

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 OSP 04910

Annette Locklear

Petitioner,

v.

North Carolina Department of
Agricultural and Consumer Services

Respondent.

**FINAL
DECISION**

1. THIS MATTER is before the Office of Administrative Hearings (“OAH” or “Tribunal”) on the Petition for a Contested Case Hearing (“Petition”) filed by Petitioner Annette Locklear on 30 August 2019. Petitioner seeks review of the Final Agency Decision (“Agency Decision”) issued by Respondent North Carolina Department of Agriculture and Consumer Services (“the Department” or “NCDA&CS”) on 18 January 2019 upholding Petitioner’s dismissal from her employment with the Department for just cause.

2. Given the nature of Petitioner’s contested case, the issue before this Tribunal is whether the Department had just cause to dismiss Petitioner, a career state-employee, from her employment with the Department based on unacceptable personal conduct. The Undersigned, based on the evidence presented at hearing and for the reasons set forth below, **AFFIRMS** the Department’s Final Agency Decision.

Law Office of Michael C. Byrne by Michael C. Byrne, Esq. for Petitioner Annette Locklear.

North Carolina Department of Justice by Christopher R. McLennan, Assistant Attorney General, for Respondent North Carolina Department of Agriculture and Consumer Services.

T.S. Jacobs, Administrative Law Judge.

I. PROCEDURAL HISTORY

1. This is an action arising out of a disciplinary action taken by a State agency against a career State employee subject to the North Carolina Human Resources Act¹ (“the Act”) and, more specifically, whether the Department has satisfied its burden of demonstrating that it properly dismissed Petitioner for just cause.

2. The Department, in the Final Agency Decision, informed Petitioner of its decision to uphold her dismissal from the Administrative Specialist I position in the Structural Pest Control and Pesticides Division within the Department. The dismissal was based on alleged unacceptable personal conduct committed by Petitioner.

3. Petitioner subsequently filed the Petition commencing a contested case hearing as provided for under the Act. In the Petition, Petitioner alleges that she “was dismissed without just cause for disciplinary reasons” and the Department, by taking such action, “(1) Exceeded its authority or jurisdiction, (2) Acted erroneously, (3) Failed to use proper procedure, (4) Acted in violation of Constitutional provisions (5) Failed to act as required by law or rule, and/or (6) Was arbitrary, and capricious,

¹ N.C. Gen. Stat. § 126-1, *et. seq.*

and/or abused its discretion.” (Petition, ¶ 5) The Chief Administrative Law Judge, by Order of dated 21 November 2019, assigned the Undersigned to preside over this contested case.

4. In the course of this contested case proceeding, the parties entered into the following stipulations:

- a. Petitioner was a career-status employee of the Respondent agency in a position subject to the State Human Resources Act.
- b. Petitioner was given notice of a pre-disciplinary conference by letter on 30 October 2018 and a pre-disciplinary conference was held on 1 November 2018.
- c. On 2 November 2018, Respondent dismissed Petitioner from her employment and Petitioner received a disciplinary letter setting forth the acts and omissions for which Petitioner was dismissed.
- d. Petitioner timely grieved that discipline through Step 1 mediation on 5 November 2018, which reached an impasse on 3 December 2018.
- e. Petitioner timely grieved Step 2 on 3 December 2018 and a Step 2 grievance hearing was held before Respondent’s designee on 2 January 2019.
- f. Following Step 2, Respondent issued a final agency decision upholding Petitioner’s dismissal on 18 January 2019.
- g. Prior to issuing the final agency decision, Respondent submitted a proposed final agency decision to the North Carolina Office of State Human Resources, which approved issuance of the final agency decision.
- h. Petitioner timely appealed the final agency decision to the North Carolina Office of Administrative Hearings on 30 January 2019 (19 OSP 00554).
- i. NCOAH has jurisdiction over this appeal.

- j. The parties agree and stipulate that the internal grievance process was fully completed by both parties.
- k. The parties accordingly do not need to present evidence on the issues of the internal grievance process or OSHR review, and this stipulation is intended to represent that this process was duly and timely completed.

(Stipulations dated 29 January 2020)

5. On 29 January 2020, the Undersigned, after proper notice to the parties, called this contested case for hearing. Both parties were present and presented evidence, in the form of testimony and documents, at the hearing.²

6. Prior to commencing the contested case hearing, the Undersigned addressed the following three (3) prehearing motions:

a. *Petitioner's First Motion in Limine*

On 28 January 2020, Petitioner filed Petitioner's First Motion in Limine, moving that "evidence of any act or omission by Petitioner constituting Respondent's bases for disciplining Petitioner not set forth in the Respondent's disciplinary letter issued prior to or at the time of the disciplinary action not be considered in support of Respondent's case for dismissal."

After considering the evidence submitted and the oral arguments of the parties at the hearing, Petitioner's First Motion in Limine was taken under advisement and addressed as challenges to evidence arose throughout the hearing. (TI p 14)

b. *Petitioner's Second Motion in Limine*

On 28 January 2020, Petitioner filed Petitioner's Second Motion in Limine, requesting that "all witnesses be excluded from the hearing room while this case is heard, in order to prevent their hearing the testimony of other witnesses, barring a designated agency representative and a representative for Petitioner."

² A list of witnesses and exhibits admitted into evidence is attached hereto as Appendix A.

Respondent noted no objection to Petitioner's Second Motion in Limine. Petitioner's Second Motion in Limine was GRANTED and all present witnesses were instructed not to discuss their testimony and to remain outside of the courtroom during the proceedings. (TI pp 14-15)

c. Respondent's Motion in Limine

At the hearing, upon request of Respondent's counsel, it was noted for the record that this case was originally filed on 30 January 2019 (NCOAH File No. 19 OSP 00554) and that Petitioner voluntarily dismissed 19 OSP 00554 without prejudice pursuant to N.C.G.S. § 1A-1, Rule 41(a) on 1 May 2019 and refiled the instant action on 30 August 2019. (TI pp 16-17)

7. Following the conclusion of the contested case on 3 February 2020, the Undersigned allowed both parties the opportunity to submit proposed final decisions containing proposed findings of fact and conclusions of law. If transcripts were ordered, the parties' proposed decisions were due thirty (30) days from the completion of the transcript. (Order for Proposed Decisions filed 6 February 2020) The transcript, in its entirety, was received on or about 4 March 2020 and the parties, as ordered, submitted proposed final decisions for the Undersigned's consideration thereafter.

