

Human Resources Admin. v. Charleman

OATH Index No. 1653/16 (Aug. 5, 2016)

Eligibility specialist charged with failing to report an arrest for shoplifting, fraudulently accepting food stamps, and failing to report her acceptance of public assistance rent checks from her sister. 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 -
DESIREE CHARLEMAN
Respondent

REPORT AND RECOMMENDATION

SUSAN J. POGODA, *Administrative Law Judge*

This disciplinary proceeding was referred in accordance with section 75 of the Civil Service Law. Respondent Desiree Charleman is an eligibility specialist II employed by petitioner, the Human Resources Administration (HRA). Respondent is charged with failing to report an arrest for shoplifting, fraudulently accepting food stamps, and failing to report her acceptance of public assistance rent checks from her sister.

A trial on the charges was held on May 16, 2016. Petitioner presented the testimony of an HRA investigator and two other HRA employees. Respondent testified on her own behalf and also presented the testimony of her sister. On July 25, 2016, both parties submitted memoranda on the issue of whether respondent's name would be used in the OATH report and recommendation.

For the reasons explained below, I find that petitioner established the charges and recommend a penalty of termination.

PRELIMINARY MATTER

Respondent requested that her name not be included in the decision because the testimony revealed her private medical information (Tr. 6, 296). This tribunal's proceedings are presumptively open to the public and its decisions issued without redaction. *See* 48 RCNY § 1-49 (Lexis 2015); *see also Mosallem v. Berenson*, 76 A.D.3d 345, 348 (1st Dep't 2010) ("Under New York Law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records"). OATH rules provide for redaction of decisions when publication of certain information will violate privacy rights set forth in applicable laws or rules. 48 RCNY § 1-49(d); *see also Dep't of Health & Mental Hygiene v. Gertskis*, OATH Index No. 1938/10, mem. dec. at 1 (Sept. 28, 2012) ("in absence of legal basis to remove trial judge's decision from publication, tribunal rules require publication of decisions without redaction").

Requests for redaction of decisions are generally rejected when a respondent places private health matters in issue by way of a defense. *See Dep't of Environmental Protection v. Capezza*, OATH Index No. 1536/14 at 4, (June 13, 2014), *adopted in part, rejected in part*, Comm'r Dec. (May 1, 2015), *aff'd in part, rev'd in part*, NYC Civ. Service Comm'n Case No. 2015-0610 (Nov. 4, 2015) (respondent's request that his name be removed from the decision because it discussed his medical history was denied); *Fire Dep't v. Palleschi*, OATH Index No. 192/11 at 6-7 (Dec. 20, 2010), *aff'd*, 102 A.D.3d 603 (1st Dep't 2013) (respondent's request to seal his counseling records denied as he placed his health in issue by way of defense).

During this trial, respondent testified only one time about her mental health condition as a defense to the misconduct charges (Tr. 217). Respondent stated that in 2013 and 2014 she was preoccupied with personal issues related to her mother and sister's medical issues and she sought treatment for depression. Respondent did not elaborate on her mental health condition or treatment or present any documentary evidence which demonstrated a legally cognizable basis for the removal of her name from the decision. Therefore, her request is denied.

ANALYSIS

Respondent has worked for HRA as an eligibility specialist since November 5, 2012. Her duties have included processing Medicaid renewals (Tr. 227). Her current assignment is as a

health care application counselor, assisting clients to obtain health care insurance (Tr. 276-77). Prior to being hired at HRA, respondent received food stamp benefits under the Supplemental Nutrition Assistance Program (SNAP) (Pet. Ex. 11).

Failure to Report Arrest

It was undisputed that respondent was arrested for shoplifting on June 4, 2014, as shown by an arrest report from the Police Department (Pet. Ex. 3). Investigator Rosete testified that HRA did not receive notice of respondent's arrest until July 2, 2014, when a notification was received from the Department of Citywide Administrative Services (Tr. 58-59). Ms. Rosete indicated that respondent later admitted that she failed to report the arrest during an interview (Tr. 64). In the interview, respondent indicated that her attorney advised her she did not need to report the arrest because the criminal case would be "sealed" (Tr. 65). Also during the interview, respondent gave Ms. Rosete a certificate of disposition (Pet. Ex. 5), indicating that respondent appeared on a desk appearance ticket on July 22, 2014, was arraigned, and was given an adjournment in contemplation of dismissal, community service, and counseling by the criminal court.

