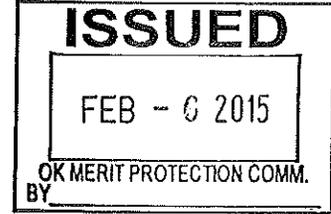


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



IN RE: CONSOLIDATED CASES -- )  
 JANICE MOONEYHAM, )  
 DAROLD LARISON, )  
 TRACY WILKINSON, )  
 LETICIA ROSE BOLLINGER )  
 GLEN WILLIAMS, )  
 LINDA SUE PACE, and )  
 RUTH JOHNSON )  
 )  
 Appellants, )  
 )  
 vs. )  
 )  
 OKLAHOMA DEPARTMENT OF )  
 VETERANS AFFAIRS, )  
 )  
 Appellee. )  
 )

MPC 14-065  
 MPC 14-066  
 MPC 14-067  
 MPC 14-068  
 MPC 14-069  
 MPC 14-070  
 MPC 14-071

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on January 6 and 7, 2015 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. All Appellants appeared in person and were represented by Woodrow K. Glass, Esq. and Scott F. Brockman, Esq, of the law firm Ward & Glass. Appellee, Oklahoma Department of Veteran Affairs (hereinafter referred to as "ODVA" or "Appellee"), appeared by and through its Counsel Kara I. Smith, Assistant Attorney General, and agency representative John McReynolds, Executive Director.

Appellants, employees at the Oklahoma Veterans Center in Norman, were discharged for alleged violation of agency policy prohibiting financial transactions

between patients and employees, SOP 381, *Financial Transactions – Employee/Patient*, and for alleged conduct unbecoming a public employee, Merit Rule 530:10-11-91, *Conduct of Classified Employees*.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with Exhibits, which were admitted and are incorporated herein and made a part hereof. Accordingly, after 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**

Appellants are all long-time employees at the Oklahoma Veterans Center in Norman, and all work with the center's residents or come in contact with them in each of their employment capacities. Leticia Rose Bollinger has worked at the center for 18 years and was a Recreation Specialist at the time of her discharge. Ruth Johnson has worked at the center for 27 years and was an Administrative Technician II at the time of her discharge. Janice Mooneyham, a Therapeutic Aide at the time of her discharge, has worked at the center for at least 19 years. Darrell Lairson, a Recreation Specialist, has worked at the Norman center for over 14 years. Tracy Wilkinson, a 28 year employee of the center, was a Patient Service Coordinator at the time of her discharge. Linda Sue Pace, also a 28 year employee, was a Patient Service Coordinator II when she was discharged. Recreation Specialist Glenn Williams has a 15-year tenure at the Norman center.

In November 2009, a resident of the Norman Center, Mr. B. M. Marshall, executed a will leaving his entire estate to nine named employees of the Center, including the seven Appellants.<sup>1</sup> The designated Personal Representative of the will and his alternate, both named beneficiaries under the will, were also employees. Likewise, the three witnesses to Mr. Marshall's execution of the will were all employees, and the notary who notarized all the signatures was an employee of the Center. The will had been drawn up by Mr. Marshall's private attorney, not affiliated with the Center or with Appellants or with Appellee. (See: Joint Exhibit 2)

Appellant Bollinger learned of the will soon after its execution, when Mr. Marshall brought it to her and told her she needed to look at it. Concerned that it might violate ODVA's Financial Transaction policy<sup>2</sup>, she took the will to Center Administrator Christy Howell for advice. Ms. Howell testified that she had worked at the Center for 31 years, but had not encountered a situation in which an employee was named as beneficiary in a resident's will. She contacted Executive Director Martha Spear. Ms. Spear testified that when she first learned of the will from Ms. Howell, she did not believe the Financial Transaction policy applied. She indicated that the policy required the employee to be an active participant in a transaction. Being named in a will did not involve active participation by the employee. However, she advised Ms. Howell to consult Bill O'Brien, ODVA legal counsel, as it was his job to interpret language in laws and policies when questions arise.

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<sup>1</sup> One of the named employees declined to accept anything under the will; another named beneficiary was no longer employed at the Center and could not be located. Mr. Marshall had two half- brothers who were not mentioned in the will, but who did not contest the will.

<sup>2</sup> ODVA policy prohibits "financial transactions between patients and employees. Employees are strictly prohibited from entering into and participating in a financial transaction with any patient."