II. FINDINGS OF FACT

Based upon careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the Undersigned makes the following factual findings that are material to the resolution of the dispute presented in this contested case. *See Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993), *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993) (recognizing "the trial court need not make a finding as to every fact which arises from the evidence;

rather, the court need only find those facts which are material to the resolution of the dispute.”)

In making the following findings, the Undersigned has weighed all evidence 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 witness, any interests, 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, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

A. The Parties & Relevant Individuals

1. Respondent is an agency of the State of North Carolina subject to Chapter 126 of the North Carolina General Statutes.

2. Within NCDA&CS is the Structural Pest Control and Pesticides Division, Structural Pest Control Section that is responsible in part for enforcing the provisions of the Structural Pest Control Act of North Carolina of 1955 (Chapter 106, Article 4C of the North Carolina General Statutes). (TI pp 25-26)

3. Petitioner Annette Locklear (hereinafter “Petitioner”) was a career State employee subject to Chapter 126 of the North Carolina General Statutes and was employed with NCDA&CS, Structural Pest Control and Pesticide Division prior to her dismissal for unacceptable personal conduct.

4. Mr. John Feagans (hereinafter “Mr. Feagans”) is the manager of the Licensing and Certification Unit of NCDA&CS, Structural Pest Control Section. (TI

p 25) At the time of Petitioner's dismissal, Mr. Feagans was Petitioner's direct supervisor. (TI p 31)

5. Ms. Nicky Mitchell (hereinafter "Ms. Mitchell") is a former employee of NCDA&CS that was previously supervised by Mr. Feagans and performed the same job duties as Petitioner. (TI pp 198-99)

6. Ms. Jacinth McAllister (hereinafter "Ms. McAllister") is employed as an Information Processing Manager for NCDA&CS and was an indirect supervisor of Petitioner. (TI pp 222, 228)

7. Ms. Sheila Rene Woody (hereinafter "Ms. Woody") has been employed with NCDA&CS for fifteen years. (TI p 253) Prior to accepting her current position as the Environmental Programs Manager, Ms. Woody was Petitioner's direct supervisor. (TI p 253)

8. Mr. James Burnette, Jr. (hereinafter "Mr. Burnette") is the Director of NCDA&CS, Structural Pest Control and Pesticide Division. (TII p 289) Additionally, Mr. Burnette serves as the Secretary to the North Carolina Structural Pest Control Committee, the statutorily created entity responsible for creating rules regulating structural pest control in North Carolina and imposing discipline on those who violate North Carolina structural pest control laws and rules. (TII p 290)

B. Licensing/Regulation of Structural Pest Control Industry

9. NCDA&CS's responsibilities in regulating the structural pest control industry include the licensing and certification of individuals authorized to perform structural pest control in North Carolina. (TI p 26) Every business performing

structural pest control in North Carolina must have an individual that holds a valid North Carolina Structural Pest Control License. (TI p 26) Individuals that possess a valid Registered Technician (“RT”) Card or Certified Applicator (“CA”) Card can also perform structural pest control under the supervision of the structural pest control license holder. (TI pp 26-27)

10. All structural pest control licenses, RT Cards, or CA Cards automatically expire every year on June 30th. (TI p 27) Therefore, individuals must renew their license/card annually by submitting a renewal application and renewal fee to NCDA&CS in order to continue to be authorized to perform structural pest control in North Carolina.

11. It is a violation of North Carolina law to perform structural pest control without a valid license/card to do so. *See* N.C.G.S. § 106-65.25(b)(1). Similarly, it is a violation of North Carolina law for a person to fail to renew their structural pest control license/card and continue to perform structural pest control once the license/card has expired. *See* N.C.G.S. § 106-65.28(a)(12).

12. Performing structural pest control in North Carolina without being properly licensed to do so can result in the unlicensed applicator being assessed a civil penalty by the North Carolina Structural Pest Control Committee and/or being charged with a Class 2 misdemeanor. *See* N.C.G.S. §§ 106-65.41 and 106-65.33(a)

13. NCDA&CS, Structural Pest Control Section employs inspectors that investigate violations of North Carolina structural pest control laws and rules,

including individuals that allow their license/card to lapse and continue to perform structural pest control. (TI pp 27-28)

14. In performing its licensing responsibilities, NCDA&CS utilizes a licensing system referred to as the “Agricultural Regulatory System,” which is also referred to as the “AgRSys.” (TI pp 27, 29) The AgRSys contains all vital information pertaining to every structural pest control license, RT Card, and CA Card, including whether an individual currently holds a valid license/card and the expiration date of the license/card. (TI p 27; TII p 308)

15. In attempting to determine whether an individual is properly licensed/certified, and thus whether a violation of law has occurred such that disciplinary action is warranted, NCDA&CS, Structural Pest Control Section inspectors rely upon the information in the AgRSys. (TI p 30)

16. Information in the AgRSys regarding the status of a license/card is also published on NCDA&CS’s website so that members of the public may verify that an individual they are considering hiring to perform structural pest control work is properly licensed to do so. (TI pp 28-29; TII p 308)

17. The accuracy of the information in the AgRSys is critically important given that it is relied upon by NCDA&CS in regulating the structural pest control industry, members of the structural pest control industry that require a license/card in order to work, and members of the public. (TI pp 28-30, 106-06, 232-33; TII pp 307-09)

18. In explaining the importance of the AgRSys, Mr. Feagans testified:

[W]ith my job as the manager of the licensing system, there is no more important factor than our licensing system is accurate. There are too many people that rely on the information in this licensing system both in our office, out in the field, or the general public. And considering we're licensing people to do something potentially dangerous, as far as applying pesticides, we need to have a resource that we know the qualifications, whether they're legal and -- and in compliance when they make these applications, and any other information.

But it has to be reliable. We have to be able to go to this system and trust the information in it . . .

