7-26-2005

METROPOLITAN PLANNING COMMISSION vs. BROOKE B. HALE

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

IN THE MATTER OF

METROPOLITAN PLANNING COMMISSION

V.       

BROOKE B. HALE

DOCKET NO. 43.02-067483J

INITIAL ORDER

This Civil Service administrative proceeding was heard on July 26, 2005 at Nashville, Tennessee, before Anthony Adgent, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Civil Service Commission of the Metropolitan Government of Nashville and Davidson County (Metro). The Honorable Margaret Holleman, Esq. represented the County. Grievant, Ms. Brooke Hale, was represented by The Honorable Ron Hooper, Esq.

The subject of the hearing was the termination of the Grievant from her job with the Metropolitan Planning Commission for violation of Metropolitan Government (Metro) Civil Service Rules and Regulations Chapter 6, Section 6.7, (2) “Deficient or inefficient performance of duties” and (16) “Inability to perform duties when reasonable accommodation has been considered and cannot be made.”

After consideration of the record and arguments of counsel, it is DETERMINED that the termination should be UPHELD. This determination is based on the following Findings of Fact and Conclusions of Law:
FINDINGS OF FACT

1. At the time of her termination, Ms. Hale was employed as an Office Support Representative III of the Metropolitan Planning Commission, which is a civil service position.

2. At the time of her termination, Ms. Hale was serving as a receptionist and office assistant for the Executive Office of the Director of Planning. This position was a very visible, high profile position that required interaction with other departments head, council member, attorney, developers, and commissioners. (Lawrence testimony, P.258, lines 1-17).

3. At the time of her termination, The Metropolitan Civil Service Rules, Section 6.7, “Employee Conduct, Disciplinary Action, and Grievance Procedures,” were in full force and effect.

4. These rules include the following grounds for disciplinary action: Section 6.7, Rule 2: Deficient or inefficient performance of duties, and rule 16: inability to perform duties when reasonable accommodation has been considered and cannot be made.

5. On Monday, October 18, 2004, Ms. Hale arrived at work late. When Ms. Hale arrived, Jeff Lawrence, the Assistant Executive Director and Ms. Hale’s direct supervisor, discussed her pattern of absenteeism in the three and a half months of her tenure with the Planning Commission and the effect it was having on her, personally, and on the office in general. (Lawrence testimony, P.264, lines 4-25, P.265 lines 1-11).

6. During the course of Monday, October 18, Ms. Hale’s behavior caused Mr. Lawrence to have a reasonable suspicion that substance abuse was the cause of Ms. Hale’s behavior. (Lawrence testimony, P.268, line 18-25, P.269, lines 1-17).
7. During the morning of October 18\textsuperscript{th}, Ms. Trish Brooks witnessed Ms. Hale sleeping on and off at her desk. (Brooks testimony, P.108-209, lines 14-25, 1-18).

8. On October 18\textsuperscript{th}, Ms. Hale went to lunch much earlier than usual. Ms. Hale ate lunch while standing behind Ms. Gail Bennett, the front receptionist of the Planning Commission, in an area that is not utilized by employees for personal activities such as eating and talking. (Bennett testimony, P.226, lines 2-13; Brooks’s testimony, P.212, lines 1-15).

9. Ms. Hale was eating another employee’s lunch, and dropped large amounts of food on the floor while she was eating. (Bennett testimony, P.224, lines 11-19, P.226, lines 17-25, P.227).

10. Ms. Hale’s behavior and statements to Ms. Bennett made Ms. Bennett feel threatened and afraid. (Bennett testimony, P. 225, lines 9-12).

11. On October 18\textsuperscript{th}, Ms. Hale fell out of her chair while sitting at her desk and remained on the floor for several minutes, rummaging through her purse and appearing unconcerned by her actions. (Brooks testimony, P. 209, lines 19-25, P.210, lines 1-25; Lawrence testimony, P.267, lines 11-25, P. 268, lines 1-17).

12. During the course of October 18\textsuperscript{th}, Ms. Hale was unable to walk without supporting herself, her words were slurred, she was unable to stay awake, her clothing was unkempt and at times her stomach was visible. (Lawrence testimony, P.269, lines 8-17).

13. Mr. Lawrence determined that there was reasonable suspicion for a substance abuse test, and requested that Ms. Hale submit to such a test. During the test, Ms. Hale
was uncooperative and verbally abusive to the substance abuse tester. (Lawrence, P.269, lines 1-25; Hartsoe testimony, P. 154, lines 155, lines 1-6, P.163, lines 19-22).

14. As a result of these incidents, Ms. Hale was asked to submit to a fitness for duty evaluation to be conducted by the Civil Service Medical Examiner, Dr. Christopher Fletcher. (Fletcher testimony, P. 71-73, lines n13-25, 1-25, 1-13; Exhibit 3).

15. Dr. Fletcher determined that Ms. Hale was not fit for duty in November of 2004. This determined was based upon the following findings: Ms. Hale was not being treated by a physician for whom medical records were provided to help explain if there were some undiagnosed medical condition that would explain her unusual behavior; Ms. Hale was taking substantial amounts of medication that could make her sleepy, and there was evidence of drug-seeking in the medical records; Ms. Hale had significant abnormality in her mental status during the interview with Dr. Fletcher; Ms. Hale was unable to stay awake for an eight-hour period. (Fletcher testimony, P.105; Exhibit 10).

16. Dr. Fletcher was unable to advise the Planning Commission of any reasonable accommodation for Ms. Hale’s current status. (Fletcher testimony, P. 105).

