

BEFORE THE ARBITRATOR

In the Matter of an Arbitration Between: BMS Case No. 08PA1446
State of Minnesota Case No. 08-257
STATE of MINNESOTA, DEPARTMENT AFSCME Case No. 08M-16-1307-14214
of HUMAN SERVICES, STATE
OPERATED SERVICES, ADULT MENTAL Grievant: Heather Mewhorter
HEALTH Subject: One-Day Suspension

and Heard: 1/29/09
Record Closed: 1/29/09
Award Issued: 2/6/09

AMERICAN FEDERATION of STATE
COUNTY and MUNICIPAL EMPLOYEES,
AFSCME, MINNESOTA COUNCIL 5 Sherwood Malamud, Arbitrator

APPEARANCES:

Ann Elizabeth Thompson, Labor Relations Representative, Minnesota
Management and Budget, appearing on behalf of the Employer.

Amanda Prince, Business Representative, AFSCME MN Council 5, AFL-
CIO, appearing on behalf of the Union.

ARBITRATION AWARD

Jurisdiction of Arbitrator

The State of Minnesota, Department of Human Services, State Operated Services, Adult Mental Health, hereinafter the Employer, and AFSCME Minnesota Council 5, hereinafter the Union, are parties to a Collective Bargaining Agreement that provides for the arbitration of grievances. On October 2, 2008, the parties notified Sherwood Malamud of his selection to hear this grievance concerning the Employer's discipline of Grievant with a one-day suspension. Hearing in the matter was held on January 29, 2009 at the Administration Building on the campus of the Anoka Metro Regional Treatment Center in Anoka, Minnesota. The parties presented testimony, documentary evidence and argument at the hearing. At the conclusion of the hearing on January 29, 2009, the record in the matter was closed. A transcriptual record of the proceeding was not made. Based on the evidence and arguments presented, the Arbitrator issues the following Award.

ISSUE

The parties were able to stipulate to the formulation of an issue to be determined by the Arbitrator. It is:

Did the Employer have just cause to issue the Grievant a one-day suspension? If not, what shall be the remedy?

BACKGROUND

Heather Mewhorter, Grievant herein, has 11 years of experience as a Licensed Practical Nurse (LPN) and approximately 4 years seniority with this Employer at the time of the imposition of the one-day suspension which is the subject of this arbitration proceeding. Grievant had served two and a half years on Unit H and six months on Miller South, when the Employer suspended her for one day. Miller South houses the Treat to Competency Program. Patients in this program receive treatment to enable them to progress to a point that they are able to stand trial.

The events leading to the imposition of the discipline at issue stretch over a period beginning September 2006 through January 2008. During that period of time, Grievant made 10 medical transcription errors.

The precipitating events that resulted in the decision of Grievant's immediate supervisor, Registered Nurse Stephanie Kuznia, to impose discipline occurred on January 3 and 8. Grievant made the same medical transcription error on both January 3 and January 8, 2008. She entered on the Medical Administration Record (the MAR) the notation from a Physician's Order form to administer the Mantoux tuberculin test at a dosage level of 0.01 rather than at the standard dosage of 0.1 milliliters. The Physician form just indicates whether the medication should be administered or not. The form in use on January 3 and 8 does not specify the dosage.

The Mantoux Tuberculin test is administered with some frequency on this unit. The dosage level is known. Grievant knew the Mantoux dosage level to be

0.1 milliliter. She erroneously moved the decimal in transcribing the dosage onto the MAR from 0.1 to 0.01.

A dosage of 0.01 milliliters is insufficient to indicate whether or not the patient has Tuberculosis. Among those who are tested are new patients. The Employer tests for TB to prevent the introduction of this highly communicable disease into the facility to prevent its exposure to staff and patients. Since the dosage level for Mantoux is well known by staff, the Employer attributed lack of diligence as the reason for Grievant's transcription error.