(TI pp 105-06)

19. Errors in the AgRSys can reflect negatively on NCDA&CS and hinder the ability of NCDA&CS employees to complete their investigations and determine if violations of the law have occurred. (TI pp 30, 233; TII p 310) Additionally, maintaining inaccurate records that handles public funds (the renewal fees) could subject NCDA&CS to adverse internal/external audit findings. (TI p 109; TII p 310)

20. Petitioner acknowledged that the accuracy of the AgRSys is important and that she would check this system when attempting to verify the status of a license or card. (TII p 468)

21. When NCDA&CS received a license/card renewal application, either Mr. Feagans or Ms. McAllister would enter the applicant's name, license/card number, and the check number/amount of the check used to pay the renewal fee into a database referred to as the "check log." (TI pp 31, 199-200, 223) The check log is a separate record keeping system from the AgRSys. Every day, all applications received were divided equally between Petitioner and Ms. Mitchell for processing. (TI pp 31, 199-200) When an application was assigned for processing, it would include a

copy of the check log for the renewals assigned to the individual for that day. (TI p 32)

22. The individual processing the request would then check the information in the application for accuracy, verify that the applicant was eligible for renewal, and then renew the license/card in the AgRSys. (TI pp 31-32, 200)

23. Renewal applications can be processed in the AgRSys either individually or as a “batch renewal.” (TI p 33) If a license holder and all RTs/CAs working under that license submitted their renewals together, and provide a single check for the renewal fees, the renewals could be processed as a batch renewal. (TI p 33) In processing a batch renewal, the individual performing the renewal enters the structural pest control license number into the AgRSys and the system automatically generates a list of all RTs/CAs working under that person’s license. (TI p 33) The individual processing the renewal then hits “renew,” at which time the AgRSys asks for the “receipt number,” which represents the check number being used to process the renewal. (TI p 33) Once the individual enters the receipt number, the license and all RT Cards/CA Cards working under that license are automatically renewed. (TI p 33) The renewed cards are then printed and mailed to the holder. (TI p 33)

24. Once renewed, the AgRSys shows the date upon which the license/card was renewed, the new expiration date for the license/card, and the check number (referred to as the “ReceiptNum”) used to process the renewal. (Resp. Ex. 2 and 7) Additionally, once renewed, the AgRSys shows that the license/card is no longer eligible for renewal. (Resp. Ex. 2)

25. Once an individual is finished processing a renewal application in the AgRSys, the hard copy of the renewal applications is filed in a common filing room arranged by licensee name. (TI p 50)

C. Renewal Application Processing Time

26. Once a check and renewal application are assigned for processing, the person to whom it is assigned is expected to deposit the check within 24 hours and have the renewal processed within a day and a half. (TI p 73) Petitioner's work plan included expectations that she deposits the check within 24 hours and have the renewal processed within a day and a half. (TII p 448; Resp. Ex. 16)

27. NCDA&CS' Cash Management Policy also required that checks be deposited within 24 hours of receipt. (Resp. Ex. 18)

28. Mr. Feagans acknowledged that during the renewal season, things can become busy and therefore some flexibility on the 24-hour requirement was allowed. (TI p 73) Mr. Feagans estimated that even during the renewal season he would not expect it to take more than three or four days to process a renewal and deposit a check. (TI p 73)

29. Mr. Feagans stated that holding a check from June 11th until July 3rd would be excessive even during the renewal season and was not an acceptable practice. (TI p 73) Ms. Mitchell indicated that processing a renewal would never take beyond a week and that a period of 21 days was not a reasonable amount of time to process a renewal. (TI p 201) Ms. McAllister further indicated that she would not

expect a renewal and check to be held for 21 days, and that doing so would impede the licensee getting their renewed license. (TI p 224)

D. Petitioner's Conduct at Issue

30. On 11 June 2018, Petitioner was assigned the renewal applications for Pest Management Systems, Inc. for processing, which included renewal applications for 38 individual license/card holders. (TII p 448) The renewal applications were accompanied by a \$2,260.00 check (Check #41569) from Pest Management Systems, Inc. for the renewal fees. (Resp. Ex. 4) Given the nature of the renewals, all 38 could be processed in the AgRSys as a batch renewal. (TI pp 206-07)

31. On 20 June 2018, Ms. Mitchell received a call from Pest Management Systems, Inc. inquiring as to the status of their renewal applications and Check #41569. (TI p 202)

32. Ms. Mitchell attempted to locate Pest Management Systems, Inc.'s original renewal packets, but was unable to do so. (TI p 202) Given that the June 30th license expiration date was so close, Ms. Mitchell suggested that the company overnight a new check and duplicate copies of the renewals. (TI p 202)

33. On 20 June 2018, Ms. Mitchell also sent an e-mail to Mr. Feagans and Ms. McAllister asking about the Pest Management Systems, Inc. renewal applications. (Pet. Ex. 1) Petitioner was not copied on this e-mail, and Ms. Mitchell indicated that she did not ask Petitioner about these renewals. (T1 p 202) Ms. Mitchell explained that previous attempts to approach Petitioner with a question

were “very uncomfortable” because Petitioner would completely fail to acknowledge her. (T1 pp 204-05)

34. Thereafter, Ms. Mitchell received renewal applications from Pest Management Systems, Inc. that were identical to those assigned to Petitioner on 11 June 2018. (TI p 206, Resp. Ex. 5 and 6) The duplicate renewal applications received by Ms. Mitchell were accompanied by a second \$2,260.00 check (Check #41656) from Pest Management Systems, Inc. for the renewal fees. (Resp. Ex. 5)

35. On 26 June 2018, Ms. Mitchell deposited Check #41656 and processed all 38 renewal applications for Pest Management Systems, Inc. as a batch renewal. (TI p 208, Resp. Ex. 5 and 6) This processing included updating the license/card holder information in the AgRSys, mailing the new license/cards to the holders, writing her initials and “6/26/18” on the hard copies of the renewal applications and filing them in the filing room. (TI pp 206-08, Resp. Ex. 6)

36. Once Ms. Mitchell processed the Pest Management System, Inc. renewals, the AgRsys indicated that each of the 38 individual license/cards for Pest Management Systems, Inc. had been renewed, were issued on “6/26/2018,” now expired on “6/30/2019,” and reflected Check #41656 as the “ReceiptNum” used to processes these renewals. (TI pp 206-07, 225-28, See Resp. Ex. 2 and 7³)

37. Furthermore, once Ms. Mitchell processed the Pest Management Systems, Inc. renewals, the AgRSys would indicate that these licenses/cards were not

³ Respondent’s Exhibit 7 reflects the AgRSys after the “ReceiptNum” had been changed. From the time these renewals were processed by Ms. Mitchell on 26 June 2018, until it was changed to “41569” on 3 July 2018, the ReceiptNum would have reflected “41656.”

eligible for renewal and the system would not allow someone to proceed with attempting to renew any of the license/cards a second time. (T1 pp 60, 210-11, 225-26, 229; See Resp. Ex. 2)

38. If someone attempted to perform a batch renewal for licenses/cards that had already been renewed, the AgRSys would show an Error Message indicating “No licenses are eligible for renewal” and prohibit the person from proceeding with the duplicate renewal. (T1 p 60; Resp. Ex. 2) If the person then attempted to individually renew a license/card that had already been renewed, the AgRSys would show an Error Message indicating the “Expiration date can never be in a year prior to or in the current expiration year” and likewise prohibit the person from proceeding with the duplicate renewal. (T1 pp 60-61; Resp. Ex. 2)

39. These Error Messages were put into place as a “failsafe” to avoid situations where something was duplicated in the AgRSys. (TI p 106)

40. Had Petitioner, or anyone else, attempted to process the Pest Management Systems, Inc. renewals after Ms. Mitchell had already done so on 26 June 2018, it would be obvious that these licenses/cards had already been renewed and that depositing an additional check would result in the company being erroneously billed a second time. (T1 pp 209-12, 225-28, 231)

41. In addition to the warnings in the AgRSys and the system not allowing her to proceed with the renewals, had Petitioner checked the physical file for Pest Management Systems, Inc., she would have seen the renewals processed by Ms. Mitchell on 26 June 2018.

