

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 OSP 00912

<p>Jason Yoder Petitioner,</p> <p>v.</p> <p>NCDPS Respondent.</p>	<p>FINAL DECISION</p>
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This matter was heard before Administrative Law Judge David F. Sutton on May 5, 2021, remotely via Microsoft Teams.

APPEARANCES

For Petitioner: Jason Yoder, *Pro se*
4660 Hickory Lincolnton Highway
Newton, North Carolina 28658

For Respondent: Norlan Graves
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27609

WITNESSES

For Petitioner: Jason Yoder

For Respondent: Jason Yoder
Harold Reep
Larry Williamson
Amy Jenkins
Susan White
LaDonna Browning

EXHIBITS

Petitioner's exhibits ("P. Exs.") 1 and 3 were admitted into evidence.
Respondent's exhibits ("R. Exs.") 1-4, were admitted into evidence.

APPLICABLE STATUTES, RULES AND POLICIES

The North Carolina State Personnel Act, codified at N.C.G.S. § 126-1, et seq.
The North Carolina Administrative Procedure Act, codified at N.C.G.S. § 150B-1, et seq.
The North Carolina Administrative Code, Title 25, Subchapter 01J, et seq.
The North Carolina State Human Resources Manual.

ISSUE PRESENTED

Whether Respondent had just cause to demote Petitioner.

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 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 of the evidence and assessed the credibility of the witnesses, taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interest, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

1. Petitioner commenced his employment with Respondent North Carolina Department of Public Safety ("Department") on February 21, 2000.
2. On September 28, 2020, Petitioner held the position of Correctional Programs Director I at Catawba Correctional Center and was a permanent career state employee.
3. In his position of Correctional Programs Director I, Petitioner was responsible for the proper administration and oversight of the Community Volunteer and Community Leave Sponsorship Program ("Program") at Catawba Correctional Center.

4. The Program is designed to re-integrate eligible offenders into society through participation in supervised off-site activities in the community. The Program relies on community volunteers to assist with the supervision of offenders during off-site community activities.

5. Petitioner was responsible for ensuring that the offenders and volunteers participating in the Program met certain eligibility requirements and that the required paperwork was maintained on each as proof that those certain requirements had been satisfied.

6. In September 2019, an investigation was commenced by Western Region Program Director, Larry Williamson (“Williamson”) against Petitioner after Williamson received complaints that Petitioner allowed offenders to participate in off-site community activities who were not eligible to participate in the Program.

7. Williamson’s investigation confirmed that offenders who were not assigned to the Program were allowed off-site. The investigation also resulted in findings that offenders were being allowed off-site with volunteers who were not approved. Upon review of volunteer files, Williamson discovered incomplete files, missing files, files with missing forms, and volunteers who needed training.

8. In December 2019, Williamson filed a complaint with the Department’s Office of Special Investigations (“OSI”) alleging that Petitioner was non-compliant with policy and procedures related to the Program at Catawba Correctional Center.

9. OSI Investigator Susan White’s investigation included interviews of numerous witnesses, review of various witness statements and other relevant documents, and review of relevant policies and procedures.

10. White’s investigative findings included, and the Undersigned finds as fact, that offenders who were not assigned to the Program were allowed off-site, that offenders were being allowed off-site with volunteers who were not approved, there were volunteers who needed training, and volunteer files were incomplete, missing, and did not contain all required forms.

11. On September 25, 2020, a Second Pre-Disciplinary Conference was held concerning Petitioner’s employment status, and on September 28, 2020, Petitioner was demoted from his position as a Correctional Programs Director I at Catawba Correctional Center to a Correctional Case Manager at Caldwell Correctional Center due to unsatisfactory job performance. Specifically, Petitioner’s demotion was due to his failure to maintain appropriate oversight of, and correctly administer, the Program at Catawba Correctional Center.

12. Petitioner timely filed an internal grievance and on November 18, 2020, a hearing on Petitioner’s appeal was held. Respondent’s decision to demote Petitioner was upheld.

13. Petitioner was notified via letter dated January 15, 2021 of Respondent’s final decision.

14. Petitioner timely filed his petition for a contested case hearing in the Office of Administrative Hearings on February 18, 2021.

