

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

NINA BLACKBURN,	:	
Petitioner,	:	Docket No.:
	:	OSAH-SPB-SWP-1418652-75-Teate
v.	:	
	:	
DEPARTMENT OF TRANSPORTATION,	:	
Respondent.	:	



DEC 26 2013

INITIAL DECISION

I. Introduction

Kevin Weistray
Kevin Weistray, Legal Assistant

In response to a one-week suspension without pay, Nina Blackburn (NB) requested a hearing that was held on December 16, 2013. NB represented herself and Kisa D. Pangburn, Esq. represented the Department of Transportation (DOT). For reasons indicated, DOT's action suspending NB's pay for one week is AFFIRMED.

II. Findings of Fact

Background

1. Since May 1, 2012, NB has worked as a Testing Management Field Technician 2 in DOT's Tennille District (District 2). Unless otherwise directed or authorized, NB is required to begin her work day at 7:00 a.m. and conclude it at 5:30 p.m. Tuesday through Friday, a 4-day, 40-hour week. She routinely parks her personal car at a DOT maintenance facility in Covington where she parked the State vehicle assigned to her at the facility at the end of her prior work day. She then reports to designated work sites that vary per work assignment and often require travel. She is assigned a work phone that is available to her at all times. At least once a month, NB must travel from Covington to Tennille, approximately 100 miles, to attend mandatory safety employee meetings that begin at 9:30 a.m. (Respondent Exhibits 1, 9).
2. Inasmuch as NB's work is often performed outside the presence of her supervisors, it is very important that she always be available by telephone and/or email to receive directives, especially so in the morning. (Respondent Exhibits 1 and 9; Testimony of Rick Douds, Testing Bureau Chief; Testimony of Sean Oglesby, lab coordinator).
3. Sean Oglesby, a lab coordinator, is currently her immediate supervisor. Other supervisors above Mr. Oglesby in the management ranking include Robbie Byrd, Tommy Gunn, Rick Douds, and Charles Hasty. Neither Mr. Oglesby nor Mr. Byrd had any awareness of adverse actions taken against NB prior to her assignment to the Tennille District. Mr. Gunn, Mr. Douds and Mr. Hasty

have higher level management positions that do not contemplate routine supervision of NB's work. (Testimony of Sean Oglesby; Testimony of Robbie Byrd; and Testimony of Rick Douds).

4. Prior to the actions that prompted the current adverse action, Robbie Byrd and Shawn Oglesby met with NB for a coaching session on July 25, 2013 to address concerns about her performance. Those concerns included being on time for scheduled meetings and the need to keep voicemail cleared on her State-issued telephone so that her mailbox was not full. NB had consistently been late for the schedule monthly safety meetings. Routinely, NB has used her driving time as an excuse for her failure to attend monthly safety meetings on time. (Testimony of Robbie Byrd; Testimony of Shawn Oglesby; Respondent Exhibits 10 and 13).

Incident on October 1, 2013

5. On October 1, 2013, Shawn Oglesby attended a work seminar in Forest Park and Robbie Byrd covered Mr. Oglesby's supervisory duties as well as those of another area coordinator who was attending the same seminar. At 7:03 a.m., Greg Moss, who was on leave that day, called Robbie Byrd to inform him that he had tried to contact NB to inform her that an inspector needed a service performed and that he was unable to get in touch with NB. At 7:24 a.m., Mr. Byrd first attempted to contact NB and got her voicemail; however, he was unable to leave a message because NB's mailbox was full. Mr. Byrd tried again unsuccessfully at 7:46 a.m., 7:55 a.m., 8:56 a.m., 9:03 a.m., 9:21 a.m.; 10:02 a.m., 10:26 a.m., 10:44 a.m., 10:46 a.m.; and 11:05 a.m. In the interim of his calls, Mr. Byrd requested lab staff at Tennille to check e-mails, workforce and phone calls to see if NB had attempted to contact anyone. No such contacts were identified. At 10:43 a.m., Mr. Byrd also called James Rockmore, the Maintenance Foreman for Area 5 where NB parks her personal vehicle and picks up her State vehicle. Mr. Rockmore reported that her State vehicle was there but that her personal vehicle was not. At 11:31 a.m., Mr. Byrd successfully contacted NB, who indicated that she had overslept and had just woken up, that she could be at work by 12:30 p.m., and that she could work late to make up for the time missed. Mr. Byrd informed her that there was no need to work late since there would be no work after hours. NB did not report to work at 12:30 p.m. as indicated and did not call in to report her absence. (Testimony of Shawn Oglesby; Testimony of Robbie Byrd; Testimony of NB; Respondent Exhibit 9).

6. Just prior to Mr. Byrd's call at 11:31 a.m. (11:32 a.m. on her record), NB awoke and attempted to contact Mr. Oglesby at 11:28 a.m. She was unsuccessful in her attempt and had forgotten that Mr. Oglesby was at a seminar that day. Although she had family issues that interfered with her sleep two nights before, she acknowledged that she overslept. She had awoken earlier at about 4:15 a.m. and had planned to report to work but fell back asleep. (Testimony of NB; Respondent Exhibit 13).

7. NB interpreted Mr. Byrd's statement to the effect that she did not need to work to be a directive that she not report to work for the remainder of the day even though Mr. Byrd lacks supervisory authority to alter her routine work hours. (Testimony of NB; Testimony of Robbie Byrd).

Incident on October 2, 2013

8. After talking to NB on October 1, 2013, Mr. Byrd emailed her a reminder that she needed to be on time for the safety meeting the following day. The next morning on October 2, Mr. Byrd called NB shortly after 7:00 a.m., again telling her to be on time and leave soon enough to arrive at the Tennille lab by 9:20 a.m. shortly before the beginning of the safety meeting at 9:30 a.m. NB arrived at 9:40 p.m. and was again late for the monthly safety meeting. (Testimony of Robbie Byrd; Respondent Exhibit 9).