42. Additionally, once processed by Ms. Mitchell on 26 June 2018, the “ReceiptNum” in the AgRSys (which reflected that Check #41656 was used to process the Pest Management Systems, Inc. renewals) could not be changed without the NCDA&CS IT Department (hereinafter “IT”) overriding the system. (TI p. 211)

43. Petitioner and Ms. Mitchell were expected to notify their supervisor (Mr. Feagans) if they needed a change made in the AgRSys that they could not make themselves. (TI pp 59, 211-13, 230)

44. On 11 June 2018, Ms. Sherry Dixon (hereinafter “Ms. Dixon”), a Technician with IT, e-mailed Petitioner and directed that “If you have additional instances with AgRSys will you run them by John [Feagans] prior to submitting a ticket to make sure one has not already been submitted.” (Resp. Ex 3)

45. At the hearing, Petitioner acknowledged that on 11 July 2018 she was instructed to ask Mr. Feagans before submitting IT tickets requesting changes to the AgRSys. (TII p 464) Petitioner could not recall if she had ever discussed the issue of submitting IT requests with Mr. Feagans. (TII pp 464, 467-68; Resp. Ex. 28, p 60)

46. On 2 July 2018, Petitioner e-mailed IT and requested that the AgRSys be changed to have the Check Number (shown in the AgRSys as the “ReceiptNumber”) for each of the 38 individuals’ license/cards in the Pest Management Systems, Inc. renewals be changed to reflect Check #41569. (TII p 462; Resp. Ex. 9 and 10)

47. Petitioner did not notify Mr. Feagans, or anyone else, of her request that IT change the Check Number reflected in the AgRSys for the Pest Management Systems, Inc. renewals. (TI p 59; TII p 460)

48. On 3 July 2018, IT notified Petitioner that her requested changes in the AgRSys had been made. (Resp. Ex. 10)

49. Petitioner testified that she verified that the check number had been changed, but did not enter any additional information for this account. (TII p 464)

50. Following IT making the changes requested by Petitioner, the AgRSys “ReceiptNumber” listed Check #41569 as having been used to process the 38 license/card renewals for Pest Management Systems, Inc. on 26 June 2018. (Resp. Ex. 7) Additionally, as a result of the changes in the AgRSys requested by Petitioner, there was no record of Check #41656 in the system and anyone attempting to search for that check number would be unable to locate it. (TI p 61)

51. At the hearing, Petitioner admitted that, following her requested changes, the AgRSys would have shown that Check #41569 was used to issue the Pest Management Systems, Inc. renewals on 26 June 2018 and that she did not issue those licenses/cards on that date. (TII pp 468-69)

52. The evidence does show, and the Undersigned does find, that following Petitioner’s requested changes to the AgRSys, the information reflected in the AgRSys for the altered records was false.

53. Given the multiple failsafe mechanisms, and the abundance of information available to Petitioner indicating that the renewals for Pest Management

Systems, Inc. had already been renewed, the evidence does show, and the Undersigned does find that Petitioner knowingly falsified records in the AgRSys by her 2 July 2018 request for IT to change the Check Number associated with the renewals at issue.

54. After receiving the notification from IT that her requested changes had been made, Petitioner deposited Check #41569 on 3 July 2018 (22 days after it was originally assigned to her for processing). (Resp. Ex. 4 and 8)

55. By depositing Check #41569 on 3 July 2018, Petitioner over-billed Pest Management Systems, Inc. by \$2,260.

56. On 7 August 2018, Ms. Mitchell received a phone call from Pest Management Systems, Inc. indicating that NCDA&CS had deposited both Check #41569 and Check #41656 and thus the company had been double-billed. (TI pp 66, 213)

57. Ms. Mitchell looked in the AgRSys and was confused because her initials showed up as having processed the Pest Management Systems, Inc. renewals on 26 June 2018, but Check #41656, which she deposited to process these renewals, did not show up in the system. (TI p 213) Ms. Mitchell indicated that she “got real flustered” and “felt very upset” because “the company was not happy” and she thought that she had made a mistake. (TI pp 213-14)

58. On 7 August 2018, Ms. Mitchell took the issue to Mr. Feagans so that the issue could be fixed, and a refund of \$2,260 be issued as soon as possible. (TI pp 66, 214) Originally, it appeared to Mr. Feagans that Ms. Mitchell had made a mistake.

(TI p 107) Mr. Feagans then began attempting to reconcile how these errors in the system could have occurred. (TI pp 63, 66)

59. Mr. Feagans did not learn of Petitioner's request for IT to change the AgRSys until he was informed by Ms. Dixon on 8 August 2018. (TI p 59; Resp. Ex. 9)

60. While Mr. Feagans was attempting to gather information, Petitioner was on leave for an extended period of time. (TI p 66, Resp. Ex. 11) Upon Petitioner's return to work, Mr. Feagans met with her on 8 October 2018. (TI p 68) At this 8 October 2018 meeting, Mr. Feagans asked Petitioner to provide him with a written statement by the end of the day explaining how the receipt number for Pest Management Systems, Inc. had been changed in the AgRSys. (TI p 69) At no point in this meeting did Petitioner inform Mr. Feagans that she had requested for IT to change the receipt number. (TI p 69)

61. On 9 October 2019, Petitioner sent Mr. Feagans a lengthy e-mail in response to his request. (Resp. Ex. 12) Petitioner's response makes no mention of her request to have IT change the receipt number in the AgRSys. (Resp. Ex. 12)

62. On 9 October 2019, Mr. Feagans responded to Petitioner specifically indicating in underlined text "You were asked to give me a written statement about how 41569 got entered into our system and your initials got placed on the renewal packet that was in the file for [Pest Management Systems, Inc.]" (Resp. Ex. 12)