The Employer's policy requires that medical transcriptions from physician's orders to the MAR be checked by a second LPN. The January 3 transcription error was missed by the second LPN.¹ The erroneous dosage level was administered on January 3 and the results read on January 6. The Employer did not catch the transcription error until January 14, 2008. In addition to the double-check of the transcription by a second LPN, the day nurse/ the evening nurse review the MAR. It was the final administrative check that caught the transcription error.

On January 8, Grievant made the same transcription error for a prescribed Mantoux test for another patient. This transcription was double-checked by a float LPN from another unit. Both errors, although separated by five days, were caught on January 14. However, on January 8, Mantoux was not administered at the dosage level, the erroneous level, that Grievant transcribed to the MAR.

Grievant's supervisor, Kuznia, elected to impose a one-day suspension. Her decision to do so is based on Grievant's record of medical transcription errors, the additional training opportunities she received, the policy review conducted with Grievant by both by the supervisor and the Employer's Education Trainer and the imposition of progressive discipline, a verbal and a written reprimand. All the discipline and additional corrective actions occurred over a period of one and a half years.

¹The second LPN, who checked and missed the error, received a 1-day suspension, as well.

A review of Grievant's work history from 2006 to 2008 reveals that while on Unit H, Grievant made transcription errors on September 8 and 26, October 10, 2006, and on January 4, 2007. Her supervisor on Unit H, Elaine Fitzgerald, directed that Grievant receive re-training and attend a transcription review class with the Employer's Educational Trainer DeFoe. Grievant participated in a one-on-one policy review covering medical transcription with DeFoe on January 14, 2007. She participated in the three hour medical transcription review class taught by DeFoe on January 16, 2007. All LPN staff are required to attend a medical transcription review course annually.

In a Performance Review in February 2007, Fitzgerald, Grievant's supervisor on Unit H graded Grievant's medical transcription errors as below expectations. The supervisor's rating of Grievant's other duties and responsibilities included many exceeds expectations and meets expectations for an overall performance review score of meets expectations.

On June 5, 2007, Grievant failed to follow policy and omitted making an entry on the MAR. She failed to enter the results of an Accucheck. Fitzgerald issued a verbal reprimand for this transcription error. On July 17, Grievant made another medical transcription error. She failed to note that the prescribed medication Haldol 15 mg, was to begin on July 20. The omission resulted in the order beginning on July 17 rather than on July 20 as ordered by the physician. Fitzgerald issued a written reprimand in response to this medical transcription error.

Shortly after this incident, Grievant transferred to Miller South. On the July 25, 2007 performance review completed by her former supervisor Fitzgerald, again medical transcription errors were identified as the deficiency in her work performance that required improvement.

Shortly after her transfer to Miller South, Grievant failed to note on the MAR that the prescribed medication, Ativan, had been administered to the patient. Her new supervisor, Kuznia, reviewed the medical transcription policy, Employer

Exhibit 15, with Grievant. The supervisor did not impose discipline, inasmuch as, Grievant had just transferred to Miller South.

The next two errors, one on January 3 and the other on January 8, 2008, are the medical errors described above which precipitated the imposition of the discipline which is the subject of this arbitration. Grievant served the one-day suspension on January 25. In addition to the discipline imposed, Kuznia required that Grievant follow a Medical Error Corrective Action Plan. Beginning on January 18 through July 18, 2008, Kuznia directed that Grievant's completed medical transcriptions be checked and co-signed by a Registered Nurse. In addition, Kuznia directed that Grievant attend a medical transcription review. Grievant attended the annual medical transcription review on February 13, 2008.

In Grievant's February 21, 2008 performance review completed by Kuznia, the supervisor notes excessive medical errors as the only area where Grievant's performance was below expectations.

On March 31, 2008, Grievant filed the within grievance protesting the Employer's imposition of a one-day suspension. The parties processed the grievance through the grievance procedure. It is properly before the Arbitrator.

DISCUSSION

The Parties' Arguments

The Employer argues that ten transcription errors in a year and a half are too many. The Employer applied progressive discipline. It imposed a verbal reprimand, a written reprimand, and followed that discipline with a one-day suspension. Grievant admits she committed the errors. The Union's defense that no one was injured is more a matter of luck.

