Health & Hospitals Corp. (Bellevue Hospital Ctr.) v. Belliard

OATH Index No. 2088/15 (Dec. 1, 2015)

Petitioner established that respondent, a community liaison worker, violated patient escort procedures on three occasions, was excessively late, failed to arrive on time for three assignments, and falsified a timesheet. In light of the seriousness of the misconduct, termination of employment recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
HEALTH AND HOSPITALS CORPORATION (BELLEVUE HOSPITAL)
Petitioner
- against -
MARIA BELLIARD
Respondent

REPORT AND RECOMMENDATION

KARA J. MILLER, *Administrative Law Judge*

Petitioner, the New York City Health and Hospitals Corporation, referred this employee disciplinary proceeding, under section 7:5 of the Personnel Rules and Regulations of the Corporation. The petition alleged that respondent, community liaison worker Maria Belliard, violated patient escort procedures on three occasions, was excessively late, failed to arrive on time for three assignments, and falsified timesheets (ALJ Ex. 1). Petitioner withdrew another charge prior to trial.

During a two-day trial before me, petitioner relied on testimony from five witnesses and documentary evidence. Respondent testified on her own behalf.

For the reasons below, I find that petitioner established that respondent repeatedly violated escort procedures, was excessively late for work, was late for assignments, and falsified a timesheet. As such, I recommend termination of respondent's employment.

ANALYSIS

Violation of Patient Escort Procedures

Respondent is a community liaison worker at Bellevue Hospital ("Bellevue"). Her responsibilities include escorting patients to and from appointments. The charges arise from allegations that respondent did not follow escort procedures on three occasions in April 2014 (ALJ Ex. 1; Tr. 21-22). Respondent denied that she left one patient unattended and argued that the other two allegations were, at most, technical violations that did not endanger patients (Tr. 9).

Natalie Kramer, associate director of social work, testified that respondent's primary responsibility is to escort patients who have psychiatric or substance abuse issues to appointments outside the facility (Tr. 11-12). Patients who are stable enough to leave the hospital on supervised trips but are still deemed in-patients, must be escorted at all times (Tr. 14-15). Respondent, who has worked in the social work psychiatry unit for more than a decade, acknowledged that hospital policy requires her to accompany patients at all times (Pet. Ex. 4; Tr. 184).

The first incident occurred on April 3, when respondent escorted a psychiatric patient to the Chinese Embassy. Petitioner claimed that, during the trip, respondent went into a Starbucks and left the patient alone outside on the sidewalk (ALJ Ex. 1). Social worker Diana Han testified that respondent accompanied a patient to the Chinese Embassy on the west side of Manhattan to receive some documents (Tr. 119, 126). When the patient returned he told a student intern that respondent went inside a Starbucks and left him outside waiting (Tr. 120). The patient had thought that it was humorous since staff had repeatedly warned him to stay with his escort and she left him (Tr. 125). Han subsequently spoke to the patient to confirm what he had told the intern. When questioned, the patient laughed and said that respondent took a "pit stop" at Starbucks and left him outside (Tr. 121, 124). Han reported this incident to respondent's supervisor, Anne-Karine Derac (Pet. Ex. 15; Tr. 69, 122). Derac testified that when she spoke to respondent regarding the patient's allegations, respondent said that she did not like Starbucks and she did not go there while escorting the patient (Tr. 72).

At trial, respondent denied the charge (Tr. 9). She recalled that the Bellevue van took her and a patient to the Chinese Embassy (Tr. 165-66). After waiting in line, they were told that the patient needed a new passport photograph. They went to a nearby drug store, took a passport

photograph, and returned to the embassy (Tr. 167-68). The whole trip took about an hour (Tr. 168). Respondent contended that they did not go anywhere else and she did not stop for coffee or go to Starbucks (Tr. 168, 191).