Respondent testified that on the day of her arrest she was shopping at a make-up store and took some "testers" of perfume and eye shadow which were half empty, assuming they were free. Security personnel stopped her outside the store and escorted her back inside. The store staff told respondent that she was "arrested" and that she could not return to the store (Tr. 205). Respondent did not tell HRA about being arrested because her attorney told her that the case was sealed and she did not have to report it (Tr. 207). Respondent insisted that she did not recall being told anything about being required to report an arrest when she was hired by HRA (Tr. 207). She admitted receiving the HRA code of conduct when she was hired, but did not read it (Tr. 224).

The HRA Code of Conduct requires that all employees must report in writing any arrest to the Commissioner and HRA inspector general. A failure to do so "may result in disciplinary action up to and including termination." (Pet. Ex. 4 at §§ II (E), III 23). The duty to report an arrest includes arrests accompanied by issuance of a desk appearance ticket. *See Dep't of*

Transportation v. Goldstein, OATH Index No. 326/08 (Nov. 29, 2007), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 08-36-SA (June 2, 2008) (employee who received desk appearance ticket held to have failed to notify employer of arrest, where she was detained in precinct jail cell for an hour).

Respondent's contention that she should be relieved of the duty to report the arrest because she was misled by her attorney, who told her that the case was sealed and need not be reported, is not persuasive. As this tribunal held in *Administration for Children's Services v. Rios*, OATH Index No. 1687/06 at 6 (Nov. 1, 2006), reliance upon the advice of lawyers or judges is not a defense to the violation of an agency rule.

Failure to Report Income While Receiving Food Stamps and Failure to Report Public Assistance Rent Checks

The last two specifications concern respondent's obligations to report certain types of income to HRA. Specification II alleges that respondent failed to report her salary to her SNAP benefits caseworker, despite being expressly advised to do so when she was hired. Principal Administrative Associate Fields testified on October 17, 2012, she met with respondent to process her civil service application. During the interview, Ms. Fields found out from the HRA database that respondent was receiving SNAP benefits and Medicaid. Ms. Fields gave respondent an acknowledgement form (Pet. Ex. 1) to report the public assistance benefits she was receiving. The form stated that respondent had ten days from her start date to inform her case worker of any change in income (Tr. 20-21, 28, 71). Respondent indicated on the form that she was receiving SNAP benefits and signed and dated the form (Tr. 22). Ms. Fields told respondent that she would receive another form (Pet. Ex. 2) during her orientation to report a change in income and that respondent should complete this form and submit it, along with a photocopy of the acknowledgement form she had just signed (Tr. 23).

After the commencement of respondent's employment on November 5, 2012, respondent continued to receive \$200 per month in SNAP benefit funds through an account accessed by means of a credit card through April 2013. As of April 5, 2013 the remaining balance on the credit card was \$200.00. Respondent continued to use the SNAP credit card to make purchases

beginning on June 8, 2013 with the last draw down on September 27, 2013 (Pet. Ex. 7, Tr. 73, 112). Principal Administrative Assistance Thompson testified that she audited respondent's case in June 2013 and determined that, due to respondent's HRA salary, respondent was ineligible for SNAP benefits as of January 2013 (Tr. 133-36; Pet. Ex. 12). After the determination of an overpayment was made by Ms. Thompson, a notice (Pet. Ex. 14) was mailed to respondent on June 21, 2013, indicating that respondent had received an overpayment of \$600 in benefits due to her failure to report her employment income. The notice requested that respondent repay this amount (Tr. 140-41).

Investigator Rosete stated that, in July 2014, she checked the HRA benefits database and saw that there was an outstanding recoupment case against respondent for \$600 in benefits (Tr. 67-68). Respondent continued to redeem her SNAP benefits until September 27, 2013 when her benefits balance was \$1.20 (Tr. 72, 123, 125; Pet. Ex. 7). On December 9, 2014, Investigator Rosete interviewed respondent. Respondent admitted that she had received SNAP benefits since 2010. Respondent stated that she did not know why she failed to report her change in employment status to her SNAP caseworker or why she kept redeeming the SNAP benefits after she was employed by HRA (Tr. 75, Pet. Ex. 11).

Respondent repaid the \$600 recoupment claim a week after her interview with Investigator Rosete, on December 16, 2014 (Tr. 75, 143; Pet. Ex. 15).

