

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
20 OSP 01101

<p>Andrew Larcell McArthur Petitioner,</p> <p>v.</p> <p>North Carolina Central University Respondent.</p>	<p>FINAL DECISION</p>
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THIS MATTER comes before the Office of Administrative Hearings pursuant to N.C. Gen. Stat. § 126-1 *et seq.* and Petitioner's Petition for Contested Case Hearing appealing Respondent's decision to suspend him for two weeks without pay. After an internal grievance appeal, Respondent issued its Final Agency Decision on February 20, 2020, upholding Petitioner's suspension for unacceptable personal conduct and unacceptable job performance.

On August 26, 2020, the undersigned Administrative Law Judge heard this contested case at the North Carolina Office of Administrative Hearings in Raleigh, North Carolina. At the end of all the evidence, the undersigned took this matter under advisement.

APPEARANCES

For Petitioner: Andrew McArthur, *Pro se*

For Respondent: Nora F. Sullivan
Assistant Attorney General
North Carolina Department of Justice
Raleigh, North Carolina

ISSUES

1. Whether North Carolina Central University had just cause to suspend Petitioner for two weeks without pay for unacceptable personal conduct and unsatisfactory job performance?

2. Whether North Carolina Central University subjected Petitioner to harassment based on race, religion, color, national origin, sex, age, disability, genetic information, or political affiliation or unlawfully withheld his pay?

GOVERNING STATUTES AND ADMINISTRATIVE RULES

The State Personnel Act, N.C. Gen. Stat. § 126-1, *et seq.*
The Administrative Procedure Act, N.C. Gen. Stat. § 150B-1, *et seq.*
Title 25 of the North Carolina Administrative Code

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: 1 and 2

For Respondent: 1-3, 4, 5, 8, 9, and 11

WITNESSES

For Petitioner: None

For Respondent: Reuben Affiah, Cassandra Haire, Jonas Welcher,
Akua Matherson, and Petitioner

PRELIMINARY EVIDENTIARY MATTERS

At the hearing, Respondent North Carolina Central University (“NCCU” or the “University”) sought to introduce as exhibits three Written Warnings that Petitioner received during his employment by the University. (Tr. pp 258-268) The University sought to introduce these exhibits under the public records exception to the hearsay rule, and Petitioner did not contest their authenticity. (Tr. pp 269-271)

Petitioner objected to the introduction of his prior Written Warnings as exhibits, however, because they were not active at the time of the suspension underlying Petitioner’s contested case. (Tr. pp 258-268). Responding to Petitioner’s objection, the University argued that Petitioner’s prior Written Warnings are relevant and admissible pursuant to the North Carolina Supreme Court’s holding in *Wetherington v. N.C. Dep’t of Pub. Safety*, 368 N.C. 583, 592, 780 S.E.2d 543, 548 (2015). At the hearing, the undersigned took the matter under advisement and allowed Respondent to proceed with testimony on these Written Warnings under an offer of proof. (Tr. p 268)

Having considered the record and relevant statutory and case law, the undersigned finds that Petitioner’s prior Written Warnings are both relevant and admissible as exhibits to the contested case hearing.

Petitioner correctly noted at the contested case hearing that his prior Written Warnings were not active at the time of the disciplinary suspension which is the subject of this contested case hearing. Under North Carolina’s Administrative Code, written warnings and other disciplinary actions generally become inactive after 18 months. 25 NCAC 01I .2309(b).

Petitioner received his prior Written Warnings in 2010, 2015, and 2017. (Resp. Ex. 1, 2, 3) At the time of his current suspension, Petitioner did not have any active Written Warnings or other disciplinary action. As a result, the University could not impose disciplinary action against him that requires active disciplinary action as a pre-condition of subsequent disciplinary action. For instance, before an agency suspends an employee without pay based on unsatisfactory job performance, the agency must first “insure that the employee has received at least one prior disciplinary action.” 25 NCAC 011 .2308(2)(a). However, not all disciplinary actions against an employee require prior active disciplinary action. Employees may be suspended, demoted, or dismissed for unacceptable personal conduct without any prior warning or disciplinary action. 25 NCAC 011 .2308(2)(a), (3)(b), (4).

Here, NCCU suspended Petitioner without pay for both unacceptable personal conduct and unsatisfactory job performance. (Resp. Ex. 11) The fact that Petitioner had no active warnings or disciplinary action at the time of his suspension suggests the University may have erred in including unsatisfactory job performance as a basis for suspension. However, as the Tribunal finds below, the University had ample cause to suspend Petitioner for unacceptable personal conduct. Thus, the Tribunal can affirm the University’s decision without deciding whether the University properly suspended Petitioner based on unsatisfactory job performance.

Moreover, in evaluating whether NCCU had “just cause” to suspend Petitioner without pay based on unacceptable personal conduct, the undersigned must consider a variety of factors, including Petitioner’s prior work history. *Wetherington*, 368 N.C. at 592, 780 S.E.2d at 548. Petitioner’s prior Written Warnings are relevant and admissible for purposes of evaluating his work history. *See, e.g., Fidler v. N.C. Dept. of Revenue*, 2014 WL 4686176 (N.C.O.A.H) (evaluating the Petitioner’s entire “discipline-free” work history, including a 2008 departmental award, and upholding agency’s decision to terminate him for unacceptable personal conduct in 2013); *see also Whitehurst v. E. Carolina Univ.*, 257 N.C. App. 938, 948, 811 S.E.2d 626, 634 (2018) (considering the Petitioner’s twelve-year work history for purposes of evaluating whether agency had “just cause” to dismiss him based on unacceptable personal conduct).