The second incident occurred on April 10, when respondent escorted a patient to Creedmoor Hospital ("Creedmoor"). Petitioner alleged that respondent had returned to Bellevue without the patient (ALJ Ex. 1; Tr. 6). Derac testified that respondent was assigned to escort a patient to Creedmoor to be assessed for an in-patient substance abuse program (Tr. 73, 81, 111). According to Derac, it was a round-trip assignment which required respondent to escort the patient to Creedmoor and return with the patient to Bellevue (Tr. 73). Instead, respondent left the patient at Creedmoor without her being discharged from Bellevue. Bellevue staff are required to know where all patients are at all times (Tr. 79). If the patient was accepted into the program at Creedmoor, respondent should have contacted Derac or a social worker for instructions (Tr. 74, 110). Among other things, the social worker and doctors at Bellevue had to speak to the patient before discharge. The patient also needed to receive medications and her personal belongings (Tr. 74).

Social worker Wardeh Hattab corroborated Derac's testimony. He testified that the psychiatric patient was deemed fit to travel with an escort to Creedmoor for an assessment and, according to the assignment log, it was listed as a "round-trip" (Tr. 135). Respondent was assigned to take the patient at 10:00 a.m. for an 11:00 a.m. appointment at Creedmoor and it should have taken no more than an hour to get back (Tr. 136). When the patient had not returned by 3:00 p.m., Hattab called Creedmoor and learned that the patient was still there (Tr. 136). Hattab found respondent at Bellevue and asked her what happened (Tr. 137). Respondent replied that she came back to Bellevue by herself because the patient was accepted into the substance abuse program at Creedmoor (Tr. 137-38). According to Hattab, Bellevue needs 24 hours' notice before a patient is discharged, to ensure that the patient receives proper medication, such as the anti-psychotic medicine that this patient was taking (Tr. 139). Furthermore, the patient's personal belongings, including money and identification, were still at Bellevue (Tr. 139).

Respondent testified that it took her less than an hour to take the patient to Creedmoor and she waited 15 minutes before a psychiatrist told her that the patient had been accepted (Tr.

173-74). Instead of calling from Creedmoor to report that the patient had been accepted, respondent returned to Bellevue without the patient (Tr. 196). When respondent got back to Bellevue, she could not find a social worker so she told the unit's head nurse that Creedmoor had accepted the patient (Tr. 174).

Although she conceded that the assignment log specified that it was supposed to be a "round-trip" and the patient had not been discharged from Bellevue, respondent testified that she had "no idea" why there was a problem with her failure to return with the patient (Tr. 194-95, 198). Respondent insisted that it was customary to leave admitted patients at Creedmoor and this particular patient did not have medications or personal belongings at Bellevue in contradiction of Hattab's testimony (Tr. 195, 197-98). Moreover, she contended that there was no danger to the patient (Tr. 9).

The third incident occurred on April 15. Petitioner alleged that respondent escorted a patient to an interview for a drug treatment program at the Village Care Center, a few blocks from Bellevue. According to petitioner, respondent failed to stay in a waiting area as required (ALJ Ex. 1; Tr. 7).

Petitioner's escort policy requires an escort to stay with a patient at all times. If the escort cannot sit with the patient during a meeting, the escort must wait immediately outside the room where the meeting is taking place (Pet. Ex. 1). Social worker Amanda Gaudet testified that she scheduled a patient to go to a local drug treatment program on April 15 for an evaluation (Tr. 144). Respondent escorted the patient to the program (Tr. 145). Later that day, program personnel called Bellevue to report that they could not find respondent (Tr. 146). Gaudet notified respondent's supervisor, Derac (Tr. 146).

Derac testified that she called the program to confirm they were finished with the patient and that respondent could not be found (Tr. 86). Village Care Center staff told Derac that the program director advised respondent that she could go get lunch, but respondent did not return for more than an hour (Pet. Ex. 14). Derac called respondent on her cell phone and told her that program staff had been looking for her for more than an hour (Tr. 92). Respondent told Derac that she had been waiting outside the Center (Tr. 92).

