

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE**

GRIEVANT,)	
)	
Employee/Grievant,)	
)	<u>DOCKET No. 22-02-824</u>
v.)	
)	
DELAWARE DEPARTMENT OF HEALTH AND)	
SOCIAL SERVICES, DIVISION OF)	DECISION AND ORDER
MANAGEMENT SERVICES,)	
)	[Public - Redacted]
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:00 a.m. on July 7, 2022, at the Delaware Public Service Commission, Silver Lake Plaza, Cannon Bldg., Suite 100, 861 Silver Lake Boulevard, Dover, DE 19904. The hearing was closed to the public pursuant to 29 Del. C. §10004(b)(8).

BEFORE Sheldon N. Sandler, Esq., Acting Chair, Victoria D. Cairns, Joseph A. Pika, III, Ph.D., and Dinah M. Davis-Russ, Members, a quorum of the Board under 29 *Del. C.* §5908(a).

APPEARANCES

Victoria R. Sweeney
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Grievant
Employee/Grievant, *pro se*

Eric Zubrow, Esq.
Deputy Attorney General
on behalf of the Department of
Health and Social Services

BRIEF SUMMARY OF THE EVIDENCE

The Employee/Grievant (“Grievant”) offered fifty-three (53) documents and five (5) audio recordings as evidence. After the prehearing conference, the Board admitted Grievant Exhibits 6, 10, 11, 13 – 19, 23 – 24, 26, 28 – 29, 32, 53, and 56 into evidence.¹

The Department of Health and Social Services, Division of Management Services (“Agency”), offered twelve (12) documents into evidence, all of which were admitted, marked as Exhibits A through L. Prior to the hearing the Agency withdrew Exhibit F.

The Grievant testified on her own behalf. Two witnesses testified on behalf of the Agency: Kirstin Meloro, Program Compliance Manager for the Quality Control Unit, DHSS; and Koshema Fassett, DHSS Labor Relations Manager, Delaware Department of Human Resources (“DHR”).

FINDINGS OF FACT

The Grievant was employed by the Agency as a Program Compliance Specialist from August 3, 2020 through February 1, 2022. In this position, the Grievant was responsible for conducting case reviews of statewide public assistance programs to determine the Agency’s compliance with program objectives, as well as federal and state standards and regulations.

Between June 2021 and September 2021, the Grievant met with her supervisor several times to discuss concerns about her job performance and her leave usage, including review of Agency and Merit Rule requirements for taking leave. The Grievant was provided with

¹ Grievant Exhibits 20–22, 25, 30–31, 34–35, and 38 were identical to Agency Exhibits D, G, H, J, K, and L, and were excluded by agreement for clarity and to avoid repetitive exhibits. The audio recordings were not admitted into evidence.

training and mentoring to improve her job performance. She was also reminded to communicate with her supervisor regarding any interruptions to her regular work schedule.

On or about August 23, 2021, the Grievant filed a complaint with Human Resources alleging that her supervisor was discriminating against her and subjecting her to a hostile work environment. *Grievant Exhibit 14*. The Agency investigated the Grievant's complaint and concluded her claims could not be substantiated. The Grievant was dissatisfied with the outcome of the investigation of her claim and contacted the Secretary of the Department of Human Resources (DHR). DHR assigned a member of its staff² to conduct an independent investigation of her complaint. Ms. Fassett concluded that the Agency had investigated the Grievant's complaint and that its conclusion finding the claim was unsubstantiated was supported and justified.

On September 26, 2021, the Grievant met with her direct supervisor and the Program Compliance Manager of the Quality Control Unit to discuss the Grievant's performance review. During their discussion, the Grievant was informed that she was being placed on a Performance Improvement Plan ("PIP") to aid her in correcting performance deficiencies. The Grievant was also reminded, again, about the importance of communicating with supervisors when she requested leave or was unable to work. Following the meeting, the Grievant left her workplace. She did not return to the workplace at any point thereafter.