Based on relevant statutory and case law, the undersigned concludes that the temporal proximity between Petitioner’s Written Warnings and his current suspension go to their weight as relevant evidence — not their admissibility as exhibits.

The undersigned further concludes, and as explained below, that NCCU had ample cause to suspend Petitioner without pay even without any consideration of his prior Written Warnings. The substantiated incidents resulting in Petitioner’s disciplinary suspension more than justify the University’s action. Thus, even considering conduct occurring in the 18 months leading to Petitioner’s suspension, the undersigned would affirm and uphold the University’s final agency decision. The undersigned, therefore, admits Respondent’s Exhibits 1, 2, and 3.

FINDINGS OF FACT

Based upon the sworn witness testimony presented at the hearing, the documents and exhibits admitted into evidence, and the entire record in this proceeding, the undersigned finds as follows:

1. NCCU is a constituent institution of The University of North Carolina System, and for certain employees, is subject to the protections of Chapter 126 of the North Carolina General Statutes.

2. Petitioner is a citizen and resident of the State of North Carolina and is a career state employee. Petitioner works as the Support Services Supervisor in NCCU's Central Stores and Receiving Department ("Central Receiving"). (Tr. pp 14-15) Petitioner has been employed in this position for approximately 10 years. (Tr. p 286)

3. NCCU's Central Receiving office maintains custody and control of University property and oversees the transfer or disposal of the University's surplus property. As the Support Services Supervisor, Petitioner is responsible for receiving merchandise and delivering it to departments across campus. (Tr. pp 14) Petitioner also manages multiple employees who report directly to him. (Tr. pp 14-15)

4. On November 21, 2019, NCCU suspended Petitioner for two weeks without pay for unacceptable personal conduct and unsatisfactory job performance. (Resp. Ex. 11)

5. Prior to his suspension on November 21, 2019, Petitioner had received several letters of counseling and Written Warnings at regular intervals for at least the past 10 years. (Resp. Exs. 1, 2, 3, 5) On August 21, 2010, Petitioner received a Written Warning for Unacceptable Conduct based on a confrontation he had with a University police officer regarding a parking violation. (Resp. Ex. 1) Petitioner was "loud" and spoke to the officer in a "disrespectful manner." As noted in the Written Warning, this incident came "upon the heels of complaints by [Petitioner's] colleagues that they characterize[d] as 'arrogant,' 'high-handed,' and rude." The warning further noted that Petitioner had received previous counseling sessions to address his behavior toward colleagues. (Resp. Ex. 1)

6. On March 27, 2015, Petitioner received a Written Warning for unsatisfactory job performance based on his repeated failure to pay invoices and properly handle University property. (Resp. Ex. 2) Although Petitioner indicated in response to multiple inquiries that the situation was under control, his failure to pay invoices and receive property damaged the University's relationships with vendors and cost it money. (Resp. Ex. 2)

7. Petitioner had received a documented counseling letter a month earlier to address his relationships with colleagues and effectiveness as a manager. (Resp. Ex. 2) To assist Petitioner in his professional development, the University connected him with a

mentor, Rodney Meheux, who performed similar job duties as Petitioner for the State of North Carolina. (Resp. Ex. 2) Despite efforts to mentor Petitioner, the Written Warning noted that Petitioner's "inability to get along with people continue[d] to be a serious shortcoming that undermine[d] Petitioner's effectiveness as a manager, damage[d] the morale and efficiency of [his] staff, alienate[d] [his] colleagues, and injure[d] the reputation of our University." (Resp. Ex. 2)

8. On June 28, 2017, Petitioner received a third Written Warning for unsatisfactory job performance. (Resp. Ex. 3) This warning, once again, arose from Petitioner's "out of line" and "disrespectful" behavior — this time, toward an outside vendor. (Resp. Ex. 3)

9. Petitioner's three prior Written Warnings were issued by two different supervisors — each of whom observed and documented similar deficiencies in Petitioner's demeanor and performance. (*Compare* Resp. Exs. 1, 2, 3)

10. As of February 2019, Petitioner reported to a third supervisor, Reuben Affiah. Mr. Affiah observed and documented serious deficiencies in Petitioner's demeanor and performance. Mr. Affiah described Petitioner's general work demeanor as "combative." (Tr. p 14) Petitioner "had an issue with authority" and "would not listen to any directive regardless of who it might come from." (Tr. pp 14-15) Mr. Affiah thought that Petitioner created a hostile environment for his staff, including making threats and subjecting them to regular outbursts. (Tr. p 16)