The day before she testified, Derac went to the Village Care Center (Tr. 97). She noted that there was a waiting area inside the program's entrance (Tr. 88). Derac was unsure if the

lobby or waiting area were visible from the sidewalk because there was a metal door at the entrance (Tr. 88-89). Program staff told her that there had been some renovations at the Center, but the alcove or waiting area was the same as it was at the time of this incident in April 2014 (Tr. 96).

Respondent disagreed with Derac's testimony and maintained that the program did not have a waiting area (Tr. 178). During the patient's interview on April 15, she stood inside the front door for about ten minutes (Tr. 178). Because it was a tight space and respondent was blocking the way, she went and stood outside for two hours (Tr. 178, 199-200). According to respondent, the program director told her to go to lunch but she refused to go because it was against the rules (Tr. 182). At about 1:30 p.m., Derac called respondent and said that program staff were looking for her and respondent insisted that she was standing outside in front of the Center (Tr. 180, 201). Respondent denied that she had "disappeared" and said that she would have noticed if the patient had walked out of the building (Tr. 179, 181).

The evidence established that respondent violated petitioner's escort policy on three occasions in April 2014. Petitioner's witnesses were more believable than respondent. Their testimony was clear and straightforward, they did not display any animosity, and there was no evidence that they had a motive to lie. Thus, the charges should be sustained. *See Health & Hospitals Corp. (Elmhurst Hospital Ctr.) v. Huggins*, OATH Index Nos. 587/14 & 1545/14 at 1, 9 (June 23, 2014) (sustaining charges of dereliction of duty where lab technician sent a patient's specimen for testing with documentation for a different patient and on another occasion entered the wrong test code on a requisition form that resulted in the incorrect test being performed).

Derac and Hattab credibly maintained that respondent was required to bring the patient back from Creedmoor on April 10. They noted that it was important for staff to meet with a patient prior to discharge. And their testimony was supported by documentary evidence. The assignment log plainly stated that it was a round-trip. In contrast, respondent offered no support for her self-serving claim that it was customary to leave the patients at Creedmoor.

I also credited testimony from Derac and Gaudet that they spoke with staff at a local drug treatment program who said that respondent could not be found on April 15. Even accepting respondent's claim that there was no space in the waiting room, I did not believe that she waited

outside the front door for two hours. If that was so, program staff would have easily found her. Instead, the evidence showed that program staff could not find respondent for more than an hour.

Though the allegation regarding respondent's April 3 trip to Starbucks was based on hearsay, it was reliable enough to prove the charge. *See Dep't of Housing Preservation & Development v. Davron*, OATH Index No. 1533/11 at 16 (Dec. 21, 2011) (hearsay is generally admissible in administrative proceedings and may form the sole basis for a finding of fact if evidence has probative value and bears indicia of reliability); *Dep't of Correction v. Woodson*, OATH Index Nos. 603/04 & 597/04 at 7 (July 1, 2004) (multiple hearsay statements from inmates sufficient to prove charges where statements corroborated each other); *see also People ex. rel. Vega v. Smith*, 66 N.Y.2d 130, 139 (1985) (hearsay is admissible at an administrative proceeding and may constitute substantial evidence if sufficiently reliable and probative).

Petitioner proved that the patient promptly reported the incident to staff. The patient's detailed allegation, which specified that respondent went inside Starbucks and left him outside, had the ring of truth. It was especially believable that the patient found it noteworthy that his escort left him alone, when he had been repeatedly warned to stay with his escort.

Respondent correctly notes that the allegations regarding Starbucks were based on the claims of a psychiatric patient. However, petitioner showed that the patient was stable enough to go to the Chinese Embassy for a passport and there was no evidence that he suffered from hallucinations or delusions that day (Tr. 108). The allegations also were consistent with respondent's pattern of ignoring the rules for escorting patients. Thus, the charges should be sustained. *See Dep't. of Correction v. Sulehria*, OATH Index No. 1904/08 at 6 (July 22, 2008) (allegation based on hearsay proved where pattern of misconduct shown); *cf. Health & Hospitals Corp. (Seaview Hospital Rehabilitation Ctr. & Home) v. Davila*, OATH Index No. 645/02 at 14-15 (May 3, 2002) (dismissal recommended for claim based on hearsay from a patient who had severe brain injury, significant cognitive impairment, and memory loss).

