

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 OSP 05604

<p>Amie Roberts Petitioner,</p> <p>v.</p> <p>Transylvania County Department of Social Services Director Darrell Renfroe Respondent.</p>	<p>FINAL DECISION</p>
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This matter is before the Office of Administrative Hearings (“OAH”) on the contested case filed by Petitioner Amie Roberts after the termination of her employment by Respondent, Transylvania County Department of Social Services Director Darrell Renfroe.

This matter was heard before the Honorable David F. Sutton, Administrative Law Judge, on January 10, 2020 in Waynesville, North Carolina.

APPEARANCES

PETITIONER: Donald Barton
Attorney at Law
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Brevard, NC 28712

RESPONDENT: Sean Perrin
Womble Bond Dickson, LLP
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301 S. College St.
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WITNESSES

The following people testified for the Petitioner:

Amie Roberts
Ann Simms
Chantal Sheehan
Gilda Ruddy

The following people testified for the Respondent:
Cory Niver
Sarah Willix
Cacy Ramirez
Melissa Akers
Channing Niver
Darrell Renfroe

EXHIBITS

Petitioner's Exhibit 1 was admitted into evidence.

Respondent's Exhibits 1-11 were admitted into evidence.

ISSUE

Whether Respondent fired the Petitioner for just cause due to unacceptable personal conduct under N.C.G.S. § 126-35.

FINDINGS OF FACT

Based upon careful consideration of the sworn testimony, the witnesses presented at the hearing, the documents, exhibits received and admitted into evidence, the entire record and its proceeding, the undersigned Administrative Law Judge ("ALJ") makes the following findings of fact. In making these findings of fact, the ALJ has weighed the evidence presented and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witnesses, any interest, bias or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, or whether the testimony of the witness is reasonable and whether the testimony is consistent with all of the believable evidence in the case.

1. Respondent Transylvania County Department of Social Services ("DSS") is a division of the North Carolina Department of Health and Human Services. Darrell Renfroe is the DSS Director.
2. Petitioner Amie Roberts began her employment with DSS on April 22, 2013. At all times relevant to this matter, she was employed as an Income Maintenance case worker in the Income Maintenance unit.
3. The Petitioner's immediate supervisor was Gilda Ruddy.
4. In the Income Maintenance unit, the Petitioner was a lead worker who was in charge of training new employees and completing second party reviews. Second party reviews involved the Petitioner reviewing work already done by trainees to make sure the work complied with DSS regulations.
5. In addition to her lead worker duties, Petitioner was responsible for supervising the Income Maintenance unit in Ruddy's absence.

6. In the Fall of 2018, Petitioner, who was married, began an extra-marital affair with Cory Niver. Cory Niver worked with Petitioner's husband, Gary Roberts, at the Brevard Police Department. Cory Niver was married to Channing Niver.
7. During the course of their extra-marital affair, Cory Niver sent the Petitioner a picture of his genitals, with his wedding picture in the background.
8. In October 2018, the Petitioner informed her co-worker, Sarah Willix, about her affair with Cory Niver, and showed her the picture Cory Niver sent Petitioner.
9. Willix did not request to see the photograph of Cory Niver's genitals and was shocked at seeing it. Viewing the photograph interfered with Willix's work performance.
10. Around the same time, the Petitioner informed Willix that the Petitioner liked to flaunt herself around the wives of men she was having affairs with. The Petitioner also informed Willix that the Petitioner liked to "toy" with wives of the men she was having affairs with. Willix was extremely uncomfortable with the content of their conversations, and it interfered with her work performance.
11. The Petitioner informed Willix that Cory Niver's wife was Channing Niver, and that the Petitioner wanted to see how close she could get to Channing Niver without getting caught because it gave the Petitioner an adrenaline rush.
12. In December 2018, the Petitioner solicited Channing Niver to work at DSS. The Petitioner informed Willix that she wanted Channing Niver to get a job at DSS because the thought of flaunting herself in front of Channing Niver, when Petitioner was having an affair with Cory Niver, excited her.
13. At some point in December 2018, while her affair with Cory Niver was ongoing, the Petitioner contacted Channing Niver on social media and encouraged Channing Niver to apply for an open clerical position at DSS. The Petitioner informed Channing Niver that Gary Roberts and Cory Niver worked together, and the Petitioner knew Channing Niver was looking for employment.
14. Before Channing Niver was hired at DSS, the Petitioner informed fellow DSS workers that she was good friends with Channing Niver. In reality, the Petitioner and Channing Niver had never met one another in person, but only communicated via social media.
15. Gilda Ruddy was the supervisor tasked with finding candidates for the open clerical position at DSS.
16. During the process for finding someone for the open clerical position, the Petitioner asked Ruddy about Channing Niver's application for the clerical position. Ruddy informed the Petitioner that Channing Niver's application was missing, so the Petitioner printed out a new application and gave it to Cory Niver at the Brevard Police Department. The Petitioner