11. In addition, Petitioner was frequently absent from work without notifying his supervisors or staff. (Tr. p 20) Mr. Affiah received numerous complaints from departments across NCCU's campus that Petitioner was not available to open gates and unlock doors for couriers. (Tr. p 20) Petitioner was a primary key holder and accepting packages was one of his core job responsibilities. (Tr. p 20) Petitioner's failure to timely receive and deliver packages — including time-sensitive items that required refrigeration — caused departments at NCCU to receive damaged and defective items. (Tr. pp 21)

12. One of Petitioner's subordinates, Jonas Welcher, observed that Petitioner was frequently absent from work. (Tr. p 130) For approximately two years, Mr. Welcher worked in NCCU's Central receiving Warehouse as a temporary employee. (Tr. pp 124, 129-130) Although Petitioner was Mr. Welcher's technical supervisor, Welcher's coworker, Calvin Ramseur, acted as Welcher's *de facto* supervisor because Petitioner "was never hardly there working." (Tr. p 130)

13. Mr. Welcher's relationship with Petitioner was fine at first. (Tr. p 131) Indeed, at the hearing of this contested case, Petitioner complimented Mr. Welcher's work ethic and acknowledged that Mr. Welcher worked "very hard" and was a "disciplined employee." (Tr. p 159) The relationship deteriorated, however, because Petitioner failed to approve Mr. Welcher's timesheets promptly. As a result, Mr. Welcher missed paychecks and had to wait several weeks to be paid. (Tr. pp 131-132)

14. Petitioner's second-level supervisors, Cassandra Haire and Akua Matherson confirmed Mr. Affiah and Mr. Welcher's assessments of Petitioner's job performance and demeanor.

15. Ms. Haire confirmed that Petitioner's job responsibilities included "making sure that packages and things . . . were delivered to . . . University departments, to take care of surplus, . . . [t]ag that equipment and get it down to surplus on a weekly basis [, and] supervise employees." (Tr. pp 179-180) According to Ms. Haire, Petitioner's performance of these duties was "not very good" and Petitioner often made excuses for failing to do his work. (Tr. p 180) Ms. Haire observed Petitioner treat his staff "very unfairly" and "discriminated against" them. (Tr. pp 182-183) In fact, she believed employees were afraid of Petitioner, and specifically afraid of being retaliated against by him. (Tr. p 184) Ms. Haire also confirmed that Petitioner frequently missed scheduled meetings with little to no advance warning. (Tr. p 197)

16. Akua Matherson had been in Petitioner's direct supervisory chain for the past two years. (Tr. pp 247-249) In her role as Vice Chancellor for Administration and Finance and Interim CFO, Ms. Matherson has direct supervisory authority over ten employees and indirect authority over approximately 200 employees. (Tr. p 245) With regard to matters of departmental discipline, Ms. Matherson coordinates with HR (Human Resources) to ensure that the department implements proper protocols before taking disciplinary action. (Tr. p 250-251) In monitoring and overseeing protocols, Ms. Matherson typically reviews employee files to assess prior work history and also to confirm that the department consistently imposes discipline in similar cases. (Tr. pp 252-253)

17. With respect to Petitioner's work performance, Ms. Matherson confirmed that Petitioner's work "performance was very spotty." (Tr. p 254) Ms. Matherson opined that Petitioner was derelict in his customer service to the point that departments across campus would contact her for assistance. (Tr. p 254) As to the employees he supervises, Ms. Matherson described Petitioner as "heavy-handed" with the employees he supervises. She thought some employees even feared him. (Tr. pp 254-255)

18. On January 22, 2019, Mr. Affiah met with Petitioner to discuss expectations with respect to his job performance, including his work attendance and completing tasks in a timely manner. (Tr. p 25-26) On February 1st and 4th, Petitioner did not respond to Mr. Affiah's requests to meet and did not attend scheduled meetings. (Resp. Ex. 5)

19. On February 7, 2019, Mr. Affiah again met with Petitioner to discuss expectations regarding Petitioner's attendance and job performance. (Resp. Ex. 4) Mr. Affiah followed this meeting with an email to Petitioner communicating clear directives. (Resp. Ex. 4) Mr. Affiah also consulted with the University's Human Resources Office and Petitioner's second-level supervisor to ensure that Petitioner's job expectations were consistent throughout his supervisory chain. (Tr pp. 22-23) Despite all of these measures, Petitioner was late to work the very next day. (Resp. Ex. 4) On February 11, 2019, Mr. Affiah issued a Letter of Counseling to Petitioner. (Resp. Ex. 5, Tr. pp 27-29)

20. On February 14, 2019, Mr. Affiah went to Petitioner's office to discuss an employee, Ilean Sutton, who would be supporting Petitioner in the Central Receiving Office. (Tr. pp 31-33) During the conversation, Petitioner became combative and told Mr. Affiah "you better leave my office because I don't know what I'll do to you." (Tr. p 31-33, 97, 99-101) Mr. Affiah perceived this statement as a threat and called Campus Police, (Tr. p 31-33, 97, 99-101) who escorted Petitioner off campus. (Tr. p 33)

21. Mr. Welcher was in the warehouse at the time of this altercation and observed Ms. Sutton leave Petitioner's office crying. (Tr. p 135) Shortly thereafter, Mr. Welcher saw NCCU's campus police escort Petitioner out of the building. (Tr. pp 135-136) The day after this altercation, employees in the warehouse were so "afraid" of Petitioner returning to the office that they spent the day "watching the door to see was he going to come back through the door, you know, with a gun or anything." (Tr. p 136)

22. On November 21, 2019, Respondent suspended Petitioner for two weeks without pay, which is the subject of the current contested case hearing. (Resp. Ex. 11) Petitioner's suspension followed several additional instances of unprofessional behavior throughout October 2019.