63. On 9 October 2019, Petitioner responded with an e-mail stating in its entirety "I've explained this to you. The check and renewals were given to me on a

check log June 11, 2018. I processed the check and renewal according to my workplan.” (Resp. Ex. 12)

64. Despite Mr. Feagans’ clear request, Petitioner never indicated that she asked IT to change the receipt number in the AgRSys. (TII p 470; Resp. Ex. 12)

65. At the hearing, Petitioner testified on direct examination that Mr. Feagans asked her to provide a written statement that she falsified records. (TII pp 444-45) But, at her discovery deposition on 17 December 2019, and on cross-examination, Petitioner claimed that she could not recall what Mr. Feagans asked her to provide. (TII p 476; Resp. Ex. 28, pp 60-62) The Undersigned finds Petitioner’s testimony on direct examination not credible on this point and further finds that Mr. Feagans asked Petitioner to provide a written statement explaining how 41569 became the ReceiptNumber in the AgRSys, which Petitioner repeatedly failed to do.

66. Petitioner’s statement in her 9 October 2018 e-mail to Mr. Feagans that she “processed the check and renewal according to [her] workplan” was false. Petitioner’s actions were significantly outside the time periods for processing renewals and depositing checks required by Petitioner’s work plan and NCDA&CS policy. (Resp. Ex. 14, 16 and 18) At her discovery deposition on 17 December 2019, Petitioner testified that she could not recall what her work plan required her to do with regards to processing checks and renewals. (TII p 473; Resp. Ex. 28, p. 62) However, the evidence presented at trial shows that Petitioner never actually “processed” these renewals and instead simply had the check number changed in the

AgRSys, deposited the check, and placed the renewal applications in the file. (TI pp 72-73; TII p 464)

67. On 10 October 2019, Mr. Feagans once again met with Petitioner about the Pest Management Systems, Inc. renewals. (TI p 78) At this meeting, Petitioner became agitated and started indicating that whatever proof Mr. Feagans had would not hold up in court. (TI p 79; Resp. Ex. 13)

68. At the 10 October 2019 meeting, Mr. Feagans asked Petitioner “Are you telling me that you processed all 38 individuals in the [Pest Management Systems, Inc.] renewal package, not Nicky Mitchell, and used the check that is showing up in our system to do so?” to which Petitioner replied “yes.” (TI p 79; Resp. Ex. 13)

69. Additionally, on 10 October 2019, Mr. Feagans asked Petitioner “So Nicky Mitchell didn’t process that package, and you are confirming that you did all the work yourself and used the check that is currently showing up in our system and did not ask for the check number to be changed?” to which Petitioner again replied “yes.” (TI p 80; Resp. Ex. 13)

70. Finally, on 10 October 2019, Mr. Feagans confronted Petitioner with the fact that he was aware of her request for IT to change the check numbers. (TI p 81) At no time prior to Mr. Feagans revealing this information to Petitioner did Petitioner admit to having made a request for IT to change the check numbers in the AgRSys. (TI p 81)

71. In reaching his decision that Petitioner’s conduct warranted dismissal, Mr. Burnette indicated that he felt he could no longer trust Petitioner to perform her

job because “I cannot have a person whom I can’t trust with the public’s money, with the public’s livelihood. . . .” (TII p 312)

72. Following proper compliance with its internal grievance procedures, NCDA&CS issued a Final Agency Decision upholding Petitioner’s dismissal from her employment due to unacceptable personal conduct on 2 November 2019. (Resp. Ex. 1)

E. Petitioner’s Work History

73. Mr. Burnette testified that over the course of her employment, Petitioner was “uncooperative,” “aggressive towards her coworkers,” and “disrespectful and dismissive.” (TII p 295)

74. Mr. Burnette described Petitioner’s work performance as “oftentimes unacceptable” and “acceptable at best.” (TII p 296) Mr. Burnette indicated that, as the Division Director, he had spent over a decade “trying to do what [he] could to redirect [Petitioner] so she would be successful.” (TII p 301)

75. Mr. Feagans also made numerous efforts, including counseling sessions, attempting to improve Petitioner’s job performance and conduct in the workplace. (TI p 101) Despite these efforts, Mr. Feagans observed no improvement in Petitioner’s job performance or conduct. (TI p 104)

76. Petitioner received an Overall Rating of “1 – Does Not Meet Expectations” on her 2017 – 2018 Performance Evaluation. (Resp. Ex. 16) This Performance Evaluation noted numerous and recurring instances of significant problems with Petitioner’s job performance and conduct in the workplace. (Resp. Ex. 16) Specifically, the Performance Evaluation noted Petitioner’s failure to timely

process renewal applications and checks according to her work plan. (Resp. Ex. 16) These same problems were noted on Petitioner's 2017 – 2018 Interim Review. (Resp. Ex. 14)

77. On 16 June 2016, Petitioner received a written warning for Unacceptable Personal Conduct. (Resp. Ex. 19)

78. On 15 December 2017, Petitioner received a 2-week Disciplinary Suspension without Pay for violation of the NCDA&CS Workplace Violence Policy. (Resp. Ex. 26)

79. The Pre-disciplinary Conference letter for the incident that ultimately resulted in Petitioner's 2-week disciplinary suspension without pay recommended dismissal as the proposed disciplinary action. (Resp. Ex. 25) Despite this recommendation, Mr. Burnette elected to impose the lesser disciplinary action of a 2-week disciplinary suspension. (TII pp 303-04) Mr. Burnette testified that he gave Petitioner another chance and hoped this suspension would get Petitioner's attention and change Petitioner's frequent unacceptable personal conduct. (TII pp 304, 311)

80. Upon Petitioner's return to work from her 2-week disciplinary suspension without pay, Mr. Burnette and Petitioner met every 30 days to discuss her progress and expectations. (TII pp 304-05; Resp. Ex. 27) Despite these efforts, Mr. Burnette observed no improvement in Petitioner's behavior and Petitioner's disruptive conduct became more frequent. (TII pp 304-05, 311)

81. By Memorandum dated 30 April 2018, Mr. Burnette informed Petitioner that "[a] substantive, meaningful lack of improvement in either your job performance

or conduct may certainly lead to further disciplinary action.” (Resp. Ex. 15) As part of his on-going effort to improve Petitioner’s behavior Mr. Burnette additionally stated, “You currently have all necessary resources including my support and that of your supervisor as we do our best to help you succeed. It is my sincere hope that you will avail yourself of that support as well as from others whose only motivation is for you to become a productive member of this division.” (Resp. Ex. 15)

82. In addition to the two above-referenced disciplinary actions, Petitioner has received 5 written warnings during her employment with NCDA&CS. (TII pp 449, 459) However, Mr. Burnette indicated that he only reviewed the “two active disciplinary actions for unacceptable personal conduct” – the 16 June 2016 written warning and the 15 December 2017 disciplinary suspension – in reaching his decision to dismiss Petitioner. (TII p 311)

III. CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and upon the preponderance of the evidence, the Undersigned makes the following Conclusions of Law for purposes of the Final Decision.