- contacted Channing Niver on social media and told Channing Niver that she needed to fill out a new application.
17. The Petitioner again contacted Channing Niver on social media and asked Channing Niver when she was bringing in her application for the clerical position.
 18. Channing Niver informed the Petitioner what time she was bringing in her application to the DSS office. The Petitioner met Channing Niver at the time that Channing Niver told the Petitioner she was bringing in her application. The first time that the Petitioner met Channing Niver in person was when she delivered the application to the DSS office.
 19. The Petitioner was supposed to interview Channing Niver for the clerical position along with Gilda Ruddy. However, on the day of the interview, the Petitioner informed Ruddy that she was taking the day off due to a family issue and could not interview Channing Niver.
 20. However, in the middle of Ruddy's interview with Channing Niver, the Petitioner came into the office from her day off, entered the interview room, and greeted Channing Niver.
 21. Petitioner informed Ruddy that she knew Channing Niver well because their sons played football together. Channing Niver's son was 2 at the time and never played football.
 22. Channing Niver was hired by DSS on December 20, 2018.
 23. Throughout the Petitioner's employment, she would continue to provide Willix with updates on her relationship with Cory Niver. She also informed Willix that while at work, she would send provocative pictures to him in order to entice Cory Niver to continue their extra-marital relationship.
 24. Around February 14, 2019, Petitioner showed Willix a video of an airplane flying through the sky and then having a penis come out of the tailpipe at the end of the clip. Willix did not ask to see this video, and it interfered with her ability to work.
 25. In the spring of 2019, Cacy Ramirez and Melissa Akers were assigned to the Income Maintenance Unit.
 26. As the Lead Worker, Petitioner was asked to train Ramirez and Akers. Akers and Ramirez were placed under the Petitioner's unit, and she had the responsibility to train them.
 27. While training Ramirez, the Petitioner began sharing intimate details of her life with Ramirez. Ramirez did not ask for the Petitioner to share these details.
 28. Petitioner informed Ramirez that she was having an affair with a married police officer, but did not provide the police officer's name. Petitioner told Ramirez that Petitioner and her husband had an open relationship, and that Petitioner was a "cold person" who liked the thrill of having affairs.