In her testimony, respondent admitted that she signed the acknowledgement form indicating she received food stamps (Tr. 243), but insisted that she did not read it. Part of the reason was that she was distracted by the disruptions and relocations after Hurricane Sandy (Tr. 271-72). She stated that she thought she was entitled to benefits for three months before she was required to report her income and could let the benefits "run out" and not recertify them (Tr. 228). Respondent also denied ever receiving the June 21, 2013 notice of the \$600 recoupment claim (Tr. 246). She indicated that she had made a "mistake" in not reporting her income or the rent checks, that the charges had been a "learning experience," and that she would never let such a mistake happen again (Tr. 210, 225). Respondent stated that she grew up in the Bronx with a mother who took drugs (Tr. 212) and used the food stamp benefits to feed herself, her sister, and

her mother (Tr. 214). Her mother was in a nursing home at the time of the hearing (Tr. 214). In 2013 respondent went to a therapist for depression (Tr. 217).

Although this case raised few disputed issues of fact, one factual matter was contested. Despite proof that respondent was mailed the notice regarding the SNAP benefits overpayment in June 2013, respondent confirmed that the address was correct but insisted that she never received this notice, citing problems with her mailbox (Tr. 247). Respondent's testimony on this issue was not credible. Respondent had a compelling motive to deny receiving the recoupment notice in order to bolster her claim that she did not realize her use of the benefits was wrong. In at least one other matter, respondent was shown to be untruthful. In respondent's testimony, she indicated that she and her sister shared meals (Tr. 256), while in the letters submitted by her sister to apply for food stamps (Pet. Ex. 8) respondent indicated that she and her sister did not share meals. In the absence of any corroboration of respondent's claim that the notice was never received, the general inference that mail which is correctly addressed will be received by the recipient should control. *Health and Hospitals Corporation v. Allen*, OATH Index No. 1230/98 (May 27, 1998) ("Once mail is sent to the correct address of record, petitioner may rely on the fact that it was either delivered or intentionally left unclaimed.").

Respondent did not dispute that she was required, as a condition of receiving SNAP benefits, to report any change in employment status. As a recipient of benefits for two years, respondent was obviously aware of this requirement. Respondent's obligation to report her new salary was expressly explained on the acknowledgement form that she signed on October 17, 2012, which stated, "I understand that as a participant of the above indicated programs I am required to notify my worker of any changes in my situation such as income, employment . . ." The form further indicated that respondent's deadline for notifying her case worker of her employment with HRA would be 10 days after her start date. This meant that she was required to submit the income notification form by November 15, 2012.¹

Respondent also did not dispute that, from January through September 2013, she did not notify her case worker about her employment and yet continued to access her SNAP benefits. By continuing to accept some \$600 in benefits for which she had reason to know she was not

¹ Ms. Thompson testified that, under parallel federal guidelines, respondent would have had until December 10, 2012, to report her income (Tr. 137).

eligible, respondent arguably committed welfare fraud, in violation of HRA Code of Conduct section III (37) (“Employees shall not engage in any conduct detrimental to the agency or which would undermine the effectiveness of the employee in the performance of his/her duties”) and HRA Procedure No. 03-10 (Employees may not commit misconduct which involves “unethical conduct, financial irregularities, falsification of records, theft, conflicts of interest or any criminal activity. . .”). See Penal Law § 158.00 (welfare fraud defined as fraudulent act to obtain public assistance benefits); *Human Resources Admin. v. Morgan*, OATH Index No. 1512/96 (April 19, 1996) (employee who issued food stamp benefits to friends who were ineligible found to have committed misconduct and terminated).

In his closing, respondent’s counsel raised two largely meritless defenses. He contended that HRA should be imputed with knowledge that respondent was continuing to receive food stamps after she began to work for HRA because of the acknowledgement form (Tr. 292). Counsel further insisted that the agency could have resolved the issue by turning the food stamp card off (Tr. 293). Even assuming that HRA could have acted more promptly in terminating respondent’s benefits, this is not a defense to the misconduct charges, since respondent, not HRA, had the primary obligation to notify her caseworker promptly of a change in her circumstances which she knew would affect her eligibility for benefits.

Respondent’s counsel further argued that the language of the charge alleging “fraudulently received” benefits for nine months from January through September 2013 should be dismissed. Counsel contends that the food stamp benefits stopped being transferred into respondent’s account as of April 2013 and that therefore respondent did not “receive” any benefits from April through September 2013. Respondent’s motion to dismiss should be denied for two reasons. First, dismissal is not appropriate since respondent admits that the charge can be sustained as to benefits accruing from January through April 2013. Second, respondent’s continued use of her food stamps card to make purchases from April to September was receipt of benefits, even where no new funds were being placed in her account.

