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**IDAHO PERSONNEL
COMMISSION**

JAN 23 2013

FILED

IDAHO PERSONNEL COMMISSION

STATE OF IDAHO

PATRICIA A. SCOTT,)	
)	
Appellant,)	IPC NO. 12-05
)	
vs.)	DECISION AND ORDER ON
)	PETITION FOR REVIEW
SOUTH CENTRAL PUBLIC)	
HEALTH DISTRICT,)	
)	
)	
Respondent.)	
_____)	

This matter is on petition for review from the May 25, 2012 decision of Hearing Officer J. Robert Alexander (hereinafter "Hearing Officer"). At the conclusion of an approximately three-hour hearing on May 2, 2012, the Hearing Officer affirmed South Central Public Health District's (hereinafter "Health District") imposition of discipline on Patricia Scott (hereinafter "Scott") in the form of a five-day suspension without pay and a reduction of her permanent merit increase from 4.25% to 1% effective March 4, 2012. The Health District also accepted Scott's resignation effective April 30, 2012. Scott's resignation is not at issue, but Scott petitions for review on the suspension and the pay reduction for the period of March 4 through April 30, roughly a period of eight weeks.

In an Amended Preliminary Order ("Order"), issued May 25, 2012, the Hearing Officer determined that the Health District established proper cause for the discipline by

a preponderance of the evidence by proving Scott violated IDAPA 15.04.01.190.01.e. (hereinafter "IPC Rule 190.01.e." or "Rule 190.01.e.") which provides for discipline based upon insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the agency. Scott timely petitioned for review on June 28, 2012. The Health District is represented by attorney Jeffrey J. Hepworth in this case. Scott is Pro Se.

I.

FACTUAL BACKGROUND

A. Preliminary Background

Scott was an Administrative Assistant for the Health District, hired in March 2007. She received positive reviews and was promoted to Personnel Technician in December 2008, but eventually took a voluntary demotion back to Administrative Assistant in order to be able to work 20 hours per week instead of 40 hours.

In her initial appeal, at her hearing, and now on petition for review, including at oral argument, Scott paints a picture of alleged harassment and hostility from leadership at the Health District, and in particular from its Director, Rene LeBlanc ("LeBlanc") and from Scott's supervisor Bonnie Spencer ("Spencer"). Through written statements set forth in her appeal, petition for review and Memorandum to the IPC ("Memorandum"), along with exhibits introduced in the record and testimony at the evidentiary hearing, Scott sets forth an alleged asserted pattern of a hostile environment under which she was harassed and intimidated by LeBlanc and was afraid of him.

It was this allegation of pattern harassment by Spencer that led Scott to send an email (Respondent's Exhibit 1), which prompted the meeting(s) in February 2012 from which stemmed the disciplinary action at issue.

Most, if not all, of Scott's assertions went unrefuted by the Health District. The Health District's position during this appeal was that the facts or issues raised by Scott's assertions are not relevant. The Health District focused narrowly on the specific incidents of the February 2012 meetings, and on the January 18, 2012 email in proving Scott's alleged violation of Rule 190.01.e.

At the outset of oral argument on petition for review, the Health District made a continuing objection to Scott's oral argument with respect to references to alleged incidents and/or discussion of the alleged work environment at the Health District, because the Health District considers Scott's exhibits and her discussion of them concerning the alleged work environment and history at the Health District leading up to the specific incidents for which she was disciplined to be outside the record. We disagree. They are part of the record in this case. The process and procedure before the IPC shall be summary and simple as reasonably may be. Idaho Code § 67-5316(5). The Hearing Officer allowed the exhibits into the record and allowed Scott to discuss them, including testimony regarding the work environment at the Health District, over objection of the Health District. The Hearing Officer did not consider a good number of her exhibits in the Order, because he found them to be irrelevant. See Order, ¶ 8, pp. 2-3. This does not mean the exhibits are not contained in the record in this case. The Hearing Officer, finding them irrelevant, simply did not afford them any weight. We find no need to consider those exhibits and other evidence, testimony or argument which

relates to the alleged work environment at the Health District leading up to the incident forming the basis for discipline. We find no need to do so because we hold that the Health District did not sustain its burden of proof in this matter.