1. As an initial matter, the Undersigned concludes that (i) the parties are properly before the OAH, (ii) Notice of Hearing was proper, and (iii) pursuant to 26 N.C. Admin. Code 3.0118, extraordinary cause exists for the issuance of a Final Decision in this case beyond 180 days from the date of filing the contested case petition.

A. *Standard of Review*

2. The “burden of showing that a career State employee was discharged, demoted, or suspended for just cause rests with the employer.” N.C. Gen. Stat. § 126-32.02(d).

3. Given the agency’s burden of proof in “just cause” contested cases, an “ALJ, reviewing an agency’s decision to discipline a career State employee within the context of a contested case hearing, owes no deference to the agency’s conclusion of law that either just cause existed or the proper consequences of the agency’s action.” *Harris v. N. Carolina Dep’t of Pub. Safety*, 252 N.C. App. 94, 102, 798 S.E.2d 127, 134 (2017), *aff’d*, 370 N.C. 386, 808 S.E.2d 142 (2017).

4. Rather, under the current iteration of the Act, the ALJ now has greater authority regarding the appropriate disciplinary action against a career State employee. *See, e.g.*, N.C. Gen. Stat. § 126-34.02 (authorizing ALJ to render a final decision taking one of several actions to rectify an agency decision she deems erroneous); *N. Carolina Dep’t of Env’t & Nat. Res. v. Carroll*, 358 N.C. 649, 666, 599 S.E.2d 888, 898 (2004) (recognizing that the question of whether “just cause” exists is a question of law, which the ALJ has the authority to review *de novo*).

B. *Relevant Law Governing Review of Disciplinary Actions Based on “Just Cause”*

5. This contested case involves a claim of dismissal without “just cause” pursuant to General Statute 126-35.

6. It is well-settled that “[c]areer state employees, like Petitioner, may not be discharged, suspended, or demoted for disciplinary reasons without ‘just cause.’”

Warren v. N. Carolina Dep't of Crime Control & Pub. Safety, N. Carolina Highway Patrol, 221 N.C. App. 376, 379, 726 S.E.2d 920, 923 (2012) (citing N.C. Gen. Stat. § 126-35)

7. The North Carolina Administrative Code provides two bases for the discipline or dismissal for “just cause:” (1) Discipline or dismissal imposed on the basis of unsatisfactory job performance, including grossly inefficient job performance and (2) Discipline or dismissal imposed on the basis of unacceptable personal conduct. 26 N.C. Admin. Code 1J.0604(b). When “just cause” exists, four (4) disciplinary alternatives may be imposed against an employee: (1) Written warning; (2) Disciplinary suspension without pay; (3) Demotion; and (4) Dismissal. 25 N.C. Admin. Code 1J.0604(a).

8. Here, Petitioner’s dismissal was based on allegations of unacceptable personal conduct. Unacceptable personal conduct, however, “does not necessarily establish just cause for all types of discipline.” *Warren*, 221 N.C. App. at 383, 726 S.E.2d at 925. Instead, “[j]ust cause must be determined based upon an examination of the facts and circumstances of each individual case.” *Id.* (internal citations and quotations omitted); *see also Whitehurst v. E. Carolina Univ.*, 257 N.C. App. 938, 946, 811 S.E.2d 626, 633 (2018) (recognizing that “just cause” is “a concept embodying notions of equity and fairness to the employee.” (internal citations omitted)).

9. The North Carolina Court of Appeals has articulated a three-part analytical approach to determine whether just cause exists to support a disciplinary action against a career State employee for unacceptable personal conduct:

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.

Warren, 221 N.C. App. at 383, 726 S.E.2d at 925 (emphasis added). The Undersigned addresses each of these prongs below.

i. Whether Petitioner engaged in the conduct employee alleges?

10. The Department alleged Petitioner falsified records in AgRSys, failed to cooperate with an investigation, and manipulated the licensing system in an attempt to falsely implicate a coworker and conceal her own wrongful actions.

11. The preponderance of the evidence fails to reveal that Petitioner manipulated the licensing system in an attempt to falsely implicate a coworker. However, it does reveal such evidence in support of Petitioner's other alleged misconduct.

12. The overwhelming evidence in this case demonstrates that (i) Mitchell processed Pest Management System Inc.'s renewals on 26 June 2018 with Check # 41656, (ii) AgRSys contained information making it obvious that the renewals had been processed as of that date, and (iii) the AgRSys has measures put in place to prevent the duplication of renewals.

13. The overwhelming evidence further shows that Petitioner was assigned Check # 41569, Pest Management System, Inc.'s original check submitted for the

renewals, on 11 June 2018. Petitioner's work plan required her to deposit checks in 24 hours. Petitioner deposited Check # 41569 on 3 July 2018 – twenty-two (22) days after the check was assigned to her for processing and one day after Petitioner asked IT to change the receipt number in AgRSys for Pest Management System, Inc.'s renewal applications to show a receipt number of Check # 41569.

14. Petitioner's actions resulted in (i) the AgRSys falsely indicating that Check # 41569 was used to renew each of the 38 individuals' license/cards associated with Pest Management System, Inc. on 26 June 2018 and (ii) the erasure of the reference to Check # 41656, the actual check used to process the renewals, in AgRSys. Given the overwhelming evidence in this case regarding the AgRSys, the Undersigned concludes that Petitioner would have known that changing the check number in the AgRSys would result in the system reflecting false information.

15. Petitioner was instructed to notify her supervisor prior to requesting changes in the AgRSys that she could not make herself; she did not notify her supervisor that she was requesting IT to change the receipt number in the AgRSys as she was required to do. When asked by her supervisor how Check #41569 came to be in the AgRSys, Petitioner repeatedly concealed the fact that she asked IT to make this change and falsely claimed that she had processed this check and renewals in accordance with her work plan.

ii. Whether Petitioner's conduct is "unacceptable personal conduct?"

16. Having concluded that Petitioner engaged in conduct alleged by the Department, the Undersigned must next determine whether such conduct is

“unacceptable personal conduct” as contemplated in the North Carolina Administrative Code.