29. While training Akers, the Petitioner informed Akers that she was texting with several men that she was not married to. The Petitioner showed Akers the texts that she was receiving from a man who worked out with the Petitioner. The Petitioner then showed Akers a picture of what appeared to be a naked man. Akers did not ask to see this picture, and it interfered with her work environment.
30. Shortly after telling Ramirez about her affair with a married police officer, Petitioner found out that Ramirez and Channing Niver were spending time together outside of work from a Facebook post. The Petitioner found out that Ramirez and Channing Niver were becoming close friends.
31. After finding out about Ramirez and Channing Niver's relationship, Petitioner stopped talking to Ramirez about Petitioner's personal issues.
32. The Petitioner began bringing more work to Akers and less work to Ramirez.
33. Petitioner also began ignoring Ramirez and not responding to Ramirez's questions about work and her work product.
34. Ramirez and Akers asked Petitioner about the lack of Ramirez' workload, and Petitioner informed Ramirez that she had enough to do and changed the subject.
35. After Ramirez complained that the Petitioner refused to give her comparable work to Akers, the Petitioner informed her superiors that Ramirez was not performing well compared to Akers and other new employees.
36. Petitioner then informed Ruddy that Ramirez was not doing a good job in the Income Maintenance Unit.
37. On May 24, 2019, Ramirez went to Willix and asked Willix if she knew why Petitioner was not giving her work or responding to her complaints.
38. Ramirez informed Willix that the Petitioner would tell Ramirez intimate details of her private life, and she was unsure of why the Petitioner was ignoring her requests for feedback on Ramirez' job performance.
39. Ramirez told Willix that Petitioner informed her that she was having an affair with a married police officer. Ramirez also told Willix that she felt like the Petitioner was not giving her work due to her relationship with Channing Niver.
40. Willix then informed Ramirez that Petitioner was having an affair with Channing Niver's husband.

41. After the conversation with Willix, Ramirez informed Channing Niver that her husband was having an affair with the Petitioner, and that the Petitioner had shown Willix a picture of Cory Niver's penis with the Niver's wedding picture in the background.
42. Ramirez told Willix that she informed Channing Niver about the affair, Willix contacted the county Human Resources officer Sheila Cozart, who then contacted Renfroe.
43. Renfroe and Cindy Anders, DSS administrative assistant, began an investigation into whether Petitioner violated any DSS policies.
44. After a brief investigation, Renfroe suspended Petitioner with pay on May 30, 2019.
45. Renfroe continued the investigation to determine whether Petitioner's conduct violated DSS policies. The investigation included interviewing Willix, Ramirez, Akers, Channing Niver, DSS employee Susana Bolancos, and the Petitioner.
46. As part of the investigation, Ruddy reviewed Petitioner's second party reviews into the work done by Ramirez and Akers. The second party reviews revealed that Ramirez scored better than Akers, contradicting what Petitioner told Ruddy about Ramirez's job performance.
47. DSS has several work policies, including a Harassment Policy and a Conduct Policy.
48. The Harassment Policy, Section 9, provides that "Transylvania County expressly forbids harassment because of...sex." Sexual harassment is defined as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when one or more of the following occur: ... (c) such conduct [which] has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating hostile or offensive working environment."
49. The Conduct Policy provides that an employee may be dismissed "for cause relating to personal conduct detrimental to county services (1) in order to avoid undue disruption of work, (2) to protect the safety of persons or property, or (3) for other serious reasons."
50. The Conduct policy sets forth "causes relating to failure in personal conduct" which are "adequate grounds for suspension" including "2) conduct unbecoming a public officer or employee; ... 5) falsification of county records for personal profit or to grant special privileges; ...12) other gross conduct inappropriate for public service."
51. On June 10, 2019, after Renfroe completed his investigation, Renfroe sent Petitioner a letter asking her to attend a pre-disciplinary conference on June 11, 2019 to discuss a recommendation for dismissal.
52. Renfroe met with Petitioner on June 11, 2019 for the pre-disciplinary conference.

53. On June 11, 2019, Renfroe notified Petitioner via certified letter that he was terminating her.
54. According to Renfroe, the Petitioner violated the Harassment Policy and the Conduct Policy in four instances.
55. First, the Petitioner shared the naked picture of Cory Niver with Willix, and an unidentified man to Akers. Petitioner was responsible for overseeing both Willix and Akers' job performance, and responsible for training Akers. The Petitioner also did not have Cory Niver's permission to share his photograph.
56. Second, the Petitioner shared an unsolicited inappropriate video with Willix, when she was responsible for overseeing Willix's job performance.
57. Third, the Petitioner shared unsolicited inappropriate information about her personal life with subordinates including Willix, Ramirez and Akers in direct violation of the Harassment Policy, because it interfered with their work performance and created an offensive working environment.
58. Last, the Petitioner provided false and untruthful information to Ruddy and other supervisors about the productivity and performance of Ramirez in violation of the Conduct Policy.
59. Petitioner filed an appeal to Renfroe on July 3, 2019. In the appeal letter, the Petitioner did not deny sharing videos or pictures, but claimed the information received from Willix, Akers, and Ramirez was coerced and irrelevant to her termination.
60. On July 8, 2019, Renfroe denied the Petitioner's appeal.
61. Petitioner had positive work reviews with no indication of previous disciplinary issues.
62. On October 7, 2019, Petitioner filed a petition for a contested case hearing challenging Respondent's decision to terminate her employment and claiming that she was fired without just cause.

