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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0224**

In the Matter of the Dismissal of Judith Wryk.

**Filed August 18, 2009
Affirmed
Harten, Judge***

Hennepin County Human Resources Board
Agency File No. 11-6220-19274-3

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Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and
Harten, Judge.

UNPUBLISHED OPINION

HARTEN, Judge

Relator, a former employee, challenges the determination of an administrative law
judge (ALJ) that respondent, a public employer, had just cause to discharge relator.

Because substantial evidence supports that decision, we affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

FACTS

Respondent Hennepin County had a program to provide alternative jobs to employees whose positions were being eliminated rather than utilize layoffs. In September 2003, relator Judith Wryk, an employee whose managerial position was being eliminated, was interviewed under this program for the position of Principal Support Service Supervisor (PSSS) in the Child Protection Division (CPD) of the County Attorney's Office (CAO). She received a job description; the job duties included providing backup for legal secretaries by performing core legal secretarial work. Relator accepted the job.

In December 2003, relator began work as PSSS. In March 2004, she received a copy of the training schedule used by a former PSSS to learn how to perform legal secretary duties. Relator did not implement the training schedule. In December 2004, at an oral performance evaluation, relator's supervisor told her that she needed to acquire computer and legal secretarial skills so that she could back up the legal secretaries. In June 2005, and again in September 2005, relator was reminded that she had to learn to perform the legal secretaries' core duties.

In June 2006, relator received a "Needs Improvement" rating on a written performance evaluation because she had failed to demonstrate improvement in either her interactions with her staff or her performance of secretarial duties. In February 2007, she received another "Needs Improvement" rating for the same reasons.

In September 2007, respondent notified relator that she would be dismissed. She appealed; after an internal hearing, a deputy county attorney denied the appeal. She

appealed again, and, following a hearing, an ALJ concluded that respondent had just cause to discharge relator. The ALJ denied relator's request for reconsideration, and she sought certiorari review, arguing that the ALJ's decision was not supported by substantial evidence.

DECISION

"No permanent [Hennepin County] employee in the classified service shall be suspended, demoted, or discharged except for just cause." Minn. Stat. § 383B.38, subd. 1 (2008). The ALJ determined that respondent had just cause to terminate relator.

An agency decision will be reversed only when it constitutes an error of law, when the findings are arbitrary and capricious, or when the findings are unsupported by substantial evidence. . . . Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. On appeal, the appealing party bears the burden of establishing that the findings of the agency are unsupported by the evidence in the record, considered in its entirety.

Fine v. Bernstein, 726 N.W.2d 137, 142 (Minn. App. 2007) (citations omitted), *review denied* (Minn. 17 April 2007).

The ALJ found that respondent had demonstrated that relator failed to acquire the technical competence and interpersonal skills needed for her job; the ALJ also found that relator did not show extenuating circumstances that would support a form of discipline other than discharge.

1. Technical Competence

The ALJ found:

[I]t is evident that [relator] failed to demonstrate the technical skills necessary to suitably perform the duties required of the PSSS position. She did not develop, over a period of nearly four years, the necessary computer

skills and familiarity with the . . . documents required in CPD legal proceedings.

....

Even after nearly four years, [relator] was not sufficiently comfortable with the duties and procedures of the legal secretarial staff to function as a viable support and back-up to the CPD secretarial staff.

The record indicates that testimony from relator's supervisor and from an attorney whom relator was assigned to assist supports the ALJ's observations.

a. Relator's Supervisor

Relator began work as PSSS in December 2003. Her supervisor testified that, at an oral evaluation a year later, she "addressed [relator's] lack of computer skills and . . . said [she should] get moving on these goals, which included secretarial duties" because "[t]o [her] knowledge, [relator] had not performed." Relator's supervisor further testified that relator did not meet the goals in 2005, even after working for two years.

Relator's supervisor testified that, in a June 2006 written evaluation of relator, she "didn't feel that [relator] had been acting on learning secretarial duties" and that relator's performance improvement plan required her to "perform legal secretarial duties and provide coverage." Relator's supervisor "did talk to [relator] . . . on December 13, 2006 about her continued lack of very basic technical skills, including not knowing how to use a typewriter." Relator's supervisor responded "Correct" to the question that, by relator's next evaluation in February 2007, "she had not improved substantially[.]" Relator's supervisor also testified that relator had said work for one attorney took between 80 and 90 percent of relator's time when "for the average secretary [this work] might take up 20 percent of their time."

b. Relator's Assigned Attorney

In 2006, relator was assigned to assist an attorney so she could learn the legal secretary function. The attorney testified that: "I would have to explain [to relator] the document and exactly what it is that I needed. . . . [R]eally I am a fast typ[ist], . . . so most of the work that I would give to [relator] had to do with formatting." The attorney also stated:

After a period of time [relator's asking so many questions] was frustrating to me because I thought by then she should have known the process well enough, and I know that she was asking other legal secretaries for help on that, and I know that because of a couple of times I would give something to [one of the other secretaries] simply because I needed it done quickly and I didn't have time to go over in detail the way that [relator] would ask me about. . . . I think [relator] herself told me that she had asked some of the other secretaries for help or assistance.

