

Human Resources Admin. v. Traylor

OATH Index No. 1046/16 (Apr. 22, 2016)

Clerical associate charged with repeated AWOL, lateness, excessive absence, and insubordination. After default trial, ALJ found that the charges should be sustained and recommended that the employee be terminated.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
HUMAN RESOURCES ADMINISTRATION
Petitioner
- against -
ALYSSA TRAYLOR
Respondent

REPORT AND RECOMMENDATION

JOHN B. SPOONER, *Administrative Law Judge*

This disciplinary proceeding was referred to me in accordance with section 75 of the Civil Service Law. Respondent Alyssa Traylor is a clerical associate employed by petitioner, the Human Resources Administration (HRA). Respondent is charged with repeated AWOL, lateness, excessive absence, and insubordination.

A trial on the charges was scheduled before me on April 21, 2015. Petitioner appeared but respondent did not. After petitioner established that respondent had been properly served with the charges and the notice of the trial, the trial proceeded in the form of an inquest. Petitioner presented time-keeping records as well as the testimony of two supervisors.

For the reasons explained below, I find that the charges should be sustained and recommend that respondent be terminated.

ANALYSIS

In 2014 through early 2016, respondent has worked as a clerical associate with the Administration. The two sets of charges allege that (1) respondent was absent without leave (AWOL) from June 2, 2014, through June 13, 2014, and insubordinately refused to sign forms

regarding these unscheduled and unauthorized absences; (2) respondent was excessively absent for 40 per cent of the days from September 3, 2014, through February 29, 2016; (3) respondent was AWOL from January 26, 2016, to the time of the trial; (4) respondent was AWOL from December 9, 2015, through January 8, 2016, and insubordinately refused to sign forms regarding these unscheduled and unauthorized absences; and (5) respondent was late 68 times, totaling 1,700 minutes, from September 19, 2014, through January 26, 2016.

Petitioner submitted proof of all of the charges. Certified timekeeping records (Pet. Exs. 4, 7, 11) established all of the absences and latenesses alleged. Ms. Cruz, respondent's supervisor through September 2014, testified that she conferenced respondent as to her absences and the need to comply with agency rules. Respondent failed to provide documentation for absences though required to do so by agency rules (Pet. Ex. 6 at 11). On June 17, 2014, during a conference with Ms. Cruz, respondent refused to sign forms (Pet. Ex. 8) required for employees who have unscheduled and unapproved absences (Pet. Ex. 6 at 9). Mr. Hinds, respondent's supervisor since October 2015, testified that respondent was habitually late and failed to call in before taking sick leave. After her 21-day absence from December 2015 to January 8, 2016, Mr. Hinds held a conference with respondent and she refused to sign the forms required for unscheduled absences.

Respondent's absences and latenesses violated HRA time-and-leave rules. *See* HRA Admin. Procedure P-14-03 §§ III(F) ("Any employee who is absent from his/her work location for any period of time without authorization is deemed to be AWOL.") and III(G) ("An employee who does not report to work due to illness or other medical reason must contact his/her supervisor or the supervisor's authorized designee as early as possible, but not later than 60 minutes after the employee's scheduled start time."); HRA Code of Conduct §§ III(5) ("Employees shall comply with all Departmental time and leave regulations. Excessive lateness and/or absenteeism is prohibited."); III(6) ("Employees shall not be absent from or leave assigned work locations without appropriate authorization."). Respondent's refusals to submit required forms violated HRA Code of Conduct section III(21) ("Employees shall obey all regulations and orders of their supervisors").

Petitioner's proof also established the charge of excessive absence. The timekeeping records show that respondent was absent 40 per cent of the work days between September 2014 and February 2016. This tribunal has found three circumstances where absences are excessive:

(1) absences which are so extensive in number that they are excessive *per se*; (2) absences which are excessive because of the disruption they cause to the workplace and the adverse impact they have on office efficiency and operations; and (3) absences which are excessive based on circumstances surrounding the missed days of work. Factors considered in evaluating these circumstances include the availability of leave accruals, the lack of advance notice, the timing of such absences in relation to weekends and holidays, the legitimacy of the need for the absences and whether respondent was ever warned that the absences were considered excessive. *Health & Hospitals Corp. (Harlem Hospital Ctr.) v. Pabon*, OATH Index No. 270/04 at 3 (Oct. 29, 2003); *Bd. of Education v. Hunter*, OATH Index No. 384/90 at 4 (Mar. 5, 1990), *adopted in part, rejected in part*, Bd. Dec. (Apr. 19, 1990), *aff'd sub nom. Hunter v. NYC Bd. of Education*, 190 A.D.2d 851 (2d Dep't 1993).

Respondent's absences during this period were excessive under all three of these theories. The number of absences, the equivalent of 147 work days, was excessive *per se*. *See Dep't of Education v. Medina*, OATH Index No. 1865/11 at 4 (July 22, 2011), *adopted*, Chancellor's Dec. (Aug. 25, 2011) (109 absences in 16 months deemed excessive). Both Ms. Cruz and Mr. Hinds testified that respondent's frequent unscheduled absences hindered their units' efficiency and worked a hardship on other workers and agency clients. Most of respondent's absences were unscheduled and undocumented.

For these reasons, I find that all of the charges should be sustained.

FINDINGS AND CONCLUSIONS

1. Specifications 1 through 3 of charge 05 should be sustained in that, from June 2, 2014, through June 13, 2014, respondent was AWOL in violation of HRA Admin. Procedure P-14-03 and HRA Code of Conduct sections III(5) and (6).
2. Specifications 4 through 6 of charge 5 should be sustained in that, on June 17, 2014, respondent refused to sign a form required for employees who take unscheduled and unapproved absences, in violation of HRA Code of Conduct section III(21).
3. Specification 1 of charge 06 should be sustained in that, from September 3, 2014, to February 29, 2016, respondent was excessively absent in violation of HRA Code of Conduct section III(6).

4. Specification 2 of charge 06 should be sustained in that, from January 26, 2016, through the trial date, respondent was AWOL absent in violation of HRA Admin. Procedure P-14-03 and HRA Code of Conduct sections III(5) and (6).
5. Specification 3 of charge 06 should be sustained in that, from December 9, 2015, through January 8, 2016, respondent was AWOL in violation of HRA Admin. Procedure P-14-03 and HRA Code of Conduct sections III(5) and (6).
6. Specification 4 of charge 06 should be sustained in that, from September 19, 2014, through January 26, 2016, respondent was excessively late in violation of HRA Admin. Procedure P-14-03 and HRA Code of Conduct section III(5) and (6).
7. Specification 5 of charge 06 should be sustained in that, on January 11, 2016, respondent refused to sign a form required for employees who take unscheduled and unapproved absences, in violation of HRA Code of Conduct section III(21).

RECOMMENDATION

The egregiousness of respondent's absences and latenesses leaves little doubt as to the penalty to be recommended here. Due to respondent's failure to appear, there are no mitigating factors to consider. Respondent's abandonment of her job since January 26, 2016, standing alone, would justify her dismissal. *See Human Resources Admin. v. Adams*, OATH Index No. 1450/03 (May 19, 2003). When combined with her default and the other types of misconduct found here, there is no doubt that termination is the only penalty appropriate.

Accordingly, I recommend that respondent be terminated.

John B. Spooner
Administrative Law Judge

April 22, 2016

SUBMITTED TO:

STEVEN BANKS

Commissioner

APPEARANCES:

EMILY TONE, ESQ.

Attorneys for Petitioner

No Appearance by or for Respondent