23. On or about October 4, 2019, Mr. Affiah received a complaint from Mr. Welcher after Petitioner failed to approve Mr. Welcher's timesheet. (Tr. p 66; Resp. Ex. 11) This was the third time Petitioner had failed to approve his timesheet. (Tr. pp 131-132) As a result of this failure, Mr. Welcher was not paid for his time and suffered extreme financial hardship. (Tr. pp 131-132; Resp. Ex. 11) His electricity was shut off and his car was repossessed. (Tr. pp 131-132, 147) Mr. Welcher and his girlfriend both struggled to maintain their jobs while sharing one vehicle. (Tr. p 132) In his own words, "it was a very rough time." (Tr. p 147)

24. Mr. Welcher tried to discuss the importance of having his time approved promptly with Petitioner. (Tr. p 147) He described trying to talk with Petitioner as requiring "an act of Congress" in that Petitioner typically dodged discussions. (Tr. p 147) Mr. Affiah thereafter instructed Mr. Welcher to bring his timesheets directly to him—rather than to Petitioner—for approval. (Tr. pp 36)

25. On or about October 24, 2019, Petitioner failed to attend a scheduled meeting with his direct supervisor, Mr. Affiah. (Tr. pp 55-56, 88) Petitioner did not respond to Affiah's meeting request; did not call, email, or otherwise communicate his inability to attend the scheduled meeting; and generally provided no explanation for missing the meeting. (Tr. pp 55-56)

26. Mr. Affiah reported Petitioner's conduct to Ms. Haire. Ms. Haire called Petitioner to inquire about his failure to attend the meeting. During this conversation, Petitioner was loud, boisterous, and disrespectful to Mr. Affiah and Ms. Haire. (Tr. pp 55-57; Resp. Ex 11) Specifically, Petitioner said he refused to attend the meeting because, in Petitioner's opinion, Mr. Affiah "doesn't know a damn thing." (Tr. p 56; Resp. Ex. 11) Ms. Haire thought Petitioner's attitude on the call was "very disrespectful." (Tr. pp 197,

213) According to Ms. Haire, Petitioner was “raising [his] voice and disrespecting [Ms. Haire] as [his] supervisor.” (Tr. p 217)

27. Ms. Haire and Mr. Affiah directed Petitioner to start signing a log for using any vehicles assigned to Central Receiving. (Tr. pp 138, 190) Petitioner had frequently used University vehicles for his own personal use, causing campus receivables to go undelivered. (Tr. pp 63-64, 190)

28. After receiving this directive, Petitioner called a meeting with his subordinate employees. According to Mr. Welcher, Petitioner was “furious” about having to maintain a vehicle log, balled up his fists, and raised his voice with his subordinate employees. (Tr. p 139; see *also* Tr. p 164-165) Petitioner told them “if anyone has a problem with me let’s put it all out here on the damn table!” (Tr. pp 138-140, 170; see *also* Resp. Ex. 9) Mr. Welcher interpreted Petitioner’s comments as a threat of retaliation against whoever was responsible for “going behind his back” and “snitching” about Petitioner’s inappropriate use of University vehicles. (Tr. pp 140-141)

29. Referring to the vehicle log, Petitioner further stated, “I don’t give a damn what [Mr. Affiah] said; he is not my damn boss.” (Tr. p 139; Resp. Ex. 9) Mr. Welcher brought Petitioner’s outburst to Mr. Affiah’s attention. (Tr. pp 143-144; see *also* Tr. pp 60-62) By bringing this incident to Mr. Affiah’s attention, Mr. Welcher hoped someone at the University would take action to stop Petitioner’s unprofessional behavior. (Tr. p 144)

30. On a subsequent telephone call, Petitioner was again disrespectful to Mr. Affiah and Ms. Haire. (Tr. p 59) When Ms. Haire asked Petitioner to assist Mr. Affiah in handling surplus on campus, Petitioner became angry and belligerent and yelled that he would not work with Mr. Affiah. Petitioner stated, “He is not my supervisor I am not going to work with him.” (Resp. Ex. 11; see *also* Tr. p 190-191)

31. Petitioner often expressed his refusal to work with Mr. Affiah. (Tr. p 190-191) Mr. Welcher thought Petitioner resented the fact that Mr. Affiah was younger than him, but nonetheless his supervisor. (Tr. p 134) In fact, Mr. Welcher heard Petitioner would refer to Mr. Affiah as a “young college punk.” (Tr. p 134)