The attorney also testified that she sometimes figured out how to do secretarial jobs herself because it was quicker than asking relator for help.

Asked if attempts were made to train relator, the attorney testified, "[Relator] tended not to accept that she needed to make improvements. It tended to be . . . somebody else's problem . . . either she was given something too late or somebody was unreasonable . . . she just didn't seem to be willing to take constructive feedback"

Thus, the testimony of relator's supervisor and relator's assigned attorney provide support for the ALJ's finding that relator "failed to demonstrate the technical skills necessary to suitably perform the duties required of the PSSS position."

2. Interpersonal Skills

The ALJ also found that:

[Relator] failed to demonstrate the personal interaction and supervisory skills necessary to perform the duties required of the PSSS position. She engaged in a prolonged and consistent pattern of inappropriate interactions and altercations[,] . . . repeatedly created conflict and provoked confrontations[,] . . . and consistently failed to resolve office issues. In addition, the attorneys to whom she was assigned found her to have an unpleasant and negative attitude about performing secretarial work.

Despite being coached repeatedly on interpersonal skills and leadership skills, [relator] continued her disrespectful behavior toward the support staff with little improvement over the nearly four-year period she was in the PSSS position. . . . [Relator's] demonstrated unwillingness to accept coaching or feedback provides further justification for her dismissal from employment.

Testimony from the CPD's managing attorney and from another attorney whom relator was assigned to assist supports these findings.

a. Managing Attorney

The managing attorney testified about an incident between relator and a receptionist. The receptionist, a temporary agency employee, had gone to an emergency room because of a health problem. Relator notified the agency, which then told the receptionist that she could not return to work without a letter from a physician—but the emergency room did not provide such letters. The managing attorney said, “I didn’t think [relator] handled that situation appropriately. I think that it wasn’t necessary for her to contact [the agency], and I think that when it became clear that . . . something was going to be asked of [the receptionist] that would be very difficult for her to do . . . [relator] did not handle it well.”

The managing attorney also testified about a problem with relator and a legal secretary who worked part time with a flexible schedule: “[T]he issue was that [relator] didn’t like the fact that [the secretary] had a flexible schedule. . . . [She] was my secretary for a period of years . . . [and] I knew that there wasn’t any problem with her schedule.” The situation escalated when the secretary asked relator if she could take some time off and make it up later. The managing attorney testified that: “[relator] told her that she thought that [the secretary] was taking advantage of [respondent] with this incident, and . . . [implied that] in the way [the secretary] handled her schedule in general [that] she was taking advantage of [respondent.]” The managing attorney also testified:

I was concerned because it was a situation, again, where [relator] . . . was challenging [the secretary] about her schedule. I felt that that should not have happened. . . . I felt [relator] provoked the situation. . . . [W]e expect a supervisor in the office to be able to handle a situation like that without having it escalate. . . .

....

. . . [I]t was clearly an unpleasant workplace experience; and I think everybody in the division experienced it that way.

The managing attorney also testified that relator’s evaluations of those she supervised “were written in a way that [they] were likely to offend the person reading [them], that might provoke them to be irritated or annoyed, and that wasn’t necessary.” Relator’s supervisor tried to point out “ways in which [relator] could be less provocative” Relator made the changes recommended by her supervisor but then, without telling her supervisor, refused to sign the evaluations. The managing attorney testified that she

felt that it had been insubordinate of [relator] to not sign the evaluations and not tell [her own supervisor] what she was doing. . . . [I]t appeared

certainly to be a statement by [relator] that she . . . disagreed with the content or she resented the fact that [her own supervisor] had made comments [Relator] was trying to make some sort of a statement through not signing the evaluation[s] and then not letting us know that rather than just deal with the issue.

The managing attorney also testified as to the impact relator's conduct had on the whole division:

[I]t had a negative impact on the division as a whole. . . . [I]ncidents . . . happened that have been testified to here and . . . when they would happen people would find out about them or people would hear a version of them, and it would be upsetting, it would be upsetting to the attorneys, it would be upsetting to the paralegals, it would be upsetting to the other secretaries. . . . so it had kind of a general demoralizing effect on literally everybody in the division.

b. Relator's Assigned Attorney

Another attorney to whom relator was assigned was asked how she would describe relator's treatment of others. She replied, "Very poorly. [Relator] was very rude, disrespectful, just not very pleasant." The attorney testified that the work she needed done was "pretty easy and basic" and that, while relator was able to do the work, she did it "[v]ery begrudgingly. It felt to me like it was obvious she didn't want to be doing this work. . . . [It] was, . . . how dare she have to do secretarial work. . . ." The attorney described an incident that occurred after relator had worked with her for about six weeks. Because of relator's manner, the attorney asked if something was wrong. Relator responded: "I told you before I am not a secretary, and I didn't ask to do this." The attorney replied "Well, I didn't ask to work with you either." She later "left [relator's supervisor] a voice mail that [the attorney could not] work with [relator] anymore[]" and needed a new secretary.