15. Petitioner's prior disciplinary actions include the following:

- A. On April 20, 2015, Petitioner was issued a Written Warning for Unacceptable Personal Conduct as the result of entering initial case management notes in OPUS without making personal contact with the offenders.
- B. On January 22, 2020, Petitioner was issued a Written Warning for Unacceptable Personal Conduct for bringing a cellular phone into the correctional facility.

16. At the hearing of this contested case, Petitioner did not deny that he had engaged in the conduct alleged. Petitioner stated that he did not contest the demotion, he just wanted his pay reinstated due to financial issues.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction of the parties and the cause in Petitioner's contested case. N.C.G.S. § 126-34.02.

2. To the extent the foregoing Findings of Fact contain Conclusions of Law, or that these Conclusions of Law contain Findings of Fact, they should be so considered without regard to their 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).

3. The Department is subject to the State Human Resources Act, codified at N.C.G.S. § 126- 1, et seq., and is Petitioner's employer.

4. Pursuant to N.C.G.S. § 126-1.1, a career state employee is an employee who has been employed by an agency of the State of North Carolina in a permanent, non-exempt position for at least twelve continuous months.

5. At the time of his September 28, 2020 demotion, Petitioner was a career state employee subject to the provisions of the State Human Resources Act.

6. A career state employee may be demoted for disciplinary reasons only for just cause. N.C.G.S. § 126-35 (a). The employing State agency has the burden of establishing by a preponderance of the evidence that there was just cause for the demotion. N.C.G.S. § 150B-25.1(c) and N.C.G.S. § 126-34.02 (d).

7. Demotion of a career state employee may be made on the basis of either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct. 25 N.C.A.C. 01J .0612(a).

8. “Unsatisfactory job performance means work-related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan, or as directed by the management of the work unit or agency.” 25 N.C.A.C. 01J .0614(9).

9. In a case of demotion due to unsatisfactory job performance, the agency must “make a showing that the employee has not performed with reasonable care, diligence and attention.” *Walker v. North Carolina Dept. of Human Resources*, 100 N.C. App. 498, 504, 397 S.E.2d 350, 355 (1990). “The agency must show that ... job requirements were *reasonable*, and if so, that the employee made no reasonable effort to meet them.” *Id.*

10. The preponderance of the substantial evidence is that the Department’s job requirements that Petitioner ensure that only eligible offenders participate in off-site community activities as part of the Program, that only approved volunteers supervise offenders during off-site community activities, and that Petitioner keep and maintain documentation necessary to prove both offender and volunteer eligibility is reasonable. The Petitioner’s failure to satisfy these requirements created conditions that compromised the safety of the public and integrity of the Department.

11. The preponderance of the substantial evidence is that Petitioner made no reasonable effort to perform his job requirements and that he did not perform with reasonable care, diligence and attention. Allowing one offender to leave the correctional facility without the proper authorization to do so is substantial evidence that Petitioner did not meet the required standards of reasonableness, diligence and attention. Add in the Petitioner’s failure to ensure that volunteers met the eligibility requirements and his failure to maintain records proving eligibility, the evidence then becomes overwhelming.

12. “An employee may be demoted for unsatisfactory job performance after the employee has received at least one prior disciplinary action.” 25 N.C.A.C. 01J .0612(a)(1).

13. At the time of his demotion, Petitioner had received two prior disciplinary actions in the form of written warnings.

14. Respondent met its burden of proof that it had just cause to demote Petitioner for unsatisfactory job performance.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned determines that there was substantial evidence to support Respondent’s decision to demote Petitioner for just cause due to acts of unsatisfactory job performance. Therefore, Respondent’s decision to demote Petitioner and impose a 15% reduction in his annual salary is AFFIRMED.

NOTICE OF APPEAL

This Final Decision is issued under the authority of N.C.G.S. § 150B-34 (2019). Pursuant to N.C.G.S. § 126-34.02 (2019), any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such an appeal by filing a Notice of Appeal to the North Carolina Court of Appeals as provided by N.C.G.S. § 7A-29(a) (2019), within 30 days of the receipt of the written notice of this Final Decision of the Administrative Law Judge. The Notice of Appeal shall be filed with the Office of Administrative Hearings and served on all parties to this contested case.

IT IS SO ORDERED.

This the 7th day of July, 2021.



David F Sutton
Administrative Law Judge

CERTIFICATE OF SERVICE

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

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This the 7th day of July, 2021.



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