32. On November 1, 2019, Petitioner confronted Mr. Welcher about submitting his timesheets to Mr. Affiah for approval. By this time, Petitioner had failed to approve Mr. Welcher’s timesheets on multiple occasions causing Mr. Welcher to miss multiple paychecks, as described previously. Mr. Welcher first submitted his timesheet to Petitioner on November 1 at 9:00 a.m. (Tr. p 150) By 2:30 p.m., Mr. Welcher was nervous that the timesheet had not yet been approved and needed to be approved by 5:00 p.m. in order for him to be paid for the previous two weeks. (Tr. p 150) As a result, Mr. Welcher took his timesheet to Mr. Affiah for approval. (Tr. p 150; Resp. Ex. 8)

33. Petitioner was angry that, in his view, Mr. Welcher went behind his back to have his timesheet approved. (Tr. pp 150-151) According to Mr. Welcher, “all hell broke loose.” (Tr. p 150) Petitioner told Mr. Welcher, “You just messed up big time buddy . . .

you going to see.” (Tr. p 37, 132, 148-151; Resp. Ex. 8) Mr. Welcher felt threatened by Petitioner’s words and feared that Petitioner would try to have him fired or otherwise refuse to renew his contract. (Tr. p 151) Mr. Welcher immediately reported the incident to Human Resources. (Tr. p 152)

34. On November 18, 2019, Ms. Haire hand-delivered a Notice to Attend a Pre-Disciplinary Conference for November 19, 2019 to Petitioner. (Tr. p 232-233)

35. Ms. Haire and a representative from HR attended the conference. (Tr. p 186) During the Pre-Disciplinary Conference, Petitioner admitted to telling Mr. Affiah that Petitioner does not respect him, and that Mr. Affiah does not have the business and purchasing knowledge and experience to do his job. (Tr. p 200-201)

36. Petitioner also admitted that the interaction between him and the Associate Director was intense. Petitioner further acknowledged that he did not have a good relationship with Mr. Affiah and was unprofessional in speaking with Ms. Haire on the phone. Petitioner admitted that after the phone conversation, he stepped out of his office and was very “direct” in the way that he spoke to his staff. Although Petitioner denied yelling at them, he admitted to saying, “I don’t give a damn.” Furthermore, Petitioner admitted he had not approved the timesheet at issue because he had been dealing with personal issues. (Resp. Ex. 11) Following the Pre-Disciplinary conference, Ms. Haire recommended that Petitioner be suspended without pay. (Tr. p 205)

37. Ms. Matherson reviewed Petitioner’s personnel file to assess Petitioner’s work history and to recommend an appropriate level of discipline. (Tr. pp 256-257, 261) Ms. Matherson thought Petitioner’s file demonstrated a “continuous pattern” of unacceptable conduct and poor customer service. (Tr. pp 256-257) Upon reviewing Petitioner’s file, Ms. Matherson described her reaction as “amazement that . . . Petitioner’s behavior had been going on for as long as it had.” (Tr. p 284) Ms. Matherson further considered the fact that Petitioner was a supervisor—and had been a supervisor for approximately ten years. (Tr. p 286) In Ms. Matherson’s view, Petitioner was not a new supervisor who required additional coaching about “the difference between being an employee and being a supervisor.” (Tr. p 286) After ten years of supervising employees, Ms. Matherson stated Petitioner’s behavior toward colleagues could not be tolerated. (Tr. p 286) Ms. Matherson recommended that Petitioner be terminated based on his conduct during the 18 months leading up to his Pre-Disciplinary Conference, based on his work history, and based on the discipline imposed against other employees. (Tr. p 287, 290)

38. On November 21, 2019, Dr. Cornelius Wooten, Vice Chancellor for Administration and Finance at NCCU, notified Petitioner in writing that he would be suspended for two weeks without pay for unacceptable personal conduct and unsatisfactory job performance. Dr. Wooten explained in detail the conduct underlying his decision. (Resp. Ex. 11)

39. Although Petitioner was suspended for two weeks, Ms. Haire recommended Respondent suspend Petitioner for longer than two weeks. (Tr. p 205-206) Given the

severity of Petitioner's conduct and behavior as a supervisor, his failure to come to work on time and refusal to attend scheduled meetings, and his failure to approve Mr. Welcher's timesheet, Ms. Haire thought a suspension of three or four weeks would have been appropriate. (Tr. p 205-206) Ms. Haire was also generally aware of Petitioner's prior work history, which she described as "not good at all." (Tr. p 207)

40. Petitioner filed a grievance on November 22, 2019.

41. Mr. Affiah described working at NCCU — his alma mater — as his "dream job." (Tr. p 12) However, he left the University in November 2019 largely because of Petitioner's poor attitude and conduct. (Tr. p 13) Likewise, Mr. Welcher no longer works at NCCU. Had Mr. Welcher accepted a permanent position with NCCU, he would not have wanted to be supervised by Petitioner. In Mr. Welcher's opinion, Petitioner "is not fit to be a leader" or have supervisory authority over employees. (Tr. pp 174-175)

42. After completing NCCU's internal grievance process, Respondent upheld Petitioner's suspension.

43. Petitioner filed a Petition for Contested Case Hearing alleging that NCCU did not have just cause to suspend him for two weeks without pay. Petitioner also alleged that the University improperly withheld his pay and subjected him to workplace harassment.

