

Human Resources Admin. v. Battle-Black

OATH Index No. 2272/13 (Sept. 10, 2013)

Fraud investigator fraudulently obtained Section 8 housing benefits as proven by her guilty plea. Termination from employment recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of

HUMAN RESOURCES ADMINISTRATION

Petitioner

-against-

SYLVIA BATTLE-BLACK

Respondent

REPORT AND RECOMMENDATION

ALESSANDRA F. ZORNIOTTI, *Administrative Law Judge*

This disciplinary proceeding was referred by the Human Resources Administration (“HRA”) pursuant to Section 75 of the Civil Service Law against Sylvia Battle-Black, a fraud investigator. Petitioner alleges that respondent committed misconduct by fraudulently obtaining Section 8 housing benefits from the United States Department of Housing and Urban Development Corporation (“HUD”) as evidenced by her guilty plea to a federal crime (ALJ Ex. 1; Tr. 8-10).

A hearing was scheduled for August 23, 2013. On the morning of trial respondent appeared with counsel. Based on respondent’s request, respondent’s counsel made an application to be relieved and substituted by Alan Roberts, another attorney from the same law firm. The request was granted without objection (Tr. 4-5).

Mr. Roberts requested an adjournment and petitioner objected. The request was denied because respondent failed to demonstrate good cause for the last minute substitution and Mr. Roberts stated that he was able to proceed if given time to confer with respondent (Tr. 6-7). 48 RCNY § 1-32(b) (Lexis 2012) (applications for adjournments shall be granted for good cause only; delay in seeking an adjournment shall militate against request); *see also Matter of Gareza*, OATH Index Nos. 2061/12 & 760/13 at 2 (Dec. 12, 2012) (where respondent failed to show

good cause and substituted counsel was prepared to go forward adjournment denied); *Dep't of Correction v. Cortes*, OATH Index No. 1230/06 at 2-3 (June 16, 2006) (respondent may not use right to counsel to delay hearing).

Following an hour-and-a-half recess, the hearing went forward (Tr. 7). Petitioner presented one witness and offered documentary evidence. Respondent testified on her own behalf and asked for leniency in the penalty. The record was held open until September 6, 2013, for post-hearing submissions. For the reasons below, I find that respondent engaged in misconduct and recommend that she be terminated from her employment.

ANALYSIS

Respondent is a fraud investigator level II in HRA's Bureau of Eligibility and Verification. Fraud investigators review applications for public assistance which includes rent subsidies, food stamps, Medicaid, and other forms of monetary assistance. Fraud investigators determine whether an applicant is eligible for public assistance by: reviewing an applicant's documentation; interviewing the applicant; and verifying whether the applicant's information is correct by calling landlords and/or employers (Tr. 14-16, 20, 25). One of the factors considered for eligibility is whether an applicant has income (Tr. 27-28).

On July 18, 2013, respondent pled guilty in federal court to Title 18 of the United States Code Sections 641 and 642, a felony. Specifically, respondent admitted that between 2006 and 2011 she failed to disclose her HRA employment to HUD and received \$62,376 in Section 8 public assistance to which she was not entitled (Pet. Ex. 1; Tr. 21).

Pursuant to the doctrine of collateral estoppel, respondent's guilty plea conclusively establishes the underlying facts of the criminal charge of federally funded program fraud. *See Dep't of Correction v. Fuller*, OATH Index No. 2144/05 at 3 (Nov. 28, 2005), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 06-120-SA (Nov. 14, 2006); *School Construction Auth. v. Davis*, OATH Index No. 1582/06 at 2 (June 21, 2006). The charges of misconduct, as amended to include the guilty plea (Tr. 8-10), should be sustained.

FINDING AND CONCLUSION

Respondent intentionally defrauded HUD by misrepresenting her HRA employment to obtain Section 8 rent subsidies.

RECOMMENDATION

Respondent has been employed by HRA since 1996. She started as a fraud investigator I and was promoted to level II in 2006 (Tr. 19-20). She has no prior disciplinary history and has maintained an overall rating of “good” on her recent performance evaluations.