17. Subsection (8) of 25 N.C. Admin. Code 1J.0614 defines unacceptable personal conduct, in part, as:

- (a) conduct for which no reasonable person should expect to receive prior warning;
- ...
- (e) conduct unbecoming a state employee that is detrimental to state service;
- ...
- (h) falsification of a state application or in other employment document.⁴

18. “One act of [unacceptable personal conduct] presents ‘just cause’ for any discipline, up to and including dismissal.” *Hilliard v. N. Carolina Dep't of Correction*, 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005) (internal citations omitted). In this case, the Department alleges that Petitioner committed three acts of unacceptable personal conduct: falsification of a State application or other employment documentation to include falsification of work-related documents, conduct for which no reasonable person should expect to receive a warning, and conduct unbecoming a State employee that is detrimental to State service. The Undersigned concurs.

19. Petitioner, through her actions, changed the receipt number in the AgRSys to incorrectly reflect that Check #41569 was used to renew the 38 individuals

⁴ See also State Human Resources Manual, § 7 (effective 1 October 2017) (noting that this includes the “falsification of work-related documents”)

with Pest Management Systems, Inc. on 26 June 2018. The evidence demonstrates, and the Undersigned concludes, that Petitioner knew that she was causing false information to be reflected in the AgRSys.

20. Petitioner appears to argue that her actions, while erroneous, fail to show that she intentionally falsified the information in the AgRSys as she allegedly had little or nothing to gain from the error. Petitioner's motive in acting, however, is not determinative in this case. Regardless of the "why," the circumstances surrounding Petitioner's actions are such that one can conclude, and the Undersigned does, in fact conclude, that Petitioner knew that she was causing false information to be reflected in the AgRSys. *See, e.g., Williams v. Burlington Indus., Inc.*, 318 N.C. 441, 454, 349 S.E.2d 842, 850 (1986) (recognizing "[i]ntent may be inferred from the circumstances" and concluding that the lower tribunal's finding that claimant intentionally falsified company records based on the surrounding circumstances was supported by the substantial evidence in the record).

21. Petitioner further argues that her actions are more accurately described as unsatisfactory job performance, as opposed to unacceptable personal conduct. The Undersigned disagrees.

22. Unacceptable personal conduct "under the Human Resources Act is a broad "catch-all" category that encompasses a wide variety of misconduct by State employees[.]" *Smith v. N.C. Dep't of Pub. Instruction*, 261 N.C. App. 430, 444, 820 S.E.2d 561, 571 (2018). While disciplinary action for job performance is "intended to

prompt a permanent improvement in job performance,”⁵ personal conduct discipline is intended to be imposed for conduct for which no reasonable person should expect to receive a prior written warning. *Smith*, 261 N.C. App. at 440, 820 S.E.2d at 568.

23. The North Carolina Administrative Code recognizes that “unsatisfactory job performance” and “unacceptable personal conduct” “are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case.” 25 N.C. Admin. Code 1J.0604(c). “Falsification of state records, however, is a far more serious matter *that involves personal misconduct*, not mere job performance.” *Jones v. N. Carolina Dep’t of Health & Human Servs./O’Berry Ctr.*, 162 N.C. App. 180, 590 S.E.2d 334, 2004 WL 26542, at *6 (unpublished) (emphasis added). The instant case exemplifies this point.

24. Petitioner’s conduct in this case goes beyond her failure to perform her job duties as she deliberately caused false information to be entered into the AgRSys and then falsely claimed that she had completed work that she had not. At the hearing, Petitioner emphasized things other employees allegedly could have done to potentially prevent this situation from occurring. These attempted dispersions of blame are ultimately irrelevant, as they do not change the unacceptable personal conduct committed by Petitioner. Regardless of what any other employee allegedly did or should have done, it does not change the fact that, when presented with the opportunity, Petitioner chose to enter false information into the AgRSys and, when confronted about the issue by her supervisor, was dishonest and misrepresented that

⁵ State Human Resources Manual, § 7 (effective 1 October 2017) (listing poor work quality, absenteeism, and deficiencies in performance as examples of unsatisfactory job performance).

she performed work that she had not actually performed. *See, e.g., Woodard v. NCDOT*, 201 N.C. App. 124, 131, 684 S.E.2d 906, 910 (2009) (holding “Petitioner fails to offer any legal precedent or logical reason to suggest that her own dishonesty would be mitigated by her alleged belief that other employees also violated Respondent’s rules.”). Not only is Petitioner’s highly inappropriate conduct the type for which no reasonable person should expect to receive a prior warning, it is also conduct unbecoming of a State employee that is detrimental to State service.

25. With regard to the “conduct unbecoming of a State employee prong of the unacceptable personal conduct definition,” the Court of Appeals has held that “no showing of actual harm is required ..., only a potential detrimental impact (whether conduct like the employee’s could potentially adversely affect the mission or legitimate interests of the State employer).” *Smith*, 261 N.C. App. at 445, 820 S.E.2d at 571 (*citing Hilliard*, 173 N.C. App. at 597, 620 S.E.2d at 17). Petitioner’s conduct in this case has many potential detrimental impacts.

26. The AgRSys plays a crucial role in NCDA&CS’s ability to regulate the performance of structural pest control in North Carolina. *See, e.g., N. C. Gen. Stat. § 106-65.22* (“It is declared to be the policy of this State that the regulation of persons, corporations and firms engaged in the business of structural pest control in this State . . . is in the public interest . . .”). NCDA&CS relies upon the AgRSys when attempting to determine if an individual is authorized to perform structural pest control in North Carolina and when taking regulatory/disciplinary action against an individual believed to have violated North Carolina structural pest control laws or rules.

27. Additionally, individuals engaged in the business of structural pest control in North Carolina rely upon the AgRSys, in that their livelihood depends on them having the license/card required to perform structural pest control. Information in the AgRSys is also published to NCDA&CS's website and then relied upon by the public in determining whether the person they intend to hire is properly licensed

28. Given the important role that the AgRSys plays in NCDA&CS's regulatory enforcement, the structural pest control industry, and the public's safety, the accuracy of the information in the AgRSys is critical. Incorrect information in the AgRSys could result in NCDA&CS needlessly instituting enforcement action against an individual that is following the law. At the hearing, Petitioner acknowledged the importance of the accuracy of the information in the AgRSys.