Grievant's errors continued until the Employer imposed a suspension. The Employer maintains that it had just cause to impose the suspension. It requests that the Arbitrator deny the grievance.

The Union argues that the errors are the product of the Employer's procedures. The transcription errors were the product of the form. The Physician Order form did not specify the dosage. Once the form was corrected in April 2008, the problem disappeared.

Furthermore, the Union notes that it took two weeks before the Employer discovered the January 3 transcription error. Had Grievant received timely notification of the dosage transcription error, she would not have repeated the same error on January 8.

The Union notes that the Employer has abandoned the manual transcription of forms and has gone all electronic. The factual circumstances that would give rise to the kinds of errors involved in this case are no longer in place. The Union argues, therefore, that the discipline imposed is excessive. It requests that the Arbitrator: sustain the grievance, remove the suspension from Grievant's record, and reimburse her for the pay lost as a result of the Employer's imposition of the one-day suspension.

The Merits

The facts as described in the Background section of this Award are not in dispute. Grievant acknowledges that she made the medical transcription errors noted and brought to her attention by supervision.

The Employer established its case. Grievant made the medical transcription errors noted. The Employer provided Grievant with additional training. Her supervisor reviewed the medical transcription policy with her. The errors she made in transcription to the MAR, the omission of indications that medication had been administered, improper entry of dosage levels or times at which medication is to be administered, all put patients at risk. Patients may receive an overdose or may have a medical regimen begin before the time or at times at variance with the physician's orders. The fact that, over the course of the 10 errors she made, no patient was harmed is a matter of good fortune rather than the description of the manner in which an LPN should carry out her responsibilities.

The discipline imposed did not serve as a substitute for additional training, but came with additional training. Even the imposition of the one-day suspension was accompanied by a Corrective Action Plan to improve Grievant's transcription. The discipline and additional training were all geared towards correcting the problem that resulted in the multiplicity of medical transcription errors over a relatively short period of time of a year and a half.

Grievant alludes to reasons that may have caused the errors; she had to work in circumstances that were noisy and distracting. An LPN is very busy performing the other functions of her job. However, medical transcription constitutes 20% of the job responsibilities of an LPN as delineated in the position description for a licensed practical nurse, Employer Exhibit 17, paragraph 7. It is an important responsibility of an LPN. The frequent training and double-checking of the transcription performed by another LPN and the reviews of the MAR indicate the importance that the Employer ascribes to this responsibility.

The Union was unable to establish a basis for mitigating the penalty imposed. Its arguments that the Employer switched to an electronic system of recording orders, and before that, changed the form to specify dosage level, do not remove the basis for discipline. The Employer attributes the medical transcription errors to a lack of diligence. It is the work characteristic, diligence, the Employer seeks to improve through the discipline and training it provided to Grievant. Whether an LPN implements or transcribes physicians' orders and whether the orders are in electronic form or appear on a more detailed form that specifies dosage, route and location for the administration of medication, the need for diligence remains. Technology may reduce the opportunity for error, it does not eliminate it.

In her performance reviews, the Employer acknowledges that Grievant is an excellent employee who performs her responsibilities in a manner that exceeds expectations in many respects. However, in this one respect, medical transcription, her performance did not meet expectations. The Employer had just cause to impose discipline. It used progressive discipline to alert Grievant to her need to reduce her medical transcription errors. Grievant received verbal and

written reprimands for the errors that preceded the ones on January 3 and January 8, 2008. In a progressive discipline system, the level of discipline increases in response to each instance of misconduct that continues to occur. The first instance warrants a verbal reprimand; the fourth instance of the same error or infraction warrants greater discipline, in this instance a one-day suspension. For all of the above reasons, the Arbitrator concludes that the Employer had just cause to suspend Grievant for one day.

Based on the above discussion, the Arbitrator issues the following:

AWARD

The Employer had just cause to issue the Grievant a one-day suspension. Accordingly, this grievance is denied.

Dated at Madison, Wisconsin, this 6th day of February, 2009.

Sherwood Malamud
Arbitrator