B. LeBlanc's Disciplinary Action

On February 6, 2012, LeBlanc issued the NOCA to Scott informing her he was contemplating terminating her for violation of Rule 190.01.e. (insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the agency). Respondent's Exhibit 2. The stated reasons given for contemplated discipline are (verbatim):

- You were directed to report to my office at 1:45 p.m. on February 2, 2012 for a meeting with the District Director; you refused to show.
- You requested, through your supervisor, representation. I informed your supervisor that it was not an option nor warranted.
- You finally arrived to my office 35 minutes late at 2:20 p.m.
- Upon entering my office, you moved to the furthest chair and sat. I directed you to move to the chair in front of my desk. You refused.
- I asked you three more times to move to the chair and you refused.
- You failed to make eye contact when spoken to until I asked you to look at me.
- I asked if you knew what the meeting was about, you replied you did and indicated it had something to do with harassment. I indicated that was not the subject and that you would be surprised.
- You replied you wanted to be surprised from where you were sitting.
- I terminated the meeting, directed your supervisor to write a statement on what she observed and then directed you to get out of my office.
- Your behavior at this meeting constitutes disrespect and insubordination.
- You were asked again to report to my office on Monday, February 6, 2012 at 1:45 p.m. I received a call from your supervisor, Joymae Stone at 1:25 p.m. stating that you refused the appointment citing a fear of being in my office.
- Your behavior today was again disrespectful and insubordinate and has therefore led me to the decision to terminate your employment with South Central Public Health District.

Respondent's Exhibit 2.

Scott provided a response to the NOCA titled "Response to Evidence for Contemplated Action" ("Response"). She denied refusing to attend the February 2 or February 6 meetings and provided narrative explanations regarding the lead-up to both. In a nutshell, regarding the February 2 meeting, it is unfuted that Scott was provided just five minutes' notice prior to the meeting and was notified right before her shift ended. She had questions about representation and called Mike Savoie at the Idaho Division of Human Resources (DHR) to inquire. She reported to LeBlanc's office after the phone call, but his door was shut, so she waited for at least 10 minutes, tried calling him from the copy room, and then ultimately sent him an email documenting this and asking if he still wanted to meet. Response, p. 1; Tr. p. 38; Exhibit A.

This delay resulted in the meeting starting at 2:20 p.m. Scott entered the room and sat at a meeting table in the room that was furthest away from LeBlanc. Her immediate supervisor, Joymae Stone, was also there. Scott testified she had never been in a meeting with LeBlanc in his office where there were more than two people in the meeting where the table wasn't used. Tr. p. 39. At that point, Scott states LeBlanc ordered her to sit in the chair next to his desk and closest to him. Scott indicated she was fine where she was. LeBlanc got angry, raised his voice and demanded she move to the chair closest to him. He ordered her to do that three times. Scott alleged she was scared and refused to do so. See Response, p. 2; Scott's Memorandum on Petition for Review, dated August 2, 2012 (hereafter "Scott Memorandum"), p. 9.

LeBlanc terminated the meeting and, according to Scott, told her she was dismissed for disobeying a direct order. Response, p. 2. Scott testified her immediate supervisor marched her back to her desk with a box to pack her things. Tr. p. 60. Upon

protesting she couldn't be fired that way, and after her supervisor called LeBlanc to clarify whether she was fired, LeBlanc clarified she was not fired. Tr. p. 60; pp. 63-65; Exhibit Q.

Scott submitted her resignation at 9:01 a.m. on February 6 in the form of an email which she attached to her Response and which is included in her Appeal. Her resignation was effective April 30, in order to allow full vesting of retirement rights. Tr. p. 33-34; Response, p. 4. LeBlanc issued the NOCA, nearly five hours later on February 6, referenced above, and it appears he was set to terminate her, even specifically referencing a "decision to terminate" in the last bullet point. NOCA, p. 2.