44. At the contested case hearing, Petitioner confirmed that his forfeited pay allegations relate back to the University's decision to suspend him without pay for two weeks. (Tr. p 311) Petitioner agreed that NCCU had not withheld any other pay from him. (Tr. p 311)

45. With respect to workplace harassment, Petitioner did not present any evidence that he was subjected to workplace harassment. Upon examination by Respondent, Petitioner contended that his workplace harassment claim rests on Mr. Affiah's attempts to schedule meetings with Petitioner and the fact that Petitioner was assigned to supervise Ms. Sutton. (Tr. pp 311-316, 323)

46. Petitioner did not allege that he was discriminated against based on any protected status or that he was retaliated against for opposing discrimination.

CONCLUSIONS OF LAW

BASED upon the foregoing **FINDINGS OF FACT**, the undersigned concludes:

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over the parties and issues in this contested case pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes. The parties received proper notice of hearing, and venue is proper.

2. To the extent that the Findings of Fact contain Conclusions of Law or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011). *Warren v. Dep't of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. review denied*, 366 N.C. 408, 735 S.E.2d 175 (2012).

3. A judge is not required to find all the facts shown by the evidence, but only sufficient material facts to support the decision. *Green v. Green*, 284 S.E.2d 171, 174, 54 N.C. App. 571, 575 (1981); *In re Custody of Stancil*, 179 S.E.2d 844, 847, 10 N.C. App. 545, 549 (1971).

4. Respondent NCCU is subject to Chapter 126 of the North Carolina General Statutes and is the employer of Petitioner.

5. A "career state employee" is defined as a state employee, or an employee of a local entity as described in N.C. Gen. Stat. § 126-5(a)(2), who is in a permanent position with a permanent appointment and continuously has been employed by the State of North Carolina in a non-exempt position for the immediate 12 preceding months. N.C. Gen. Stat. § 126-1.1.

6. At the time of his suspension, Petitioner was a career State employee subject to the provisions of the North Carolina Human Resources Act. N.C. Gen. Stat. § 126-1, *et seq.*

7. Respondent complied with the procedural requirements for suspension without pay for unacceptable personal conduct pursuant to 25 NCAC 01J .0611 and .0613.

8. A career State employee may be suspended without pay only for "just cause." N.C. Gen. Stat. § 126-35(a). The State employer has the burden of showing by a preponderance of the evidence that there was "just cause" for suspension. N.C. Gen. Stat. § 126-34.02(d).

9. Pursuant to regulations promulgated by the Office of State Human Resources, there are two bases for disciplinary action against an employee for "just cause": (1) unsatisfactory job performance, and (2) unacceptable personal conduct. 25 NCAC 01J.0604(b). These categories "are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case." 25 NCAC 01J.0604(c).

10. Here, Petitioner was suspended for two weeks without pay based on unsatisfactory job performance and unacceptable personal conduct. (Resp. Ex. 11) For the reasons stated below, the undersigned will affirm the University's decision to suspend Petitioner based on unacceptable personal conduct. The undersigned does not reach

the separate issue of whether the University properly suspended Petitioner for unsatisfactory job performance.

**NCCU Had Just Cause to Suspend Petitioner for Two Weeks
Without Pay for Unacceptable Personal Conduct.**

11. Although “just cause” is not defined by statute or rule, the words are to be accorded their ordinary meaning. *Amanini v. N.C. Dep’t of Human Resources, Special Care Ctr.*, 114 N.C. App. 668, 678 443 S.E.2d 114, 120 (1994) (defining “just cause” as, among other things, good or adequate reason). Just cause is not susceptible of precise definition; it is a “flexible concept, embodying notions of equity and fairness,’ that can only be determined upon an examination of the facts and circumstances of each individual case.” *N.C. Dep’t of Env’t & Natural Res., v. Carroll*, 358 N.C. 649, 669, 599 S.E.2d 888, 900 (2004) (citation omitted).

12. In determining whether a public employer had “just cause” to discipline its employee the fundamental question is whether “the disciplinary action taken was ‘just.’” *Carroll*, 358 N.C. at 665, 599 S.E.2d at 898.

13. In *Carroll*, a personal conduct case, the North Carolina Supreme Court held, “[d]etermining whether a public employee had just cause to discipline its employee requires two separate inquiries: whether the employee engaged in the conduct the employer alleges, and second, whether the conduct constitutes just cause for the disciplinary action taken.” *Id.* (quotation and citation omitted).

14. In *Harris v. N.C. Dep’t of Public Safety*, 252 N.C. App. 94, 798 S.E.2d 127, *aff’d*, 370 N.C. 386, 808 S.E.2d 142 (2017), the Court reiterated its earlier explanation of what this Tribunal must consider as to the degree of discipline, as enunciated in *Warren v. N.C. Dep’t. Crime Control & Pub. Safety*, 221 N.C. App. 376, 383, 726 S.E.2d 920, 924-925 (2012):

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. *Unacceptable personal conduct does not necessarily establish just cause for all types of discipline. 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.*

252 N.C. App. at 103, 798 S.E.2d at 135 (quoting *Warren*, 221 N.C. App. at 383, 726 S.E.2d at 925) (emphasis supplied by *Harris* decision).