Petitioner seeks respondent’s termination from employment. Mayoral Executive Order No. 105 Section 5(b) mandates dismissal of an employee who commits a crime that either involves moral turpitude or bears on the employee’s fitness to perform his job, unless compelling mitigating circumstances exist. *Fire Dep’t v. Catucci*, OATH Index No. 1832/06 at 3 (Aug. 8, 2006); *School Construction Auth. v. Davis*, OATH Index No. 1582/06 at 3 (June 21, 2006).

Intentional fraud and theft of government benefits are crimes of moral turpitude that invariably lead to termination of employment. *See, e.g., Dep’t of Sanitation v. Rosario*, OATH Index No. 2301/10 (June 11, 2010) (sanitation worker terminated after conviction for theft of public funds for falsifying Section 8 housing application); *Fuller*, OATH No. 2144/05 at 4 (defrauding HUD is an act of moral turpitude leading to termination of employment); *Human Resources Admin. v. Turner*, OATH Index No. 2212/01 (Nov. 21, 2001), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 02-48-SA (June 14, 2002) (possession of a forged instrument is an act of moral turpitude leading to termination of employment); *Health & Hospitals Corp. (Elmhurst Hospital Center) v. Williams*, OATH Index No. 1818/01 (Oct. 12, 2001) (employee’s wrongful acceptance of disability payments is a crime of moral turpitude that warrants termination of employment).

Not only is respondent’s crime one of moral turpitude, it bears directly on her fitness to perform the job of a fraud investigator. Respondent engaged in conduct that she is responsible for preventing, namely public assistance fraud. Respondent’s crime was a deliberate, repeated, and fundamental breach of trust that conflicts with her job duties and discredits HRA. Given the corrupt nature of the misconduct, the extent to which HRA relies on the integrity of its employees, and the mission of HRA to provide public assistance to eligible applicants, termination is the only appropriate penalty, absent compelling mitigating circumstances.

Respondent failed to present any mitigating circumstances for her actions. Indeed, respondent acknowledged that there was no justification for her conduct and that she knew it was wrong (Tr. 22). Although respondent’s supervisor testified that respondent is one of his best investigators (Tr. 17) and respondent admitted her wrongdoing and wants to keep her job so that she can make restitution (Tr. 23), these factors do not outweigh HRA’s legitimate concerns.

Despite respondent's lack of prior disciplinary history and her 17-year tenure, the requested penalty is not so disproportionate to the sustained misconduct as to be shocking to one's sense of fairness. *Pell v. Bd. of Education*, 34 N.Y.2d 222 (1974).

Here, respondent's misconduct involved a crime of moral turpitude and the crime has a nexus to her job duties as a fraud investigator. *Human Resources Admin. v. Palmer-Davis*, OATH Index No. 2968/10 (Dec. 2, 2010) (termination for supervisor convicted of petit larceny who falsely asserted in housing subsidy applications that she worked full-time as a babysitter rather than disclosing her employment with HRA); *Human Resources Admin. v. Finley*, OATH Index No. 947/05 (Oct. 12, 2005), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 06-53-SA (Apr. 24, 2006) (termination for eligibility specialist convicted of insurance fraud); *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 conviction of welfare fraud); *see also Human Resources Admin. v. Johnson*, OATH Index No. 1187/10 (Feb. 17, 2010) (eligibility specialist terminated for housing fraud); *Human Resources Administration v. Morgan*, OATH Index No. 1512/96 (April 15, 1996) (termination for food stamp fraud); *Human Resources Administration v. Williams*, OATH Index No. 869/96 (Jan. 26, 1996) (termination for welfare fraud).

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

Alessandra F. Zorgniotti
Administrative Law Judge

September 10, 2013

SUBMITTED TO:

ROBERT DOAR
Commissioner

APPEARANCES:

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BY: ALAN ROBERTS, ESQ.