William (Bill) O'Brien, Assistant Attorney General, had served as General Counsel for ODVA for many years when the question arose about an employee being named in a resident's will. Mr. O'Brien testified that he recalled the issue "vividly". He testified that there was no issue concerning Mr. Marshall's legal competency<sup>3</sup>; there was no evidence of coercion by employees; that being named in a will is not a "transaction" for purposes of the Financial Transaction prohibition; and he saw nothing wrong with an employee accepting a bequest under a resident's will; that a veteran's wishes should be honored. Mr. O'Brien testified that he did not find a violation of any SOP, including the Financial Transaction SOP, since a transaction requires both parties' knowledge and participation, and the employee beneficiary is not a party or participant to the will. When questioned about whether he had all the information he needed to make a decision, he indicated that he did. He did not think that the amount of the bequest was relevant, nor did he think it relevant that Center employees were the sole beneficiaries. Upon questioning by ODVA, Mr. O'Brien stated that accepting a bequest under a resident's will was not conduct unbecoming a public employee. Mr. O'Brien told Ms. Howell and Ms. Spears that the agency had no jurisdiction over the will and that the employees could decide for themselves whether or not to accept the bequests. Ms. Howell relayed this legal opinion to Appellant Bollinger, who relayed it at the time to some of the Appellants, as well.

In May 2010, some six months after Mr. Marshall executed his will, he passed away. Appellant Leticia Bollinger assumed duties as the alternate Personal

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<sup>3</sup> Appellee presented evidence that Mr. Marshall was very trusting and easily swayed by unscrupulous individuals. In fact, Appellant Bollinger had reported another employee who was discharged for entering into a financial transaction with Mr. Marshall, in violation of ODVA policy. However, Mr. Marshall still managed his own affairs and had not been adjudicated incompetent. (See also: Joint Exhibit 2)

Representative under the will, after the primary representative named declined to serve. In August 2010 the bequests under the will were tendered and accepted by Appellants.

Prior to accepting the bequest, Appellant Ruth Johnson testified, she asked her supervisor Michelle Sexton whether she could accept the bequest and was told that she could, according to ODVA attorney and Center Administrator Christy Howell.

Appellant Janice Mooneyham testified that after Mr. Marshall's death she inquired of her supervisor, Connie Dowdy, whether or not she could accept the bequest from Mr. Marshall. After consulting with Ms. Howell, supervisor Dowdy advised Appellant Mooneyham that ODVA did not have jurisdiction over the will and that she could accept the bequest if she wanted to do so.

Appellant Darrell Lairson testified that in late 2009 Mr. Marshall told Appellant that he had named Appellant in his will. At that time he went to Ms. Howell and asked her if there was any problem with him accepted money under Mr. Marshall's will. Ms. Howell told him that his accepting was not a problem. Again, when he received the check, Appellant Lairson asked Ms. Howell if he would be fired if he accepted the check. Again, she told him no.

When Appellant Tracy Wilkinson learned from Appellant Bollinger that she had been named in the will, she went to Ms. Howell who told her that the question of the will had already been reviewed by Executive Director Spears and by legal counsel, and that the agency had no jurisdiction in the matter. When Appellant received the check, she inquired if she would be fired if she cashed it. Ms. Spears assured her that she would not.

Appellant Bollinger told Appellant Glenn Williams in late November 2009 that he had been named in Mr. Marshall's will. Appellant Williams testified that he went to Ms. Howell at that time and again when he received the check to inquire if he could accept the bequest. He was told that ODVA had no jurisdiction in the matter; that a resident has the legal right to make a will and there was no policy that spoke to an employee in a will situation. He was free to accept the check.

Appellant Linda Sue Pace testified that she did not know she was included in the will until she received the check from Appellant Bollinger after Mr. Marshall's death. She immediately went to Administrator Howell and asked what she should do. Ms. Howell told her that she was aware of the will provisions and that ODVA had no jurisdiction in the matter. Appellant Pace inquired whether she would be fired for accepting the check and Ms. Howell told her she would not. Three years later, when she received her pre-termination notice, Appellant Pace testified that she contacted Mr. O'Brien and he told her that what she had been told in 2010 was accurate.

Administrator Howell testified that various Appellants did approach her concerning Mr. Marshall's will and that she did advise them, based on Mr. O'Brien's advice, that ODVA had no jurisdiction over the will or whether Appellants accepted the checks, and that acceptance of the checks was not in violation of any ODVA rules or SOP's. (See: Appellant Exhibit 3). In August 2010, in accordance with Mr. Marshall's will, Appellants accepted the checks, ranging in amounts from \$1,000 to \$6,000. (See: Joint Exhibit 1 and Appellee Exhibit 8)

In August 2012 John McReynolds was called out of retirement and enticed to come back to ODVA as its Executive Director. Martha Spears had retired as Executive

Director in July 2012. Mr. McReynolds testified that at the time he returned to the agency, ODVA was facing substantial problems and negative publicity. There were allegations of abuse, neglect, rape, and mismanagement. Mr. McReynolds accepted the challenge to turn the agency around. He hand-picked his new team at central office, to include Steve Pancoast, investigator for the agency. While investigating a possible theft at the ODVA Norman Center, Mr. Pancoast heard about and became interested in the matter of Mr. Marshall's will and his bequests to Center employees. Mr. McReynolds testified that in October 2012, Mr. Pancoast came to him with the will (Joint Exhibit 1) and cancelled checks to Appellants (Appellee Exhibit 8).