The purpose of the meeting on February 6 at 1:45 p.m. was for LeBlanc to provide the NOCA to Scott. Contrary to allegations in the NOCA, Scott did not refuse to attend the meeting, but she did take an extraordinary step and called for a police escort because she asserts that she was fearful. Response, p. 3-4; Tr. p. 21, L. 20 – p. 22, L. 13. She was provided the NOCA at this meeting and provided her Response on February 13. LeBlanc issued the LODA dated February 21, 2012. The LODA outlined Scott's alleged insubordination at the meetings on February 2 and 6 and clarified what insubordination was. LODA, p. 1. Discipline was imposed for this alleged insubordination pursuant to Rule 190.01.e., in the form of a five-day suspension without pay, commencing on February 27, 2012 through March 2, 2012 and a reduction of Scott's permanent merit increase from 4.25% to 1%, effective March 5. He also accepted Scott's resignation effective April 30. LODA, p. 2.

II.

ISSUE

Did the Health District prove by a preponderance of the evidence that Appellant violated IPC Rule 190.01e.?

III.

STANDARD OF REVIEW

The standard of review on disciplinary appeals to the Commission is as follows:

When a matter is appealed to the Idaho Personnel Commission it is initially assigned to a Hearing Officer. I.C. § 67-5316(3). The Hearing Officer conducts a full evidentiary hearing and may allow motion and discovery practice before entering a decision containing findings of fact and conclusions of law. In cases involving Rule 190 discipline, the state must prove its case by a preponderance of the evidence. IDAPA 29.01.01.201.06. That is, the burden of proof is on the state to show that at least one of the proper cause reasons for dismissal, as listed in I.C. § 67-5309(n) and IDAPA 28.01.01.190.01, exist by a preponderance of the evidence.

The law is clear that once proper cause is proven for discipline under I.C. § 67-5309(n) and IPC Rule 190, the Commission (and its hearing officers) have no authority to second guess the choice of discipline imposed. *Sickles v. Idaho Dep't of Labor*. IPC No. 04-15 (May 2005).

On a petition for review to the Idaho Personnel Commission, the Commission conducts a *de novo* review of the record and renders an independent decision on the facts. *Whittier v. Dep't of Health and Welfare*, 137 Idaho 75, 78 (2002).

Whittier v. Dep't of Health and Welfare, 137 Idaho 75 (2002).

IV.

DISCUSSION

Proof of Cause for Discipline.

The question before the Commission is whether the Health District established proper cause for discipline by a preponderance of the evidence. Insubordination is a "willful or intentional disregard of the lawful and reasonable instructions of the

employer." *Whittier v. Dep't of Health and Welfare*, IPC Case No. 98-03 (Decision and Order on Petition for Review, p. 5, September 24, 1999); *Whittier v. Dep't of Health and Welfare*, 137 Idaho 75, 79 (2002). It has also been very similarly defined as a deliberate or willful refusal by an employee to obey a reasonable order or directive which an employer is authorized to give and entitled to have obeyed. *Worman v. Idaho Dep't of Correction*, IPC Case No. 04-24 (Decision and Order on Petition for Review, June 25, 2007) (citing *Whittier*, supra). Accordingly, a finding of insubordination requires proof that the employee intentionally or willfully disregarded a lawful and reasonable instruction from an employer or supervisor. *Whittier*, IPC Case No. 98-03 (Decision and Order on Petition for Review, pp. 5-6, supra.).

This case comes down to a chair. A chair that was approximately 12 feet away from LeBlanc and apparently a few feet further away than the chair he wanted Scott to sit in on February 2, 2012 in his office. Tr. p. 18. We find none of the other bullet points setting forth evidence relied upon for discipline were proven nor do they amount to insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the agency.

At the evidentiary hearing, in briefing to the IPC, and at oral argument on petition for review, the Health District has focused on an email Scott sent on January 18 to her immediate supervisor. Respondent's Exhibit 1. Apparently, this email was the reason the February 2, 2012 meeting was scheduled in LeBlanc's office. However, this email was not provided as a basis for discipline in the NOCA, nor in the LODA.