Excessive Lateness, Falsifying Timesheets, and Failure to Report on Time for Assignments

Petitioner alleged that respondent was late for work on six occasions, for more than 300 minutes, from January 8 to February 10, 2014, she falsified her timesheets on two occasions, and she was late for assignments on three occasions from January 21 to April 10, 2014 (ALJ Ex. 1).

Respondent conceded that there were instances of lateness, she denied that she falsified timesheets, and she did not dispute that she failed to show up on time for three assignments (Tr. 10). The charges should be sustained, in part, because the evidence proved that respondent was excessively late for work, she falsified her timesheet on one occasion, and she did not show up on time for three assignments.

Respondent and a union representative met with respondent's supervisor, Derac, on January 7, 2014, to discuss attendance issues and the need to report to work on time (Pet. Ex. 3; Tr. 54, 186). At the meeting, respondent agreed to send an e-mail to Derac and go to Derac's office when she arrived for work each morning (Pet. Ex. 3; Tr. 54, 186).

There was no dispute that respondent was excessively late in January and February 2014. Petitioner's lateness policy defines excessive lateness as three or more late arrivals in a month or in excess of 30 minutes (Pet. Ex. 2, Operating Procedure 20-2; Tr. 15-16). By her own admission, respondent violated that policy, because she was 80 minutes late on January 29 (Tr. 163, 187-88). That far exceeded the 30 minutes that were deemed excessive for the month. Respondent also conceded that she was 24 minutes late on February 5, and 50 minutes late on February 10, for a February total of 74 minutes (Pet. Ex. 12; Tr. 189, 191). Once again, that far exceeded the 30 minutes deemed excessive for the month. Based on this uncontested evidence, the charge of excessive lateness should be sustained.

The evidence did not support additional allegations that respondent was late on January 8, 21, and 28, 2014. Petitioner alleged that respondent was 120 minutes late on January 8 and 35 minutes on January 21, but failed to offer evidence to support those claims. No timesheets were introduced for either date. Instead, petitioner relied on an e-mail from Derac to respondent, which noted that respondent called in on January 8 and said that she "would be late due to FMLA [Family Medical Leave Act] reasons" (Pet. Ex. 3). Petitioner did not show what time respondent arrived for work that day and offered no evidence regarding FMLA leave. Nor did petitioner prove what time respondent arrived for work on January 21; instead, petitioner relied on an e-mail from Derac, which stated that respondent had been 20 minutes late for an 11:00 a.m. assignment that day (Pet. Ex. 4). Such evidence may show that respondent neglected her duties, but it did not prove that she arrived late for work.

There was conflicting evidence regarding respondent's attendance on January 28. Petitioner alleged that respondent was 10 minutes late for work that day. To support its claim, petitioner relied on testimony from associate director Kramer who said that she saw respondent come in late; an e-mail, which respondent sent from her desk to Derac at 9:10 a.m.; evidence that respondent missed a 9:30 a.m. assignment; and respondent's timesheet, which showed that she had not signed in as of 3:40 p.m. that day (Pet. Exs. 4, 5, 9; Tr. 34). Respondent did not deny that she missed the 9:30 a.m. assignment, but she testified that she arrived for work on time at 9:00 a.m. and took a few minutes to turn on her computer before sending the confirmatory e-mail to Derac (Tr. 203-04). Based on this evidence, petitioner failed to refute respondent's contention that she was at work at 9:00 a.m. Kramer did not specify when respondent reported for work that day. The fact that respondent failed to sign in and sent an e-mail to her supervisor 10 minutes after her scheduled start time of 9:00 a.m. does not prove that she was late for work. Likewise, the missed appointment at 9:30 a.m. may be evidence of negligence but does not prove tardiness, especially where petitioner's evidence showed that respondent was at work no later than 9:10 a.m. that day.