Pursuant to Mr. Pancoast's investigation, Director Reynolds determined that Appellants had violated agency rules and Merit Rules when, in August 2010, they accepted money willed to them by a deceased resident. He directed Norman Center Administrator Kim Praytor to send to all Appellants a Notice of Pre-Termination Hearing, dated August 21, 2013 (Joint Exhibits 3-9) and to suspend them all pending further investigation. Subsequently, on September 19, 2013 Appellants were issued Notice of Discharge effective September 9, 2013 for violation of SOP 381, *Financial Transactions – Employee/Patient* and for violation of Merit Rule 530:10-11-91, *Conduct of Classified Employees*, based on their acceptance of the bequests of Mr. Marshall's will three years earlier.

Appellants filed appeals of their discharge, which appeals were consolidated, and this two-day hearing was held. Appellee bears the burden of proving by a preponderance of the evidence that just cause exists for the discharge of these Appellants for violation of SOP 381, *Financial Transactions – Employee/Patient* and for

violation of Merit Rule 530:10-11-91, *Conduct of Classified Employees*. After reviewing the entire record, this Administrative Law Judge finds that Appellee has failed to meet its burden of proof in this case.

Appellee has attempted to discharge these seven Appellants for conduct engaged in three (3) years earlier, conduct known and approved by Appellee prior to their engaging in it, conduct for which advice from Appellee was sought and relied upon by Appellants. Appellee now claims that advice should not have been relied upon because "Appellants should have known better." The evidence does not support this assertion. Appellant Bollinger did NOT know the answer, and therefore asked Center Administrator Howell. Likewise, Center Administrator Howell did not know the answer, and asked Executive Director Spear. The Executive Director, herself, did not know the answer and directed the question to ODVA attorney Bill O'Brien. Clearly, this was not so obvious an answer that "Appellants should have known better", when none of the administrators in Appellants' chain of command, including the highest ranking administrator of the agency, "knew better". Appellants cannot be held to a higher standard of knowledge than their superiors.

Appellee states that it should not be held accountable for the advice given when all the facts were not known before the advice was rendered. This argument must be rejected also. Appellee cites that Mr. O'Brien was under the mistaken belief that the resident, Mr. Marshall, was deceased in November 2009 at the time his advice was sought. If this is the case, it is not because Appellants or anyone else misled him. In her December 2, 2009 email to Director Martha Spears, Christy Howell states:

It has been brought to my attention that *one of our residents has executed a will (or is going to execute a will)* naming 2 of our employees as “executors” and several others as beneficiaries of his funds.

Joint Exhibit 2 (*emphasis added*)

Thus, it was known to Appellee at the time that Mr. Marshall was not deceased, and the e-mail response from Director Spear was copied to Bill O’Brien, along with the e-mail chain. (See: Joint Exhibit 2)

Appellee also claims that Mr. O’Brien was not told the identities of the employees named in the will or that one of them was Mr. Marshall’s social services worker and was not told the amounts of the bequests. However, in his testimony, Bill O’Brien specifically stated that he had all the information he needed to make the decision in 2009, and that he stands by that decision. Certainly, had he felt he needed more information upon which to make a decision, he would have asked for it. There is no evidence whatsoever of any attempt to hide information or mislead the administration by withholding information.

Appellee argues that the advice given by Counsel Bill O’Brien and Director Spear was not actually “approval” for Appellants to accept the bequests, but was really only acknowledgement that ODVA had no jurisdiction over what a resident states in his will. This is a specious and disingenuous argument. Both retired Executive Director Spear and retired Counsel O’Brien testified that it was clearly their intent that the Appellants could accept the bequests and would not be violating any ODVA rules or policy by doing so. Retired Administrator Howell testified that she specifically advised Appellants that they could accept the bequests without any repercussions by ODVA.

