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Metro Nashville vs. Angela Coleman, Appellant

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**BEFORE THE CIVIL SERVICE COMMISSION OF THE
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**

IN THE MATTER OF:

Angela Coleman
Appellant

DOCKET NO: 43.02-079983J

INITIAL ORDER

This contested case was heard in Nashville, Tennessee, on August 10, 2006, before Ann M. Johnson, Administrative Judge, assigned by the Secretary of State and sitting for the Civil Service Commission of the Metropolitan Government of Nashville and Davidson County (“Metro”). William B. Herbert, Metropolitan Attorney, represented the Metropolitan Government. Rickey McWright, Assistant Chief with the Metro Emergency Communications Center (“ECC”), testified on behalf of Metro. The Appellant represented herself, waiving legal counsel. The Appellant testified on her own behalf, but presented no other witnesses or documentary evidence.

The subject of this hearing was the Appellant’s appeal of her termination by the Metropolitan Emergency Communications Center for deficient or inefficient performance of duties. After consideration of the evidence and the arguments of the parties, it is determined that the termination should be upheld. This decision is based upon the following.

SUMMARY OF DOCUMENTARY EVIDENCE

Fourteen exhibits were admitted into evidence: EXHIBIT 1 – Termination letter and attachments; EXHIBIT 2 – Internal Incident Report dated August 22, 2005; EXHIBIT 3 – Internal Incident Report dated August 15, 2005, with attached explanation; EXHIBIT 4 – Internal Incident Report dated August 12, 2005; EXHIBIT 5 – Internal Incident Report dated August 13, 2005, with explanation; EXHIBIT 6 – Internal Incident Report dated June 16, 2005; EXHIBIT 7 – Internal Incident Report dated June 14, 2005, with attachments; EXHIBIT 8 – Internal Incident Report dated December 9, 2004; EXHIBIT 9 – Internal Incident Report dated August 29, 2004, with attachment; EXHIBIT 10 – Internal Incident Report dated February 27, 2004; EXHIBIT 11 – Internal Incident Report dated July 23, 2003, with attachments; EXHIBIT 12 - Internal Incident Report dated May 25, 2003, with attachments; EXHIBIT 13 – Metro Civil Service Rule 6.5A; EXHIBIT 14 – Letter dated October 4, 2005.

FINDINGS OF FACT

1. The Appellant was employed by the Metro Emergency Communications Center as a dispatcher for about four years.

2. The Appellant's job performance declined over the last three years of her tenure. In 2003, the Appellant failed to reach expected goals and automatic promotions because of complaints and two disciplinary actions. In 2004, the Grievant received a performance correction notice for seventeen days of unscheduled absences. Finally, between June 16, 2005, and September 15, 2005, the Grievant was disciplined five times, receiving combined suspensions of thirty-two days.

3. According to the testimony of Rickey McWright, ECC Assistant Chief, the decision to terminate the Appellant's employment was based upon the pattern of behavior which

adversely affected the Appellant's job performance. Since most of the Appellant's problems concerned tardiness and absenteeism, the ECC determined that she was deficient or inefficient in the performance of duties and that she failed to devote her entire work time to duty, as required by civil service rules. The ECC attempted progressive discipline without success, and determined that, as a last resort, the Appellant should be dismissed.

4. Also significant in the termination decision was the Metro Civil Service rule which prohibits suspensions in excess of thirty days within any twelve month period. According to Mr. McWright, the ECC had no choice other than termination since the Appellant had been suspended for thirty-two days in a period of about four months.

5. The documentary evidence contains twelve Internal Incident Reports, from May 19, 2003 through August 22, 2005, which describe infractions committed by the Appellant and which impose disciplinary penalties for those infractions. Eight of these reflect incidents of tardiness or unauthorized absenteeism. In all except one (August 3, 2005), the Appellant admitted to the conduct at issue, marking "Guilty" on the form and signing the Incident Report. In eight of the twelve, the Appellant checked the box which states that "I . . . agree with the disciplinary action recommended taken to resolve this complaint and waive my right to present my account of this incident to the Director and/or disciplinary board."

6. The Internal Incident Report dated August 13, 2005 (EXHIBIT 5), describes two consecutive days on which the Appellant failed to arrive at work on time, lists four additional occasions on which the Appellant was disciplined for this offense, and contains the following warning: "If this behavior continues it could be reflected in your evaluation and increments as well as resulting in future discipline and possible termination."

7. The Appellant explained that her unscheduled absences and tardiness resulted from medication she was prescribed for clinical depression. In the spring of 2005, the Appellant was admitted to Vanderbilt hospital where she was diagnosed and treated for this condition. Because of the medication, it is difficult for the Appellant to hear her alarm clock or to awaken from sleep. As the Appellant stated during the hearing, “A lot of the tardiness was due to medications that I was on causing me to oversleep or what have you, just be so out of it that I was to point where it was hard for me to wake up or even hear the alarm clock, phone, whatever.”

8. The Appellant stated that she had notified her employer about her health condition, and twice provided copies of medical records to management. About two weeks before her termination, the Appellant’s work schedule was changed to the second shift in an attempt to accommodate her medical condition and prevent future episodes of tardiness and absenteeism. According to the Appellant, there were no more incidents of this behavior after the schedule change.

9. The Internal Incident Report on August 15, 2005 (EXHIBIT 3) recommended that the Appellant be dismissed from her employment. The Appellant attached a statement to this report asking that her prior record and employment history be considered since “I have been employed at this facility for 4 years now and haven’t had prior to these inc. [?] the problems that are at hand due to medication and am working with my doctor and psychologist to try and correct the problem.”