Again, this testimony supports the ALJ's finding that "[relator] failed to demonstrate the personal interaction and supervisory skills necessary to perform the duties required of the PSSS position."

3. Extenuating Circumstances

If a discharged employee asserts and the record shows extenuating circumstances, an ALJ may substitute a lesser disciplinary action. Minn. Stat. § 383B.38, subd. 1a(e) (2008). The ALJ found that:

[Relator] presented no convincing evidence of extenuating circumstances to show that discharge is not justified. While it is apparent that this position was not a good fit with [relator's] interests and abilities, it is also clear that, rather than make the best of a difficult situation, [relator] refused to step up and try to learn the skills she needed to learn and to get along in a work culture that was outside of her comfort zone. . . . Ultimately, [relator]'s presence in the CPD could not be justified, given her inability to do what was needed of her and her demoralizing impact on her staff and others in the office.

Relator alleges five extenuating circumstances: (a) the PSSS job was a demotion for her; (b) she lacked the skills and qualifications for it; (c) she was praised for many areas of job performance; (d) she was criticized for reporting other employees' violations of respondent's rules; and (e) she received only one written reprimand prior to termination. None of them precludes her discharge.

a. Demotion

At her first meeting with the employees she supervised, relator told them that "she didn't plan on staying because [the PSSS job] was a demotion and she was going to be leaving soon." But the PSSS job was offered as an alternative to a layoff when relator's other job was eliminated. She was not obligated to take the PSSS position. In her brief,

she speculates that “[respondent] likely could have transferred her to a position that was more consistent with her prior job responsibilities and did not require her to do secretarial work,” but she provides no evidence that there was such a position available.

Moreover, testimony from respondent’s human resources generalist (HRG) indicates that relator was not open to respondent’s efforts to find her an alternative position. The HRG testified that she had told relator that, unless relator improved, she could wind up “not working here [for respondent].” When asked what relator said in response, the HRG answered,

[Relator said t]hat she was entitled to three more years [with respondent], and that she had expected [respondent] to find her another job. I did pursue a discussion with her regarding what her other interests might be. I did take a look at previous resumes . . . to discern where else she might [make] a contribution [to respondent.] I did notice there were some payroll duties she had back in her past and asked her about that, and she responded that she wouldn’t—she was not interested in that. She is only interested in a management position, [she claims] that her management skills were excellent

Thus, while relator claims that she was unsuited to her position, she was not interested in another position unless it met her specifications.

b. Lack of Skills

It is undisputed that relator lacked the skills for this position. But she was not discharged for lacking the skills; she was discharged because, over four years, she failed to acquire them despite repeated directives from her supervisor that she needed to acquire them and repeated attempts to provide her with learning opportunities. An employee’s failure to acquire necessary job skills is not an extenuating circumstance that precludes the employee’s discharge.

c. Administrative Work

Relator states that her administrative work was successful. Her performance appraisal indicates that she did “quality work in this area,” but it also notes “[Relator’s] administrative duties require approximately thirty percent of her time. [Relator] needs to focus on the more critical functions of her job” Her supervisor testified that she organized relator’s appraisal as she did so it would include positive information. But success at 30% of a job does not outweigh continuous poor performance and failure to improve in the other 70% of the job.

d. Criticism of Other Employees

Relator argues that “some people in [her] division decided that they didn’t like being ‘caught’ abusing basic work rules and didn’t like working with [relator,] and then a negative spin was put on [relator’s] harmless behavior.” But the evidence relied on by the ALJ as to relator’s altercations with two legal secretaries and a receptionist was not the “negative spin” they may have put on harmless behavior of relator; it was the testimony of relator’s supervisor and the managing attorney criticizing relator’s inappropriate handling of these interactions. Relator’s superiors and her subordinates consistently testified that her attitude toward and treatment of her subordinates was detrimental to the workplace.

e. Reprimand

Although relator received only one formal written reprimand (for her refusal to sign the evaluations of those she supervised or to let her own supervisor know she would not sign them), the record provides many examples of less formal criticism throughout

the four years that relator worked as a PSSS, particularly in regard to the areas on which respondent based her discharge: lack of technical competence, lack of interpersonal skills, and failure to improve over time. The record does not support relator's implication that she had no idea that respondent was dissatisfied with her performance; in fact, in a reply to her June 2006 evaluation, relator said that, although she disagreed with it and would not sign it, it contained "no surprises."

The ALJ's determination that relator failed to present evidence of extenuating circumstances is supported by the record, as is the ALJ's determination that respondent showed it had just cause to discharge relator.

Affirmed.