Specification III alleges that respondent failed to report that her sister was paying rent to respondent in the form of public assistance, despite HRA rules requiring employees to report this arrangement. An HRA procedure memo (Pet. Ex. 10) dated March 9, 2010, states that an HRA

employee must request approval from the HRA Office of Staff Resources in order to rent living space to a public assistance participant. Investigator Rosete stated that the purpose of this policy was to prevent conflicts of interest with employees managing benefits for renters (Tr. 88). The investigator indicated that all HRA employees received this memo when they were hired (Tr. 89).

When Investigator Rosete reviewed respondent's case files with regard to the SNAP benefits, she found that respondent's sister was receiving rental assistance benefits at the same address as respondent (Tr. 76). The investigator identified 11 public assistance checks (Pet. Ex. 9), made out to "Charleman D for Charleman Mel" dated from January to July 2013 and signed by respondent (Tr. 82-83).

The investigator also found a number of documents submitted by respondent's sister to HRA which were contained in the sister's public assistance file. In a letter (Pet. Ex. 8) dated December 17, 2012, respondent wrote that her sister was living with her and paying \$300 per month rent. On a form (Pet. Ex. 8) signed and dated May 23, 2013, respondent reported that her sister was a secondary tenant at respondent's home in the Bronx and paid \$600 per month in rent. In a written statement and another form dated January 17, 2013, respondent indicated that her sister was being charged \$660 per month due to a rent increase. (Pet Ex. 8)

Respondent later admitted in her interview with Investigator Rosete that she received the rent checks and did not report to HRA that her sister was living with her and receiving public assistance benefits. (TR. 90-91).

In respondent's testimony at trial, she stated that she was unaware that she was required to report the rent checks received on behalf of her sister. She insisted that she did not see or know about the form for reporting these checks until after the charges were served (Tr. 209). She also denied ever seeing the policy memo requiring HRA employees to report receipt of public assistance rent checks (Tr. 226).

Respondent's sister confirmed that in September 2012 she moved in with respondent because she was ill and could not work (Tr. 177, 190). She recalled filling out forms to collect public assistance for rent payments to go to respondent (Tr. 183). She moved to Pennsylvania some six months later (Tr. 184).

Once again, it was undisputed that from January to July 2013 respondent received rental assistance checks on behalf of her sister and failed to report them to HRA, as required by an HRA procedural rule. Respondent's denial that she did not receive this rule as part of her employee orientation, since she herself confessed that she did not review any of the papers she received carefully or thoroughly was also not credible. Nor is respondent's professed ignorance of the rule, even if truthful, a defense to the charges, since employees are attributed with knowledge of agency rules. *See Human Resources Administration v. Vila*, OATH Index No. 1578/08 at 4-5 (June 10, 2008).

FINDINGS AND CONCLUSIONS

1. Specification 1 should be sustained in that respondent failed to report an arrest which occurred on June 4, 2014, in violation of HRA Code of Conduct sections II (E) and III (23).
2. Specification II should be sustained in that, from November 5, 2012 through September 27, 2013, respondent did not report a change in employment status to her SNAP benefits caseworker and continued to receive and redeem SNAP benefits for which she was not eligible, in violation of HRA Code of Conduct sections I, III (37) and HRA Procedure No. 3-10.
3. Specification III should be sustained in that, from January to July 2013, respondent failed to report her receipt of 11 rent assistance checks on behalf of her sister, in violation of HRA Procedure No. 10-05.

RECOMMENDATION

Upon making the above findings, I requested and received an abstract of respondent's personnel record from HRA in order to make a penalty recommendation. As noted above, respondent has worked for the agency since November 2012. This nearly four years of employment provides modest grounds for mitigation of the penalty.

Respondent's proof of good work performance is reason for further mitigation. Her 2012, 2013 and 2014 evaluations rated her work performance as "good." Respondent also offered a letter (Resp. Ex. B) from a former supervisor stating that she is a "dedicated employee

who works well independently” and an “asset” to HRA. Respondent willingly assists with Spanish translation. Another supervisor submitted a letter (Resp. Ex. D) stating that respondent displays “great integrity” and is “hardworking,” “caring,” and “helpful.”