17. As a result of the incidents on October 18th, and receipt of Dr. Fletcher’s recommendation that Ms. Hale was not fit for duty, the Planning Department charges Ms, Hale with violating the Metropolitan Civil Service Rules, Section 6.7, Rules 2 and 16. Rule 2: Deficient or inefficient performance of duties, and Rule 16: inability to perform duties when reasonable accommodation has been considered and cannot be made. (Lawrence testimony P. 273, lines 11-18; Exhibit 12).

18. A disciplinary hearing was held on December 8, 2004 before the Director of Planning, Mr. Rick Bernhardt. The Purpose of this hearing was to allow Ms. Hale to
respond to the charges filed against her in Mr. Lawrence’s December 3, 2004 letter. Ms. Hale explained in the hearing that her behavior was an isolated incident resulting from sleep disorder. Ms. Hale states that her medication regime had been adjusted since October. Ms. Hale stated that she believed she deserved a second chance because there had been no prior instances of poor performance, bad behavior, or disciplinary action in her 13 years with metro. (Lawrence testimony, P.274, lines 10-24, P.281, lines 21-25; Bernhardt testimony, P. 2-8, 25, P. 29, lines 1-10; Exhibit 1).

19. Based upon Ms. Hale’s statements, Mr. Bernhardt reviewed Ms. Hale’s personnel file and found Ms. Hale’s statements regarding her past history to be incorrect. (Bernhardt, P.15-16, lines 25, 1; Lawrence, P.2752276, lines 8-23, 14-22)

20. On August 22, 2003, Ms. Hale received a written Notation of Oral Reprimand from her supervisor at the time in the Human relations Commission. It indicated that on two separate incidents her behavior was deemed “inappropriate and insubordinate.” (Lawrence testimony, P.227-278, lines 21-25, 1-8; Exhibit 14)

21. On September 17, 2003, Ms. Hale received written documentation of a counseling session on that day about excessive unscheduled absenteeism. The documentation indicated that previous counseling sessions had also occurred on December 2, 2002, January 29, 2003, and March 7, 2003 on the same topic. (Lawrence testimony, P276-277, lines 25, 1-13; Exhibit 13)

22. On August 18, 2004, planning department staff discovered Ms. Hale asleep in the restroom long after she was to have returned to her station after her break. The staff began a search for Ms. Hale after covering her work duties for several hours and growing increasingly concerned about her absence. Mr. Bernhardt’s assistant, Ms. Trish Brooks,
went to see if Ms. Hale was feeling well, and asked Ms. Hale to report to Mr. Jeff Lawrence, her supervisor. When Ms. Hale did not report to him, he went to the front desk, and asked if she was all right. Ms. Hale seemed offended to be asked. Ms. Hale indicated she would be able to complete the rest of the day. (Lawrence testimony, P.261,262 (lines1-14); Brooks testimony, P.205, lines 20-25, P206-207; Anderson, P.238, lines 15-25, P.239-240).

23. On September 29, 2004, Ms. Hale had a counseling session with Mr. Lawrence following a written complaint to Mr. Bernhardt stemming from Ms. Hale’s attitude towards a citizen that had come into the building to ask directions to the Commission meeting. The citizen described Ms. Hale’s behavior as rude and unhelpful. Ms. Hale agreed that she was the person at the front desk at 3:45-4:15 that day. (Exhibit 1)

24. Ms. Linda Bernhardt witnessed Ms. Hale sleeping at the front desk while Ms. Hale was supposed to be greeting visitors. (Bernhardt testimony, P.144, line 15-24)

25. Ms. Linda Bernhardt determined that Ms. Hale was guilty of the charges brought against her. Mr. Bernhardt bases the termination on the activities of October 18, 2004, and the lack of fitness for duty or any available reasonable accommodation. Mr. Bernhardt also determined that Ms. Hale’s documented performance problems at the Human Relations Commission, and her performance problems at the Planning Department prior to October 18, 2005, supported his decision that termination was the most appropriate disciplinary action to take. (Bernhardt testimony, P. 33, P.34, lines 21-25, P.35, lines 4-13).
26. Ms. Hale had performance problems while employed at Metro Water Department. During her tenure there, Ms. Hale was charged with violating Civil Service Rules 6.7.(11), (12), (13) for using abusive and profane language so as to create a disturbance in the work place, conduct unbecoming a Metro employee, violation of the rules, regulations or policy of Metro, and dishonesty. (Hale testimony, P.379-382).

**CONCLUSIONS OF LAW**

1. It is the responsibility of an employee of the Metropolitan Government to abide by the rules and regulations of the Civil Service Commission.

2. The Civil Service Rules 6.7 (2) and 6.7(16) require that employees perform their duties efficiently and sufficiently, and that employees be able to perform their duties.

3. Brooke Hale’s action’s on October 18, 2004 demonstrate a deficient performance of duties, and those actions, when considered with previous job performance problems, and the recommendation of the Civil Service Medical Examiner, demonstrated that Ms. Hale was unable to perform her job duties.

4. Based upon the evidence considered at the hearing and the facts stated above, there was no reasonable accommodation the Planning Commission could make.

5. Based upon the evidence considered at the hearing and the facts stated above, the Planning Commission had just cause to find Ms. Hale guilty of violating the rules of the Civil Service Commission.

6. It is imperative that the Planning Commission have employees who are able to perform their duties.
Therefore, based upon these findings and upon de novo review of the evidence presented regarding Ms. Hale’s job performance during her entire tenure with Metro, I find that the termination of Ms. Hale was appropriate.

Therefore it is **ORDERED** that the termination be **UPHELD**.

Entered this 21st day of September, 2005.

_________________________________
Anthony Adgent  
Administrative Judge

Filed in the Administrative Procedures Division, this 21st day of September, 2005.

_________________________________  
Charles C. Sullivan, II, Director  
Administrative Procedures Division  
Office of the Secretary of State