By letter dated December 21, 2021³, the Agency wrote to the Grievant to clarify her employment status and advise her that, as of this date, she was out of work on unapproved and

² Koshema Fassett was a member of the Department of Human Resources Office of Labor Relations and Employment Law at that time. She later took a position as Human Resource Manager II with the Department of Health and Social Services and is currently the Labor Relations Manager for DHSS.

³ Agency Exhibit G.

unprotected leave. The Grievant was directed to return to work, full-time and full-duty, on Tuesday, January 4, 2022. The Grievant was also notified to provide any medical or other documentation to explain her absence since December 18, 2021. The Agency further instructed that, if the Grievant was unable to return to work full-time, she had three options: (1) obtain approval from the Hartford⁴ for a short-term disability claim; (2) obtain written approval for a leave of absence without pay; or (3) resign from her position. The Grievant did not appear for work on January 4, 2022.

The Grievant submitted a request for a Leave of Absence with Human Resources, requesting leave from December 18, 2021 through February 1, 2022. The Agency notified the Grievant by letter dated January 12, 2022⁵ that her personal request for leave could not be approved for operational reasons, which was communicated to the Grievant.

By letter dated January 5, 2022, the Program Control Manager for the Quality Control Unit notified the Grievant that she was recommending the Grievant be dismissed from her employment due to the Grievant's unauthorized absence since September 27, 2021 and her continued unavailability for work. *Agency Exhibit J.*

The Grievant requested a pre-decision meeting, which took place on January 24, 2022, at which time she was offered the opportunity to respond to the proposed action of termination and offer any reasons why termination was not justified.

On February 1, 2022, the Grievant's employment was terminated by the DHSS Secretary due to her unauthorized absence and unavailability to work.⁶

⁴ The Hartford is the State's Disability Insurance provider.

⁵ Agency Exhibit K.

⁶ Agency Exhibit L.

CONCLUSIONS OF LAW

Merit Rule 12.1 states:

Employees shall be held accountable for their conduct. Disciplinary measures up to and including dismissal shall be taken only for just cause. "Just cause" means that management has sufficient reasons for imposing accountability. Just cause requires: showing that the employee has committed the charged offense; offering specified due process rights specified in this chapter; and imposing a penalty appropriate to the circumstances.

The Board concludes as a matter of law that the Grievant failed to appear for work and failed to secure authorized leave for an extended period. The Grievant admitted to being absent from work on September 27, 2021 through February 1, 2022. From September 27, 2021 to December 18, 2021, the Grievant failed to report to work. While the Grievant asserted she was following her doctor's orders to stay home from work during this time, she failed to provide medical documentation to the Agency, and the Hartford denied her request for short-term disability leave. From December 18, 2021, through her termination on February 1, 2022, the Grievant did not appear for work.

The Board concludes as a matter of law that the Agency offered the Grievant her specified due process rights required under the Merit Rules. When the Grievant was notified of her proposed termination on January 5, 2022, she was offered a pre-decision meeting. That meeting was held on January 24, 2022, at which time the Grievant was offered the opportunity to respond to the proposed action of termination and offer any reasons why termination was not justified.

The Board concludes the Grievant's termination was the appropriate penalty under the circumstances presented. The Grievant was responsible for conducting case reviews of statewide benefit programs in accordance with state and federal time requirements. The

Agency must rely on its employees to report to work as scheduled in order to meet state and federal compliance deadlines. The Grievant was continuously absent from work between September 27, 2021 and February 1, 2022, for unscheduled absences and failed to provide notification to her supervisor.

The Board concludes as a matter of law that the Agency had just cause to terminate the Grievant for unauthorized leave of absence.

ORDER

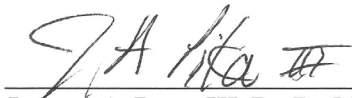
It is this 30th day of August, 2022, by a unanimous vote of 4-0, the Decision and Order of the Board to deny the grievance.




SHELDON N. SANDLER, ESQ., ACTING CHAIR



VICTORIA D. CAIRNS, MERB Member



JOSEPH A. PIKA, III, PH.D., MEMBER



DINAH DAVIS-RUSS, MEMBER