Petitioner alleged that respondent falsified her timesheet on January 28 and 29. To prove falsification of a timekeeping record, petitioner had the burden of establishing that respondent deliberately made a false entry. *See Health & Hospitals Corp. (Elmhurst Hospital Ctr.) v. McKenzie*, OATH Index No. 2043/06 at 3 (Nov. 3, 2006). Here, the evidence did not prove that respondent made a false entry on January 28. However, petitioner proved that respondent deliberately made a false entry the next day, on January 29.

At some point after 3:40 p.m. on January 28, respondent wrote on her timesheet that she arrived for work at 9:00 a.m. that day (Pet. Ex. 5). As noted, the evidence showed that respondent sent an e-mail from her desk to her supervisor at 9:10 a.m., but petitioner failed to prove when respondent showed up for work or that she was late. Thus, petitioner failed to establish that respondent falsified her timesheet that day.

In contrast, the credible evidence proved that respondent falsified her timesheet on January 29. Respondent wrote on her timesheet that she worked from 9:00 a.m. to 9:20 a.m. that day (Pet. Ex. 5). Petitioner presented evidence that three co-workers saw respondent arrive for work late, at 10:20 a.m. and respondent admitted that was true (Pet. Ex. 7; Tr. 34, 37, 187).

Respondent testified that she wrote "9:20" on her timesheet by mistake (Tr. 163, 187). She also claimed that she later realized her error and called Derac to discuss it, but Derac had no recollection of any such call (Tr. 116, 164).

I did not credit respondent's claim that she inadvertently wrote 9:20 a.m. on her timesheet after she arrived for work at 10:20 a.m. What respondent actually wrote on the timesheet was that she worked from 9:00 to 9:20 a.m. (Pet. Ex. 5). None of that was true. Respondent was well aware that she arrived more than an hour late and, based on the meeting with her supervisor earlier in the month, she knew that her attendance was under scrutiny. Thus, she had a strong motive to obfuscate and falsify. Under these circumstances, it is highly unlikely that respondent inadvertently wrote "9:00" or "9:20" instead of "10:20." The more plausible explanation is that respondent deliberately wrote the incorrect times to conceal her late arrival. This specification should be sustained. *See Dep't of Correction v. Nickless*, OATH Index No. 1658/95 at 6 (Dec. 4, 1995) (to prove falsification of timekeeping record, agency must show intentionally false entry rather than mere inaccuracy); *Dep't of Correction v. Miller*, OATH Index No. 1209/03 at 12 (Aug.13, 2003), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 04-43-SA (July 12, 2004) (inference that employee left work early and falsified timekeeping records may be drawn from other proven facts).

Petitioner also alleged that respondent committed misconduct by missing or arriving late for assignments on January 21, January 28, and April 10, 2014. Respondent was required to arrive 15 minutes before each assignment to speak with a social worker and personnel at the nursing station (Pet. Ex. 1; Tr. 19-20). The undisputed testimony and documentary evidence proved that respondent either missed or was late for an assignment on each of the specified dates (Pet. Exs. 4, 8; Tr. 75). Derac credibly testified that missed appointments could delay patient care (Tr. 20-21). For example, a substance abuse patient must go for an interview before being accepted to a treatment program (Tr. 60). If respondent was late for an assignment, the patient's interview may be cancelled or postponed, which would interfere with treatment (Tr. 60). Because the evidence showed that respondent repeatedly failed to show up on time for assignments, this charge should be sustained. *See Health & Hospitals Corp. (Queens Hospital Ctr.) v. Toval*, OATH Index No. 1372/14 at 4, 7 (May 28, 2014), *aff'd*, Health & Hospitals Corp.

Personnel Review Bd., Dec. No. 1560 (Apr. 23, 2015) (failure to respond to calls and failure to respond to the emergency room in a timely manner deemed dereliction of duty).

