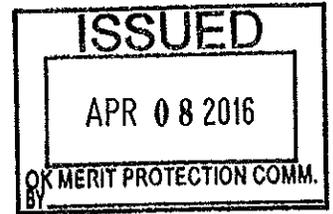


BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA



JESSICA SPRING INNISS,)
)
 Appellant,)
)
 v.)
)
 COMMISSIONERS OF THE LAND OFFICE,)
)
 Appellee.)

Case No. MPC-16-058

ORDER OF DISMISSAL

THE ABOVE STYLED AND NUMBERED CAUSE comes before the undersigned Administrative Law Judge on the 7th day of April, 2016, for the regularly scheduled Prehearing Conference. Appellant was present in person. The Appellee was present through Secretary of the Commissioners of the Land Office, Harry Birdwell, and was represented by counsel, Lisa Blodgett.

During the Prehearing Conference, the Appellee moved for dismissal of the appeal on the grounds that there is no dispute that Appellant had failed to return to work after she exhausted all of her available annual leave, sick leave, and FMLA leave after notice from the Appellee, that such failure was a stated ground for Appellant's termination in all termination notices, and that the agency was entitled to terminate Appellant on that ground pursuant to 260:25-15-10(f). Appellant did not contest that she had failed to return to work after exhausting all of her annual leave, sick leave, and FMLA leave, and that the same was a stated basis for her termination in all pretermination notices received from Appellee, and on the notice of final discipline. Appellant did not claim that she was off of work due to a work-related injury or illness, and admitted that

she had not filed a worker's compensation claim against Appellee. Appellant admitted that she was released by her doctor to return to work on October 15, 2015.

The undersigned Administrative Law Judge, having reviewed the filings of the parties, heard the statements of Appellant and Appellee, and being fully advised in the premises, issues the following findings of facts, conclusions of law, and order of dismissal:

FINDINGS OF FACT

The parties stipulated that the Merit Rules apply, that the Merit Protection Commission has jurisdiction over the matter, that the appeal was timely filed, that Appellant was a permanent classified employee of Appellee, and that Appellant was terminated on October 30, 2015. Each of the parties' stipulations is adopted herein as a finding of fact.

In addition, the undersigned makes the following findings of fact:

1. Appellant's annual leave, sick leave, and FMLA leave was entirely exhausted prior to her termination.
2. Appellant was not absent from work due to any work related injury or illness.
3. Appellant was released by her medical provider to return to work on October 15, 2015.
4. Appellant did not return to work on October 15, 2015, or at any time after her leave was exhausted.
5. Appellant failed to return to work after all of her leave was exhausted.
6. Appellant received all procedural notices and a pre-termination hearing as required by law.
7. Appellant was terminated for failing to report for work after all available leave was exhausted.

CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and subject matter in the above-entitled matter.

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

3. OAC 260:25-15-10(f) provides:

An Appointing Authority may terminate an employee who is absent from work after the employee has exhausted all of his or her sick and annual leave accumulations unless the absence is covered by 260:25-15-45 or 260-25-15-49. Termination of a permanent classified employee under this subsection is subject to the pretermination hearing requirements of 840-6.4 of Title 74 of the Oklahoma Statutes. This subsection does not prevent an Appointing Authority from granting leave without pay according to 260:25-15-47.

4. OAC 260:25-15-45 provides rules regarding the Family and Medical Leave Act of 1993. Appellant was not entitled to an exception from the Appellee's right to terminate her under this section because her FMLA leave had been exhausted prior to her termination.

5. OAC 260:25-15-49 applies to leave due to work related illness or injury. Appellant was not entitled to an exception from the Appellee's right to terminate her under this section because she was not absent due to a work related injury or illness.

6. 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 sufficient cause exists for the action taken and that the discipline imposed was just.

7. The Personnel Act and Merit Rules provide that an employee must receive notice of the proposed action, which shall include the statute, rule, policy, etc., which was violated, the specific acts or omissions which are the cause of the suspension, an explanation of the evidence justifying the suspension, and state that the employee must be given an opportunity to respond to

the proposed suspension either in writing or orally. 74 O.S. § 840-6.4; OAC 455:10-11-15. All procedural rights were afforded Appellant in this case.

8. Pursuant to Merit Rule 455-10-3-13, an appeal may be dismissed if there is insufficient evidence to support the allegations.

9. Pursuant to Merit Rule 455:10-9-2, an Administrative Law Judge may enter summary judgment when there is no dispute of material fact or inferences to be drawn therefrom, or when only questions of law exist.

10. There is no dispute that:

(a) Appellant failed to return to work after exhausting all of her annual leave, sick leave, and FMLA leave; and

(b) Appellant's absence was not due to a work related injury or illness; and

(c) Appellant was afforded every procedural right prior to her termination.

Accordingly, Appellee's termination of Appellant was proper pursuant to OAC 260:25-15-10(f) as a matter of law. Moreover, for the same reasons, there is insufficient evidence to support the allegations of the appeal.

11. Appellant's appeal should be dismissed pursuant to Merit Rule 455-10-3-13 and denied pursuant to Merit Rule 455:10-9-2.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the appeal of Appellant, JESSICA SPRING INNIS, is dismissed and denied.

IT IS SO ORDERED this 7th day of April, 2016.



MATT HOPKINS
Administrative Law Judge
Oklahoma Merit Protection Commission
3545 N.W. 58th Street
Oklahoma City, OK 73112