15. Pursuant to *Carroll*, *Warren*, and *Harris*, NCCU has met its burden with respect to each of the three inquiries.

First Prong - Warren Analysis

16. First, NCCU met its burden of establishing that Petitioner engaged in the conduct alleged. Three of Petitioner's supervisors and one of his subordinate employees substantiated the conduct alleged in NCCU's disciplinary letter. (Resp. Ex. 11)

17. NCCU alleged that Petitioner engaged in unacceptable personal conduct based on his "unacceptable, disrespectful, and loud . . . interactions with both [his] direct reports and [his] supervisor." (Resp. Ex. 11) Mr. Affiah and Ms. Haire both confirmed Petitioner's loud and disrespectful behavior toward them and toward Petitioner's direct reports.

18. Petitioner was loud and boisterous during a phone call with Mr. Affiah and Ms. Haire on or about October 24, 2019. Petitioner's attitude on the call was "very disrespectful" and that he raised his voice at Haire. (Tr. pp 197, 213, 217) At the time, Petitioner had refused to attend a meeting with his direct supervisor, Mr. Affiah, because, in Petitioner's opinion, Mr. Affiah "doesn't know a damn thing." (Tr. p 56; Resp. Ex. 11)

19. Ms. Haire also confirmed that Petitioner was frequently rude to Mr. Affiah and refused to work with him. (Tr. p 190-191) Petitioner resented the fact that Mr. Affiah was younger than him, and often referred to Mr. Affiah as a "young college punk." (Tr. p 134)

20. Mr. Welcher also confirmed Petitioner's frequent outbursts toward staff. Specifically, when Petitioner's misuse of University vehicles required Mr. Affiah and Ms. Haire to implement a vehicle sign-out policy, Petitioner called a meeting to berate his staff. According to Mr. Welcher, Petitioner was "furious" about having to maintain a vehicle log, balled up his fists, and raised his voice with his subordinate employees. (Tr. p 139; see *also* Tr. p 164-165) Petitioner told them "if anyone has a problem with me let's put it all out here on the damn table!" (Tr. pp 138-140, 170; see *also* Resp. Ex. 9) Mr. Welcher interpreted Petitioner's comments to be a threat of retaliation against whoever was responsible for "going behind his back" and "snitching" about Petitioner's inappropriate use of University vehicles. (Tr. pp 140-141)

21. Mr. Welcher reported this incident to Mr. Affiah with the expectation that the University would take action to correct Petitioner's unprofessional behavior. (Tr. pp 143-144; see *also* Tr. pp 60-62)

22. Mr. Welcher also substantiated NCCU's allegations regarding Petitioner's failure to timely approve Mr. Welcher's timesheets. Petitioner neglected to approve his time sheets on multiple occasions causing Mr. Welcher to miss pay checks and suffer extreme financial hardship. During this time, Mr. Welcher's electricity was cut off and his car was repossessed. (Tr. pp 131-132, 147) In his own words, "it was a very rough time." (Tr. p 147)

23. When Mr. Welcher submitted his timesheets to others for approval, Petitioner yelled at and threatened him. As Mr. Welcher described it, “all hell broke loose” and Petitioner told him “You just messed up big time buddy . . . you going to see.” (Tr. p 37, 132, 148-151; Resp. Ex. 8) Mr. Welcher felt threatened by Petitioner’s words and feared that Petitioner would try to have him fired or otherwise refuse to renew his contract. (Tr. p 151) Mr. Welcher immediately reported the incident to Human Resources. (Tr. p 152)

24. Thus, NCCU has met its burden of establishing the first *Warren* factor, that Petitioner engaged in the conduct alleged.

Second Prong – Warren Analysis

25. NCCU has also met its burden of establishing the second *Warren* factor that Petitioner’s conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. Unacceptable personal conduct includes “conduct for which no reasonable person should expect to receive prior warning;” “conduct unbecoming a state employee that is detrimental to state service;” and “the abuse of . . . a person(s) over whom the employee has charge or to whom the employee has a responsibility” 25 NCAC 01J.0614(8). Here, Petitioner’s conduct falls within these multiple categories of unacceptable personal conduct.

26. Petitioner’s conduct and outbursts are unbecoming and detrimental to state service and have been severe and pervasive enough that no prior warning or disciplinary action is necessary to justify Petitioner’s suspension. In the case of “conduct unbecoming a state employee that is detrimental to state service,” the State employer is not required to make a showing of actual harm, “only a potential detrimental impact (whether conduct like the employee’s could potentially adversely affect the mission or legitimate interests of the State employer).” *Hilliard v. N.C. Dep’t of Corr.*, 173 N.C. App. 594, 597, 620 S.E. 14, 17 (2005).

27. Petitioner openly challenged Mr. Affiah’s and Ms. Haire’s supervisory authority over him and derided them when speaking to other subordinate employees. He referred to Mr. Affiah as a “young college punk” to other employees, and generally undermined Mr. Affiah’s attempts to supervise the department. NCCU presented evidence that Petitioner failed to attend scheduled meetings without justification or excuse and took out frustrations with Mr. Affiah and Ms. Haire on his subordinate staff.