10. The Appellant also stated that she discussed her medical condition with Assistant Chief McWright during her previous termination hearing, which was conducted by Mr. McWright.

11. Mr. McWright stated that he was unaware the Appellant's medical condition, and that she had not mentioned it during the previous hearing. Mr. McWright did not know whether the Appellant's medical file contains documentation of this problem, since he has not read this file.

12. Although Mr. McWright was unaware of the reasons for the Appellant change to second shift duty, he was aware of the change. However, he also remembered that the Appellant was tardy on the first day she reported for duty on the second shift, contrary to the Appellant's assertion that she was never tardy after she was assigned to the second shift. Mr. McWright explained that the Appellant did not receive a disciplinary report for this incident, at his instruction, because the termination process had already begun and he believed additional reports were unnecessary.

13. Mr. McWright seemed to express doubts about whether supervisory personnel had known the nature and extent of the Appellant's health problems, since she would not have been allowed to work while taking medication that could affect her alertness level or concentration:

The thing I find confusing – if she's working under the conditions that she described under medications, I would think that we wouldn't have her working. If she is drowsy and incapable of getting there and doing her job, in our job that's a must. . . . I would assume that if she brought medical documentation, I don't know why they wouldn't – that would affect her job performance. In our situation she would not have been able to work. She would just have had to have been off on leave or something. I can't imagine why we would accept the liability of a drugged person working, unable to do their job.

Hearing Transcript, pp. 44-45.

RELEVANT LEGAL AUTHORITY

1. The Civil Service Rules of the Metropolitan Government of Nashville and Davidson County apply to this proceeding.

2. Rule 6.4b provides as follows:

An employee who develops a pattern of attendance and/or tardiness problems should be counseled for improvement and should be reprimanded if counseling is not adequate. If the problems continue the employee may be subject to disciplinary action; however, counseling and reprimand are not pre-requisites for disciplinary actions, especially when incidents of AWOL are part of the problem.

3. Rule 6.5A, "Suspension," contains the following statement: "An Appointing Authority may suspend an employee without pay for cause, provided that the suspension does not exceed an accumulation of 30 working days during a twelve (12) month period.

4. Rule 6.7, "Grounds for Disciplinary Action," includes the following: "2. Deficient or inefficient performance of duties"; "4. Absence without notification or approval for leave"; and "18. Excessive absenteeism and/or excessive tardiness and/or abuse of sick leave."

ANALYSIS and CONCLUSIONS OF LAW

The Metropolitan Government has shown by a preponderance of the evidence that termination of the Appellant's employment was appropriate. Throughout the past three years, the Appellant has shown a pattern of unscheduled absence and tardiness in spite of repeated and progressive disciplinary measures taken by her employer to correct this problem. According to the evidence, the Appellant received thirty-two accumulated suspension days in the four month period prior to her termination. The file reflects multiple instances in which the Appellant was significantly tardy, AWOL or absent from duties without authorization, and violated other departmental policies. In an attempt to resolve these problems, the employer imposed progressive discipline including warnings, written reprimands, and suspensions. None of these proved to be effective. Since the Appellant was either unwilling or unable to perform her necessary job duties, the employer had no option other than termination.

The Appellant argued that she was unable to perform acceptably because of a health condition, and that she had notified her employer of this issue. While the Appellant's condition may be very real, several inconsistencies in the evidence are troubling. For example, in the attachment to the Internal Incident report on August 15, 2005 (EXHIBIT 3), the Appellant argued that special consideration was warranted since the problems were of recent origin and were not present in her previous work history. However, a review of the documentary evidence shows otherwise. The Appellant was cited for two incidents of tardiness on August 29, 2004 (EXHIBIT 9), and another on December 9, 2004 (EXHIBIT 8). The file also contains citations for deficient or inefficient performance in 2003 (EXHIBITS 9 and 10) and for insubordination and failure to obey supervisory orders in 2002 and 2003 (Exhibit 12). Contrary to the Appellant's statement, her inability to perform her job began long before the few months prior to her dismissal.

Other inconsistencies appear in the record. On August 3, 2005, the Appellant was cited for a dispatch error (EXHIBIT 1). In her explanation the Appellant stated that the radio was very busy. However, the employee who researched the complaint found that the radio traffic was not heavy and that there were several periods of radio silence.

There are discrepancies in the testimony at the hearing as well. The Appellant stated that, once reassigned to work the second shift, she was never late for work. Mr. McWright testified that she was tardy the very first day after the change. The Appellant also testified that she had discussed her health issues with Mr. McWright during the hearing he conducted. Again, Mr. McWright stated that this matter was not discussed at that time.

The most troubling concern, however, is the Appellant's contention that she had, on multiple occasions, notified her supervisors of her health condition and had submitted complete medical records to them. But it is inconceivable that the ECC would knowingly assign an

employee to dispatch emergency calls while taking strong medications that clearly affected her mental status. By the Appellant's own admission, the drugs caused her to be "out of it" and unresponsive. The very nature of this job, upon which the safety of the public depends, requires concentration and clear thinking. It strains credulity to think that the ECC would knowingly risk public safety, as well as possible liability (as Mr. McWright so candidly reasoned).

The logical and factual discrepancies shown by the evidence indicate that the Appellant is not credible.

In the last analysis, the Appellant failed to perform the essential functions of her employment. She has a long disciplinary history of tardiness, absenteeism (AWOL), and deficient or inefficient performance of duties. For these reasons, termination is appropriate.

Based upon the foregoing it is hereby **ORDERED** that the Appellant's termination be **UPHELD**.

This Initial Order entered and effective this 7th day of December, 2006.

Ann M. Johnson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 7th day of December, 2006.


Charles C. Sullivan, II, Director
Administrative Procedures Division