Finally, Appellee claims that it has the right to protect residents of its centers and to address “public policy concerns about public employees not benefitting from their

state employment.” This administrative law judge agrees that Appellee has this right. Appellee further argues that the “real issues” in this case are that allowing employees to accept money willed them by residents would “open the flood gates” for further undesirable actions; that the interests of protecting residents outweighs the individual rights of Appellants; that acceptance of bequests from residents sends the wrong public message and lowers the standards for public employees. (See: *ODVA's Post Trial Brief*, pg 13) This administrative law judge rejects Appellee’s “real issues” in this case. The real issue is whether just cause exists to terminate the employment of these seven Appellants. The answer to that question is a resounding “NO”.

While Appellee has the right, and the responsibility, to protect residents of its centers, that protection starts with enacting the proper rules, policies and procedures to govern its employees’ conduct. If ODVA wants to prohibit its employees from accepting bequests under a resident’s will, it must pass rules and policies to state so. Appellee has presented no such rule or policy. Accepting a bequest under a will, absent evidence of coercion or undue influence or promises exchanged, is not a “financial transaction between patients and employees.” Further, where Appellee has stated that accepting a bequest pursuant to Mr. Marshall’s will does not violate any ODVA policy or prohibition, and that Appellants may choose whether or not to accept that bequest, such acceptance is not “conduct unbecoming a public employee.”

The undersigned Administrative Law Judge finds that Appellee failed to meet its burden of proof that Appellants violated ODVA SOP 381, *Financial Transactions – Employee/Patient*, prohibiting financial transactions between patients and employees, or Merit Rule 530:10-11-91, *Conduct of Classified Employees*, conduct unbecoming a

public employee. I also find that Appellee is estopped from taking disciplinary action after it has already reviewed and approved the action taken by Appellants that it now seeks to punish. In attempting to do so in this instance, Appellee has acted in bad faith.

Prior to termination, Appellee was aware of the approval given to Appellants in 2009 and 2010. Christy Howell testified that she contacted Norman Center Administrator Kim Praytor, prior Assistant Attorney General for ODVA Gretchen Zumwalt-Smith, and Human Resources Director Susan McClure to remind them that approval for the action was given in 2009 and 2010. Appellants' were being discharged three years later for actions that had been approved at the time. (See also Appellant Exhibit 3) Likewise, both Bill O'Brien and Martha Spear indicated that they submitted statements to that effect prior to Appellant's termination. (See also Appellant Exhibit 2)

Most telling, however, is Executive Director John McReynold's admission that investigator Steve Pancoast told him that the Appellants had asked for and received permission to accept the bequests and that this permission was communicated to them by Norman Center Administrator Christy Howell. Director McReynolds further testified that he did not care what Appellants were told, and he did not care what advice legal counsel had given. All he needed to know was that Appellants were named in the will and that they received the bequests, as evidenced by the cancelled checks. It was on this basis that he made the decision to discharge Appellants<sup>4</sup>. Appellee's action to discharge Appellants was, under the circumstances, unfounded, without merit, and in bad faith.

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<sup>4</sup> Although Center Administrator Kim Praytor signed the letters of discharge, she did not testify at the hearing and Mr. McReynolds acknowledged that he was the decision-maker.

## 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. Merit Rule 455:10-9-2(f)(1) 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 adverse action and that the discipline imposed was just.

4. Merit Rule 455:10-11-14 states that a permanent classified employee may be discharged for misconduct, willful violation of the Oklahoma Personnel Act and Merit Rules, conduct unbecoming a public employee, and any other just cause.

5. ODVA SOP #381, **Financial Transactions – Employee/Patient**, states that there will be no financial transactions between patients and employees and employees are strictly prohibited from entering into and participating in a financial transaction with any patient, including accepting gifts and tips, purchasing or selling any item from a patient, and borrowing money from or loaning money to a patient.

6. Appellee, Oklahoma Department of Veterans Affairs, has failed to meet its burden to prove, by a preponderance of the evidence, that Appellants Mooneyham, Lairson, Wilkinson, Bollinger, Williams, Pace, and Johnson violated any agency rules, SOP's or policies or violated any Merit Rules when they accepted bequests under the will of a resident, after seeking and obtaining permission from ODVA to do so.

**ORDER**

***IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED*** by the undersigned Administrative Law Judge that the petitions of Appellants are hereby **GRANTED**.

***IT IS FURTHER ORDERED*** that Appellee Oklahoma Department of Veteran Affairs rescind the discharge of all Appellants, and reinstate Appellants to their prior positions with all back pay and benefits restored. Appellee is further directed to purge all files, of Appellants or otherwise, of any references to the discharges.

All actions directed under this Order shall be executed in full within twenty (20) days of the date of this Order.

DATED: this 5<sup>th</sup> day of February, 2015.



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Annita M. Bridges, OBA # 1119  
Administrative Law Judge  
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