Based upon the FOREGOING FINDINGS OF FACT, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearing has personal and subject matter jurisdiction over this contested case pursuant to Chapters 126 and 150B of the North Carolina General Statutes.
2. All parties are properly before the Court.
3. Respondent is subject to Chapter 126 of the North Carolina General Statutes.

4. At the time of her termination, Petitioner was a career state employee subject to the provisions of the North Carolina Human Resources Act. N.C.G.S. 126-1-1.
5. As a career state employee, the Petitioner may be terminated only for “just cause.” N.C.G.S. § 126-35(a). The Respondent has the burden of showing by a preponderance of the evidence that there was “just cause” for termination. N.C.G.S. § 126-34.02(d).
6. Pursuant to regulations promulgated by the Office of State Personnel, there are two bases for termination of employee for “just cause”: (1) unsatisfactory job performance and (2) unacceptable personal conduct. 25 N.C.A.C. 11.2301(c).
7. An employee may be terminated without any prior warning or disciplinary action when the basis for dismissal is unacceptable personal conduct. 25 N.C.A.C. 11.2304(a).
8. Unacceptable personal conduct includes “conduct on or off the job that is related to the employee’s job duties and responsibilities for which no reasonable person should expect to receive prior warning”; “the willful violation of work rules,” and “conduct unbecoming an employee that is detrimental to an agency’s service.” 25 N.C.A.C. 11.2304(b)(1), (4) and (5).
9. In *Whitehurst v. E. Carolina Univ.*, 257 N.C. App. 938, 945, 811 S.E.2d 626, 632 (2018), while reviewing a just cause determination related to allegations of unacceptable personal conduct, the North Carolina Court of Appeals re-iterated a three-step process to determine if a career State employee’s dismissal under N.C. Gen. Stat. §126-35 is justified.

“The proper analytical approach is to first determine whether the employee engaged in the conduct the employer alleges. The second inquiry is whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the administrative Code. ... If the employee's act qualifies as a type of unacceptable conduct, the tribunal proceeds to the third inquiry: whether that misconduct amounted to just cause for the disciplinary action taken.” quoting *Warren v. N.C. Dep’t of Crime Control & Pub. Safety*, 221 N.C. App. 376, 383, 726 S.E.2d 920, 925 (2012).

Accordingly, not every instance of unacceptable personal conduct will “give[] rise to ‘just cause’ for employee discipline.” quoting *N.C. Dep’t. of Env’t & Natural Res. v. Carroll*, 358 N.C. 649, 669, 599 S.E.2d 888, 901(2004).

In determining whether unacceptable personal conduct constitutes just cause for dismissal under *Warren's* third inquiry, we look to several factors that were set forth in *Wetherington v. N.C. Dep’t of Public Safety*, 368 N.C. 583, 780 S.E.2d 543 (2015). Those factors include “the severity of the violation, the subject matter involved, the resulting harm, the [employee's] work history, or discipline imposed in other cases involving similar violations.” quoting *Id.* at 592, 780 S.E.2d at 548.

Whitehurst at 945, 811 S.E.2d at 632.

Prong 1: Did Petitioner commit the conduct alleged?