Respondent also displayed remorse about her “mistake” in failing to report her income and, soon after she was interviewed by Investigator Rosete in December 2014, repaid the \$600 in food stamps. Ms. Thompson also indicated that clients frequently were found to have accepted benefits they were not entitled to and arranged for repayment (Tr. 146). Approximately 100 HRA employees work in the recoupment unit auditing and seeking repayment of benefit overpayments (Tr. 169-70).

Despite some grounds for mitigation, petitioner’s counsel requests that respondent be terminated for unlawfully obtaining SNAP benefits, contending that respondent “concealed” her income from HRA in order to continue to receive food stamps (Tr. 301). Petitioner points out that respondent’s job responsibilities include accessing the HRA benefits database, which contains “confidential and personal information” about clients (Tr. 240). Giving dishonest employees access to this information can result in dire consequences.

Past cases indicate that employees found to have falsely reported their income in order to obtain some type of benefit have been terminated. *Dep’t of Correction v. Colon*, OATH Index No. 229/14 (Feb. 24, 2014), *aff’d*, NYC Civ. Serv. Comm’n Case No. 2014-0515 (Dec. 26, 2014) (termination for correction officer who failed to disclose income in order to maintain section 8 rent subsidy); *Human Resources Admin. v. Johnson*, OATH Index No. 1187/10 (Feb. 17, 2010) (termination for eligibility specialist who falsely claimed that she was unemployed to obtain public housing worth more than \$22,000); *Dep’t of Correction v. Fuller*, OATH Index No. 2144/05 (Nov. 28, 2005), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 06-120-SA (Nov. 14, 2006) (termination for correction officer who obtained public housing by falsely stating that she was unemployed); *Human Resources Admin. v. Williams*, OATH Index No. 1800/97 (September 5, 1997) (termination for eligibility specialist who received over \$15,000 in public assistance benefits over the course of two years by falsely telling her caseworker that she was unemployed).

Most employees who have failed to report income or other mandated financial issues, without making false statements, have also been terminated. *Dep’t of Finance v. Hatcher*,

OATH Index No. 1381/03 (Jan. 15, 2004), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 05-20-SA (Apr. 25, 2005) (termination for finance employee who failed to report purchase of rental income property as required by agency rules); *Dep't of Sanitation v. Brown*, OATH Index Nos. 542/99, 1745/98, 543/99 (Nov. 17, 1998), *aff'd on appeal*, NYC Civ. Serv. Comm'n Item No. CD 00-059-SA (June 2, 2000) (termination for three employees who failed to report income and received from \$3,000 to \$11,000 in public assistance to which they were not entitled).

In respondent's case, while her remorse over her actions seemed genuine, the fact remains that she was expressly informed when she was hired that, as a public assistance client, she had an obligation to immediately inform her caseworker of her employment and did not do so. Furthermore, respondent's defense that she made mistakes because she was preoccupied with family issues during the relevant time period is inconsistent with her statement to Investigator Rosette that "she didn't know why she kept redeeming the benefits". Moreover, respondent was notified some six months later by a mailed notice of a \$600 recoupment claim and yet continued to access her SNAP benefits, without informing her caseworker of her current income.

Respondent's mitigating grounds do not outweigh the HRA's legitimate concerns. *See, e.g., Human Resources Admin. v. Finley*, OATH Index No. 947/05 at 8-9 (Oct. 12, 2005), *aff'd*, NYC Civ. Serv. Common Item No. CD 06-53-SA (Apr. 24, 2006) (health problems and financial desperation were insufficient mitigating circumstances where eligibility specialist committed insurance fraud and wrongfully obtained property worth more than \$1,000); *Human Resources Admin. v. DeFreitas*, OATH Index No. 629/01 (Nov. 30, 2000) (employee's tenure, financial hardship, and payment of restitution were insufficient mitigation to avoid termination of employment for welfare fraud); *Human Resources Admin. v. Morgan*, OATH Index No. 1512/96 (Apr. 15, 1996) (employee terminated for fraudulently issuing more than \$3,000 in food stamps to friends and relatives).

Respondent's acceptance and redemption of benefits for up to nine months after she was employed by HRA, when she must have known that she was not entitled to them, suggests a high level of dishonesty that is incompatible with continuing to be employed to manage public assistance benefits.

Accordingly, I recommend that respondent be terminated from her employment.

Susan J. Pogoda
Administrative Law Judge

August 5, 2016

SUBMITTED TO:

STEVEN BANKS
Commissioner

APPEARANCES:

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