29. Once the integrity of the AgRSys is compromised, it could negatively impact NCDA&CS' ability to rely upon the information contained in the system when attempting to take enforcement actions against individuals violating structural pest control laws or rules. For instance, each of the 38 individuals in the Pest Management System, Inc.'s renewal applications could have had their ability to work negatively impacted by mishandling of their licenses/cards. Pest Management System, Inc. itself could have suffered significant financial impacts in the form of cash-flow disruptions and overdraft charges due to Petitioner erroneously charging Pest Management System, Inc. an additional \$2,260.00 if the company had been unable to cover this significant and unexpected charge.

30. Both maintaining inaccurate information in the AgRSys and mishandling public funds, such that a member of the public is significantly overcharged, are detrimental to the agency's reputation and could cause the regulated industry, and the public at large, to lose faith in their ability as a regulatory agency. Mishandling public funds and creating inaccurate records could also subject the agency to an audit and resulting sanctions.

iii. Whether Petitioner's conduct amounted to just cause for the disciplinary action taken?

31. The North Carolina Supreme Court has emphasized that an "appropriate and necessary component" of a decision to impose discipline on a career State employee is the consideration of certain factors, including "the severity of the violation, the subject matter involved, the resulting harm, the [career State employee's] work history, or discipline imposed in other cases involving similar violations." *Wetherington v. N.C. Dep't of Pub. Safety*, 368 N.C. 583, 592, 780 S.E.2d 543, 548 (2015).

32. Consideration of the *Wetherington* factors in this case favor Respondent. Petitioner's actions constitute a severe instance of unacceptable personal conduct given the importance of the accuracy of the AgRSys and the potential for harm caused by her actions; her actions are more inexcusable given that she would have been aware of the potential harm caused by her unacceptable conduct yet chose to do so anyway. *See supra*.

33. Any damage to NCDA&CS' reputation as a regulatory agency would be magnified if they were to allow a person proven to enter false information in the

AgRSys and mishandle public funds to continue to do so on their behalf. Allowing such an individual to continue to work within the AgRSys would leave an open question as to the system's integrity, thus jeopardizing the validity of any action relying on information within this system.

34. Petitioner has a troubled work history, consisting of numerous disciplinary actions. At the time of her dismissal, Petitioner had two active disciplinary actions: a written warning for unacceptable personal conduct and a 2-week disciplinary suspension without pay for unacceptable personal conduct. The 2-week disciplinary suspension involved an incident in which Petitioner violated NCDA&CS's Workplace Violence Policy.

35. Both Mr. Burnette and Mr. Feagans made numerous attempts to improve Petitioner's conduct in the workplace and make her aware of the potential consequences of future incidents of unacceptable personal conduct. Mr. Burnette further testified that these coaching and counseling sessions, and the prior disciplinary actions that Petitioner received, had done nothing to improve her conduct in the workplace and that, following Petitioner's return to work from her 2-week disciplinary suspension, Petitioner's behavior was worse than ever.

36. Petitioner, at hearing, argued that her prior disciplinary actions and work history should not be admitted, as they were not specifically referenced in the Agency Decision. (*See* Resp. Ex. 1) As support, Petitioner cited subsection (a) of General Statute 126-35, which states "the employee shall, before the action is taken, be furnished with a statement in writing setting forth the specific acts or omissions

that are the reasons for the disciplinary action and the employee's appeal rights.” While “a career State employee is entitled to adequate notice of the rationale underlying a disciplinary action, he or she is not entitled to notice of every single piece of evidence supporting the decision.” *Heard-Leak v. NCSU*, 250 N.C. App. 41, 48, 798 S.E.2d 394, 400 (2016).

37. As explained, “our Supreme Court recently listed an employee’s ‘work history’ as one of multiple factors of consideration deemed an ‘appropriate and necessary component of a decision to impose discipline [for just cause] upon a career State employee.” *Heard-Leak*, 250 N.C. App. at 48, 798 S.E.2d at 399-400; *see also*, *Blackburn v. N.C. Dep’t of Public Safety*, 246 N.C. App. 196, 208, 784 S.E.2d 509, 518 (2016) (holding “evidence of petitioner’s prior disciplinary history was properly considered as part of the ALJ’s review of the level of discipline imposed against petitioner.”) The Court of Appeals, in *Blackburn*, cautioned against an overly broad interpretation of the notice to which an employee is entitled under subsection (a) of General Statute 126-35:

Petitioner is apparently arguing that he is entitled to notice, not only of the acts and omissions that were the basis of his termination, but also to notice of every item of evidence pertaining to these acts and omissions. Petitioner cites no authority for his vastly expanded view of ‘notice’ and we know of none.

Blackburn, 250 N.C. App. at 210, 784 S.E.2d at 519. Petitioner, in this case, received adequate notice for the purpose of subsection (a) of General Statute 126-35 as to the instances of unacceptable personal conduct for which she was being disciplined.

38. In conclusion, the severity of Petitioner's unacceptable personal conduct, and the inability of lesser disciplinary actions to improve Petitioner's conduct, support a conclusion that dismissal was an appropriate disciplinary response. Thus, under the facts and circumstances of the instant action, the Undersigned concludes as a matter of law that NCDA&CS has proven by a preponderance of the evidence that it had just cause to dismiss Petitioner due to her unacceptable personal conduct and it did not substantially prejudice Petitioner's rights; did not act erroneously; did not fail to act as required by law; and did not act arbitrarily and capriciously when it dismissed Petitioner for just cause.

IV. FINAL DECISION

39. Based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby AFFIRMS Respondent's decision to dismiss Petitioner from her employment due to Petitioner's unacceptable personal conduct.

APPENDIX A

List of Witnesses and Exhibits

A. Witnesses

For Petitioner:

1. Annette Locklear, Petitioner

For Respondent:

1. John Feagans
2. Nikki Mitchell
3. Jacinth McAllister
4. Shelia Rene Woody
5. James Burnette, Jr

B. Exhibits

The following exhibits were offered and admitted into evidence at the contested case hearing for this matter:

For Petitioner:

Petitioner's Exhibits ("Pet. Ex.") 1, 5 and 6 were admitted into evidence.

For Respondent:

Respondent's Exhibits ("Resp. Ex.") 1 – 10, 12 – 16, 18 – 20, and 22 - 28 were admitted into evidence. Respondent's Exhibit 11 was admitted into evidence for illustrative purposes. Respondent's Exhibits 17 and 21 were not admitted into evidence.

NOTICE OF APPEAL

This Final Decision is issued under the authority of N.C.G.S. § 150B-34. Pursuant to N.C.G.S. § 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. § 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.

SO ORDERED this the 18th day of May, 2020.



Tenisha S Jacobs
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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Attorney For Respondent

This the 18th day of May, 2020.



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