under these circumstances.

This administrative law judge finds that the preponderance of evidence presented in this case supports the allegations by Appellee that Appellant violated DHS: 2-1-7(i)(5), Conduct unbecoming a public employee, when he was arrested and charged with felony child neglect by failing to provide for his child's and step-children's health, safety, and well-being. Appellee has proven, by a preponderance of the evidence, that Appellant violated DHS:2-1-7(i)(5) and that just cause exists for the action of discharge that was imposed.

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, suspended without pay, or demoted for conduct unbecoming a public employee, 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. OKDHS:2-1-7(i)(5) **Conduct unbecoming a public employee** states that such conduct includes any failure by an employee of good behavior, either during or outside duty hours, which is of such a nature as to cause discredit to OKDHS.

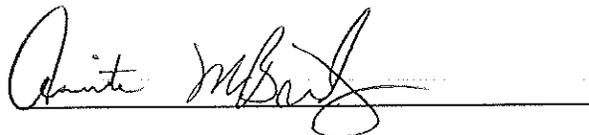
5. OKDHS:2-1-7(b) **Discipline - Scope** states that OKDHS follows the principle of progressive discipline where, absent mitigating circumstances, repetition of an offense is accompanied by a generally automatic progression to the next higher level of discipline.

6. Appellee, Department of Human Services, has met its burden to prove, by a preponderance of the evidence, that Appellant, Lemerle Robinson, has violated DHS: 2-1-7(i)(5) **Conduct unbecoming a public employee**, that just cause exists for discipline, and that the discipline imposed, discharge, is just under the circumstances.

ORDER

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

DATED this 5th day of February, 2016.



Annita M. Bridges, OBA # 1119
Administrative Law Judge
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