FINDINGS AND CONCLUSIONS

1. Petitioner established that respondent did not follow procedures for escorting patients on three occasions in April 2014.

2. Petitioner established that respondent was excessively late for work in January and February 2014.

3. Petitioner established that respondent falsified her timesheet on January 29, 2014.

4. Petitioner established that respondent missed or was late for assignments on three occasions from January to April 2014.

5. Petitioner failed to establish that respondent was late for work on January 1, 21, and 28, 2014, or that she falsified her timesheet on January 28, 2014.

RECOMMENDATION

Upon making the above findings, I requested and received respondent's personnel history. Petitioner hired respondent as a clerk in 1999 and she has held her current position, as a community liaison, since 2003. In 2014, she accepted a 10-day suspension for excessive lateness and absenteeism. Her recent performance evaluations rate her work as satisfactory. Petitioner now seeks termination of respondent's employment. That is appropriate.

The proven charges involve serious misconduct. Respondent's job was to escort patients. She failed to fulfill that basic responsibility on three occasions in April 2014. Respondent left one psychiatric patient unattended out on the street while she went to get coffee. That, alone, was a gross dereliction of duty. She also left two more patients at other facilities. It is noteworthy that respondent expressed no regret for her actions. This pattern of behavior suggests that respondent fails to treat patients with the professionalism that petitioner expects from its employees. Fortunately, no patients were injured. But petitioner is not required to wait for such harm before taking action. *See Health & Hospitals Corp. (Elmhurst Hospital Ctr.) v.*

Yao, OATH Index No. 473/11 at 6-7 (Dec. 29, 2010) (termination recommended for dietician with an unblemished disciplinary record for falsifying a patient's record, which could jeopardize patient welfare).

Respondent's poor attendance record is also troubling. Despite a very recent suspension for lateness and absenteeism, followed by a meeting to discuss this problem, respondent continued to be excessively absent in January and February 2014. Respondent offered no explanation for her lateness. Nor did she express any concern about her missed assignments and the disruption that caused for her co-workers and patients.

Furthermore, respondent's fraudulent timesheet raises fundamental concerns about her integrity. *See Yao*, OATH 473/11 at 5 ("Termination is the standard penalty for falsification of time records"); *Dep't of Consumer Affairs v. Laguda*, OATH Index No. 658/10 at 13 (Feb. 10, 2010) ("Falsifying timesheets is a serious form of misconduct that routinely results in termination of employment"); *see also Dep't of Education v. Matos*, OATH Index No. 214/04 (Feb. 13, 2004), *modified on penalty*, Chancellor's Dec. (Apr. 2, 2004), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 05-17-SA (Apr. 15, 2005) (termination of employment upheld where long-term employee with unblemished record falsified time records on three occasions).

Respondent's lengthy tenure with Bellevue is a mitigating factor. However, it is outweighed by the repeated and serious nature of her misconduct. *See Health & Hospitals Corp. (Kings Co. Hospital Ctr.) v. Kahn*, OATH Index No. 1051/15 at 6-7 (July 15, 2015) (termination of employment recommended for ultrasound technician who failed to follow hospital procedures for identifying patients); *Huggins*, OATH 587/14 & 1545/14 at 10 (termination of employment recommended where laboratory technician mislabeled and misidentified samples after previously receiving a suspension for similar misconduct and receiving poor evaluations); *Health & Hospitals Corp. (Bellevue Hospital Ctr.) v. George*, OATH Index No. 1430/00 (June 20, 2000) (despite lengthy tenure and lack of prior disciplinary record, termination of employment recommended for nurse who was unable to perform basic duty of safely administering medication).

Petitioner has a compelling interest in ensuring that fundamental procedures are followed. The proven charges of misconduct all demonstrate that respondent is unwilling or unable to meet

basic hospital standards. Because she poses an unacceptable risk to petitioner and its patients, I recommend termination of her employment.

Kara J. Miller
Administrative Law Judge

December 1, 2015

SUBMITTED TO:

STEVEN R. ALEXANDER
Executive Director

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