10. The Petitioner committed the conduct alleged when she shared the naked picture of Cory Niver with Willix, and an unidentified man to Akers, and shared an unsolicited inappropriate video with Willix. Petitioner committed additional acts of alleged conduct when she shared unsolicited inappropriate information about her personal life with Willix, Ramirez and Akers, and when she provided false and untruthful information to Ruddy and other supervisors about the productivity and performance of Ramirez.

Prong 2: Does Petitioner's conduct fall within one of the categories of unacceptable personal conduct?

11. The next step in the analysis is to determine whether Petitioner's behavior falls into one of the categories of unacceptable personal conduct defined by 25 N.C.A.C. 11.2304(b), including in pertinent part:
 - (1) conduct on or off the job that is related to the employee's job duties and responsibilities for which no reasonable person should expect to receive prior warning;
 - (4) the willful violation of work rules; and
 - (5) conduct unbecoming an employee that is detrimental to an agency's service.
12. Petitioner was responsible for training various employees. Petitioner's unacceptable personal conduct impaired her ability to effectively perform her job when she shared unsolicited, explicit sexual content about her personal life with those individuals she was responsible for training. Additionally, Petitioner's unacceptable personal conduct included providing false information about the performance of one of those individuals whom she was responsible for training. No reasonable person should expect to receive a prior warning about the inappropriate conduct for which Petitioner was terminated.
13. Petitioner violated work rules. Petitioner's unacceptable personal conduct violated the Harassment Policy and the Conduct Policy.
14. Petitioner's conduct was unbecoming an employee that is detrimental to DSS's service. It cast DSS in a negative light and had the potential of adversely affecting DSS by interfering with the job performance of DSS employees and damaging DSS' public image.

Prong 3: Did Petitioner's misconduct constitute just cause for dismissal?

15. The third step of the just cause determination requires the undersigned to apply the above referenced *Wetherington* factors to the present case and the above Findings of Fact, and in doing so, the undersigned concludes as follows:
 - (a) Petitioner's violations are severe. Petitioner subjected subordinates to unsolicited information about her personal sex life. Petitioner communicated this inappropriate

information while performing her job duties and responsibilities which interfered with other employees' ability to perform their work and created an offensive working environment.

- (b) The subject matter involved is the appropriate conduct of those individuals in a position of leadership at DSS and how that conduct effects the integrity and public image of DSS. Petitioner's conduct is unacceptable for any employee of DSS, especially an employee responsible for training others. All employees of DSS are expected to conduct themselves in a manner that promotes the integrity and public image of DSS.
 - (c) Petitioner's actions resulted in harm including causing a negative impact on the performance of other employees, creating uncomfortable working conditions and relationships, and damaging the integrity and public image of DSS.
 - (d) Petitioner had positive work reviews with no indication of previous disciplinary issues.
 - (e) Neither party presented evidence of discipline imposed in other cases involving similar violations.
16. Respondent has met its burden of proof to show that Petitioner engaged in unacceptable personal conduct and considering the totality of the facts and circumstances and equities, the Respondent had just cause to terminate the Petitioner.

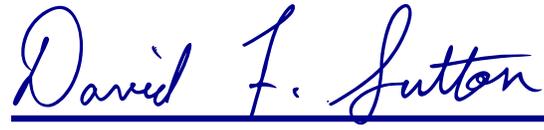
FINAL DECISION:

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby determines that there was substantial evidence to support Respondent's decision to terminate Petitioner for just cause due to unacceptable personal conduct. Therefore, the Respondent's decision to terminate Petitioner is AFFIRMED.

NOTICE OF APPEAL:

This is a final decision issued under the authority of N.C.G.S. § 150B-34. Pursuant to N.C.G.S. Section 126-34.02, any party wishing to appeal the final decision of the administrative law judge may commence such appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C.G.S. Section 7A-29(a). The appeal shall be taken within 30 days of receipt of the written notice of final decision. A Notice of Appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

IT IS SO ORDERED.
This the 8th day of April, 2020



David F Sutton
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 8th day of April, 2020.



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