28. Petitioner’s conduct toward his direct reports is particularly unacceptable and inexcusable. Petitioner’s direct reports fear him, and Mr. Welcher confirmed this sentiment. (Tr. pp 136, 184 254-255) Petitioner’s loud attitude and unprofessional behavior make employees fear for their physical safety and also fear retaliation. NCCU presented evidence that Petitioner has berated his direct reports on multiple occasions and threatened them against reporting his abusive and unprofessional behavior to others.

29. In addition, Petitioner's neglect and dereliction of duty caused Mr. Welcher to go unpaid for his work on several occasions. By Petitioner's own account, Mr. Welcher was a hard-working, dedicated University employee. (Tr. p 159) Petitioner offered no excuse or justification for his repeated failure to ensure that Mr. Welcher was paid on time. Even worse, when Mr. Welcher took steps to have others approve his time sheet, Petitioner accused Mr. Welcher of going behind his back. Petitioner further threatened Mr. Welcher, which he immediately reported to HR. (Tr. p 152) Only months prior to this incident with Mr. Welcher, NCCU campus police had to escort Petitioner off campus because of his threatening behavior toward Mr. Affiah. (Tr. p 31-33, 97, 99-101)

30. Thus, NCCU has met its burden of establishing that Petitioner's conduct falls within multiple categories of unacceptable personal conduct.

Third Prong – Warren Analysis

31. The final inquiry in the just cause analysis asks whether NCCU met its burden of establishing that the discipline imposed for Petitioner's conduct was "just." Just cause must be determined based "upon an examination of the facts and circumstances of each individual case," that is, the "balancing of equities." *Carroll*, 358 N.C. at 669, 599 S.E.2d at 900 (citation omitted).

32. In determining whether disciplinary action taken for unacceptable personal conduct was just, this Tribunal considers "factors such as 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." *Wetherington*, 368 N.C. at 592, 780 S.E.2d at 548.

33. Considering the totality of the facts and circumstances, Respondent had "just cause" to suspend Petitioner for two weeks without pay.

34. Petitioner has been employed at NCCU for more than 20 years. For at least the past 10 years, he has held a supervisory position within the Central Receiving Department. In those 10 years, Petitioner received multiple Written Warnings based on his unprofessional conduct and demeanor toward co-workers, supervisors, and outside vendors. (Resp. Exs. 1-3) Of particular note, Petitioner's prior Written Warnings demonstrate that he has received some form of counseling or disciplinary action from nearly every person who has supervised him for the past 10 years. (Resp. Exs. 1-3; see *also* Tr. pp 269-285)

35. In the 18 months preceding his suspension, Petitioner received multiple counseling sessions and was advised several times by various supervisors to modify his conduct to conform to the University's legitimate expectations of supervisors. Even after campus police escorted Petitioner from campus, Petitioner still refused to modify his conduct and demeanor toward supervisors and co-workers.

36. Ultimately, Petitioner’s long history of outbursts and insubordination establishes just cause for NCCU’s decision to suspend him without pay for two weeks. Likewise, the severity of Petitioner’s conduct and the resulting harm further justify the University’s action. Mr. Affiah — whom Ms. Matherson described as a “go-getter” and a “good employee” (Tr. pp 287, 289) — left his “dream job” at NCCU, in part, because of Petitioner’s constant attempts to undermine his authority. (Tr. p 13) Similarly, had Mr. Welcher accepted a permanent position with NCCU, he would not have wanted to work with Petitioner any longer. In Mr. Welcher’s opinion, Petitioner “is not fit to be a leader” or have supervisory authority over employees. (Tr. pp 174-175)

37. Finally, Ms. Haire and Ms. Matherson both considered and recommended more harsh disciplinary action against Petitioner. Ms. Haire recommended that Petitioner be suspended for three or four weeks without pay. (Tr. p 206) Ms. Matherson recommended termination. (Tr. p 287) Given these recommendations, NCCU’s decision to impose a lesser sanction further demonstrates that the University’s action was just under the circumstances.

38. Taking the *Wetherington* factors into account, the undersigned finds that NCCU’s imposition of a two-week suspension without pay was just under the facts and circumstances of this case.

Petitioner Failed to Substantiate His Forfeited Pay and Workplace Harassment Claims.

39. The undersigned finds that Petitioner presented no credible evidence of these allegations. Petitioner admitted that his forfeited pay allegations arise from his two-week suspension. (Tr. p 311) Having found that the University’s disciplinary action was justified, the undersigned finds there is no evidence supporting Petitioner’s allegation that his pay was unlawfully withheld.

40. Likewise, Petitioner offered no evidence that the University subjected him to workplace harassment. Petitioner’s harassment claim generally rests on Petitioner’s contention that Mr. Affiah’s and Ms. Haire’s requests to meet with him were harassing. However, Petitioner offered no evidence that Mr. Affiah’s or Ms. Haire’s supervision over him was in any way improper, inappropriate, or harassing. Moreover, Petitioner offered no evidence that any University employee took action against him based on his membership in a protected class.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **AFFIRMS** Respondent’s decision to suspend Petitioner without pay for two weeks.

NOTICE OF APPEAL

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

This the 29th day of January, 2021.



Melissa Owens Lassiter
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 29th day of January, 2021.



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