9. NB indicated that she was delayed in reporting due her need to complete mileage and fuel logs prior to the safety meeting. For the need to do so prior to the October 2 meeting she relies on an email directive from Thomas Gunn on August 28 regarding the September 5 meeting that indicated mileage and fuel logs should be completed prior to that meeting in order to allow supervisory review before submitting them to an office in Forest Park before September 6. (Testimony of NB; Respondent Exhibit 13).

Imposition of Sanction

10. In interdepartmental correspondence dated October 3, 2013, NB's failure to perform duties on October 1 and October 2 was reported to DOT human resources as: (1) failure to inform supervisor about being off work on October 1; (2) being late for scheduled safety meeting generally in the past and specifically on October 2; and (3) failure to communicate properly. (Respondent Exhibit 9).

11. Appropriate supervisory personnel and human resources personnel reviewed the current allegations as well as NB's work history before determining an appropriate sanction. On October 24, 2013, Charles Hasty, P.E., State Materials Engineer, issued the initial letter proposing suspension for one workweek (40 hours) based on NB's failure to report for work without justifiable cause, negligence and misconduct. The work history is outlined in detail ranging from occurrence on June 11, 2009 to July 19, 2012. Notably, those prior occurrences include: (1) a letter of concern on December 2, 2010 regarding inefficiency in reporting to work within the required time frame; (2) a November 21, 2011 coaching session regarding leave request procedures and the need to improve performance when requesting time off on short notice; (3) a letter of concern and expectations for failure to adhere to DOT's leave policy on December 7, 2011; and (4) a prior adverse action based on allegations of leave and conduct issues that resulted in a consent order on July 12, 2012 whereby NB agreed to a voluntary demotion from a former supervisory position and assignment to her current non-supervisory position. (Testimony of Rick Douds; Testimony of Charles Hasty; Respondent Exhibit 11).

12. NB requested review of Mr. Hasty's decision. Jeff Baker, the Director of Construction and the Commissioner's designee, conducted the review. After reviewing NB's performance records, the current allegations, NB's responses to the allegations and NB's prior employment history, Mr. Baker issued a final suspension notification on November 6, 2013. In that notification, Mr. Baker upheld the suspension based on NB's failure to report to work without justifiable cause, negligence and misconduct. (Testimony of Jeff Baker; Respondent Exhibit 12).

13. NB filed the current appeal and opines that the punishment is excessive and is based on “lies” contained in prior documents contained in her work history. There are no rebuttals in NB’s personnel file and she produced no copies of any rebuttals that she alleges were filed. (Testimony of NB; representation of Kisa Pangburn, Esq., DOT’s counsel).

III. Conclusions of Law

1. The appointing authority may suspend an employee without pay for disciplinary purposes. Ga. Comp. R. & Regs. 478-1-.24 (7) (b) (1). Suspension without pay is one of several actions authorized including dismissal. Ga. Comp. R. & Regs. 478-1-.24 (b). Although principles of progressive discipline are routinely utilized, no directives in the State Personnel Rules specify any progression that must occur within authorized adverse actions.

2. Absent emergency circumstances, GDOT’s annual leave policy contemplates discretionary approval by an appropriate supervisor upon sufficient notice to the supervisor as is reasonably possible, minimally within twenty-four hours of use. GDOT Policy 2230-2, *Annual Leave*. Without good cause, NB failed to adhere to this standard on October 1, 2013 when she overslept and again when she failed to report for work at all. Her opinion that Mr. Byrd somehow directed her not to appear is not reasonably supported by the record. He only stated that working late to make up time was not authorized.

3. Use of sick leave requires appropriate supervisory approval and an employee may be required to report each day by telephone or to provide supporting documentation of its use. GDOT Policy 2230-4, *Sick Leave*. There is no evidence supporting NB’s absence as leave that could be approved as sick leave.

4. Conditions of employment include: (1) reporting to work on time and observing appropriate call-in procedures or late arrival and/or absence; (2) using leave appropriately, including submitting timely requests and providing documentation for use of leave when required; and (3) complying with instructions from all supervisors and managers, including but not limited to job directives, coachings and meeting requests. GDOT Policies and Procedures, Policy 2255-1 *Standards of Conduct*. Failure to meet such standards is considered inefficiency and/or negligence in performing assigned duties and may result in disciplinary action up to and including separation from employment. *Id.* Even without reference to NB’s prior work history, the imposition of suspension without pay for one week is reasonable. NB negligently failed to inform her supervisor about being off work on October 1. NB was late for scheduled safety meetings routinely. Specifically, on October 2, she again reported late after a coaching session in July, an email from Mr. Byrd on October 1, and a reminder call from Mr. Byrd on October 2 before the meeting. The sanction chosen is less than harsher sanctions such as another demotion or dismissal that could have been chosen.

5. In a case involving suspension without pay of a classified employee, an agency has the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07 (1). The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. 616-1-2-.21 (4). DOT has met its burden to show that the sanction imposed is appropriate. NB has presented no convincing evidence that refutes the appropriateness or reasonableness of DOT’s determination of sanction.

IV. Decision

For the foregoing reasons, DOT's November 6, 2013 determination that NB is suspended without pay for a week is **AFFIRMED**.

SO ORDERED, this 20th day of December 2013.

A handwritten signature in black ink, appearing to read "S. W. Teate", written over a horizontal line.

Steven W. Teate
Administrative Law Judge