Therefore, the Health District's attempts at the evidentiary hearing and on petition for review to point to the email and other alleged behavior with regard to Bonnie

Spencer and light bulbs and health inquiries (See Memorandum in Response to Patricia Scott's Memorandum, p. 4), are misguided and without merit. Further, the Health District also provided testimony (LeBlanc) as to the level of discipline being appropriately given and extremely limited and reasonable since there was no termination, but just a five-day suspension and a reduction of merit increase from 4.25% to 1%, for the rest of her tenure at the Health District. Tr. p 28-29; Memorandum in Response to Patricia Scott's Memorandum, p. 5. This is disingenuous. Scott resigned early on February 6 in the form of an email which she included in her Appeal, and which was included in her Response to the NOCA. She resigned before the NOCA had been provided to her and certainly well before the ultimate discipline was doled out on February 21 in the LODA.

With a resignation in hand, effective April 30, it is not surprising LeBlanc didn't terminate her in his LODA issued February 21, 2012, and backed down from his clear intent to do so as set forth in the NOCA. Instead, as set forth in the LODA he accepted the resignation and imposed a five-day suspension and a merit decrease for not obeying his repeated orders to sit in the chair closest to him at the February 2 meeting.

Scott credibly explained why the meeting started late on February 2, and she wasn't late, nor did she refuse to attend the meeting on February 6. Her explanations went unrefuted.

It is clear Scott disobeyed repeated orders, including angry orders, from LeBlanc to move to the closest chair and this prompted an abrupt termination of the meeting on February 2 and the issuance of the NOCA and LeBlanc's clear intent to terminate Scott's employment. However, we find that this order was not a reasonable order; one

LeBlanc was entitled to have obeyed, under the circumstances. If it was so important to LeBlanc, he could have moved closer to Scott at the conference table. Scott apparently needed and desired a buffer zone or zone of perceived safety for her own comfort level. Therefore, we find that her refusal to obey the order to sit in the closer chair does not amount to insubordination or conduct unbecoming a state employee or detrimental to good order of the Health District.

V.

CONCLUSION

With narrow focus on the February 2 and 6 meetings and the basis for discipline as set forth in the NOCA and LODA, and for the reasons stated herein, the Health District has not proven by a preponderance of the evidence that there is proper cause for discipline imposed upon Scott. Accordingly, we order that Scott's five-day suspension without pay commencing on February 27, 2012 and concluding on March 2, 2012 is hereby reversed. Further, Scott's reduction of permanent merit increase from 4.25% to 1% effective March 4, 2012 and continuing through April 30, 2012, her last day of employment with the Health District, is hereby reversed and her merit increase shall be reinstated for that time period. The Health District shall compensate/reimburse Scott for these monetary amounts in the form of back pay and take other necessary action relating to retirement benefits, if any, so as to render Scott whole for the time period between February 27, 2012 and April 30, 2012, her last day of employment with the Health District.

VI.

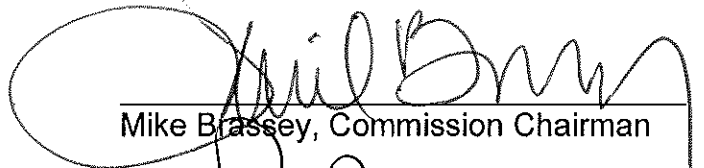
STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the commission do not as a matter of law support the decision.

Idaho Code § 67-5318.

BY THE ORDER OF THE
IDAHO PERSONNEL COMMISSION


Mike Brassey, Commission Chairman


Pete Black, Commissioner


John Cowden, Commissioner


Mark Holubar, Commissioner

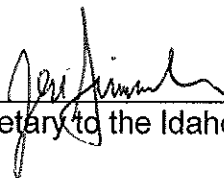
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by the method stated below on this 23 day of January, 2013.

FIRST CLASS MAIL

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Secretary to the Idaho Personnel Commission