

In the Matter of the Arbitration
between
State of Washington, Department of Social and Health Services
and
Washington Federation of State Employees
Soheyra Shakerine Grievance
AAA Case No. 75-390-00296-07

Arbitrator's Opinion and Award

Arbitrator William Greer
P.O. Box 80847
Portland, Oregon 97280

April 15, 2008

Grievance and statement of the issues

Introduction. The Employer terminated Soheyra Shakerine (Grievant) on February 23, 2007. The Union grieved, alleging that the termination violated Article 27.1 of the parties' 2005-2007 collective bargaining agreement. I conclude that the termination did not violate the contract.

The parties presented their cases in a hearing on December 13-14, 2007, in Seattle; Washington. The Employer was represented by Laura Wulf, Assistant Attorney General, PO Box 40145, Olympia, WA 98504-0145. The Union was represented by Gregory Rhodes, Attorney, Younglove Lyman & Coker, PO Box 7846, Olympia WA 98507-7846.

The advocates fully and fairly represented their respective parties. The hearing was orderly; the parties had a full opportunity to present evidence and examine and cross-examine witnesses. The hearing closed on February 27, 2008, upon receipt of the parties' post-hearing briefs.

The parties agreed that the grievance is substantively and procedurally arbitrable. They authorized me to retain jurisdiction over the grievance for 60 days following issuance of my opinion and award, for the purpose of resolving any dispute regarding any remedy that I may direct.

Statement of the issues. The parties agreed that the issues are: (1) Did the Employer have just cause to terminate Grievant under Article 27 of the parties' contract? (2) If not, what is the appropriate remedy? The Employer has the burden of proving that the discipline complied with the terms of the parties' collective bargaining agreement. The Union has the burden of proving any affirmative defenses that it asserted.

Witnesses and exhibits. The Employer offered 40 exhibits and testimony from eight witnesses (Chesterfield, Soule, Sebastian, Phillips, Gilbert, Dawson, Sieverson, Wickmark). The Union offered six exhibits and testimony from two witnesses (Shakerine, Mason). All witnesses testified under oath.

I have thoroughly reviewed all of the evidence that was received, relevant, and material, and I have thoroughly considered the parties' arguments and post-hearing briefs.

Facts

The parties. The Employer is an agency of the State of Washington. The Union is the exclusive representative of a bargaining unit of personnel employed by the Employer in certain job classifications. Grievant is a member of the bargaining unit represented by the Union.

Collective bargaining agreement. The 2005-07 contract provides, in part:

Article 11 — Vacation Leave

11.6.B. Vacation Scheduling for All Employees

When considering requests for vacation leave, the Employer will take into account the desires of the employee but may require that leave be taken at a time convenient to the employing office or department.

Article 12 — Sick Leave

12.5. Sick Leave Reporting and Verification

[1] An employee must promptly notify his or her supervisor on the first day of sick leave and each day after, unless there is mutual agreement to do otherwise. [2] If the employee is in a position where a relief replacement is necessary, the employee will notify his or her supervisor at least one (1) hour prior to his or her scheduled time to report to work. [3] If the Employer suspects abuse, the Employer may require a written medical certificate for any sick leave absence. [4] In addition, an employee returning to work after any sick leave absence may be required to provide written certification from his or her health care provider that the employee is able to return to work and perform the essential functions of the job with or without reasonable accommodation.

Article 15 — Family and Medical Leave

15.7 Personal medical leave or serious health condition leave covered by the FMLA may be taken intermittently when certified as medically necessary.

Article 27 — Discipline

27.1 The Employer will not discipline any permanent employee without just cause.

27.2 Discipline includes oral and written reprimands, reductions in pay, suspensions, demotions, and discharges. ...

27.4 All agency policies regarding investigatory procedures related to alleged staff misconduct are superseded. The Employer has the authority to determine the method of conducting investigations.

27.5 A. Upon request, an employee has the right to a union representative at an investigatory interview called by the Employer, if the employee reasonably believes discipline could result. . . . If the requested representative is not reasonably available, the employee will select another representative who is available. Employees seeking representation are responsible for contacting their representative. . . .

Article 29 — Grievance Procedure

29.3 Filing and Processing . . .

D. Authority of the Arbitrator

1. The arbitrator will:

a. Have no authority to rule contrary to, add to, subtract from, or modify any of the provisions of this Agreement;

b. Be limited in his or her decision to the grievance issue(s) set forth in the original written grievance unless the parties agree to modify it;

c. Not make any award that provides an employee with compensation greater than would have resulted had there been no violation of this Agreement

E. Arbitration Costs

1. The expenses and fees of the arbitrator, and the cost (if any) of the hearing room, will be shared equally by the parties.

Chronology

Background. Shakerine was employed by the Employer for seven years. Beginning in August 2002, she was an intake Social Worker III in the Employer's newly-created Children's Administration Central Intake Unit. That unit serves as a statewide call center for calls reporting allegations of child abuse or neglect; it is similar to a 9-1-1 call center. The Employer reasonably expects social workers

to work independently and exercise good judgment. Under readily available Employer manuals, training, and direction, a central intake social worker is to gather information from a caller and determine, on a continuum of responses, what to do.

In March 2004, the Employer assigned a veteran supervisor, Phillips, to supervise Shakerine. In a mid-2005 evaluation, Phillips noted several performance and attendance problems but used "gentle" language to maintain what she described as a "positive atmosphere." Shakerine responded with a three-page rebuttal, in part stating that her supervisors were responsible to catch and correct some of her asserted errors. Phillips was concerned that the rebuttal indicated that Shakerine had failed to take responsibility for the noted errors.

In the fall of 2005, the Employer directed Shakerine to review a protocol about how to handle calls involving child fatalities. Shakerine refused, stating that she already knew it, and filed a discrimination and hostile work environment grievance. She later withdrew the grievance.

Performance problems and investigation. Due to several concerns with Shakerine's conduct, the Employer scheduled an October 5, 2006 investigatory meeting. When the Employer announced the name of the investigator, the Union requested that a different investigator be assigned, and the Employer agreed. At a related October 12 meeting, the Employer announced the name of a second investigator, and the Union raised an objection to that individual. On October 16, the Employer agreed to assign a third individual, Gilbert, as the investigator; the Union did not object to Gilbert being assigned as the investigator. In November, Gilbert interviewed Shakerine twice and also interviewed Phillips and five management staff. After interviewing Shakerine's supervisors and reviewing relevant documents, on January 22, 2007, Gilbert issued a 28-page, single-spaced investigatory report. On February 23, 2007, the Employer terminated Shakerine based on charges discussed below.

1. May-September 2006—failure to correctly process intake calls regarding allegations of child abuse and neglect. Shakerine's performance from May through September 2006 raised concerns for the Employer. On October 16, the Employer assigned Sharon Gilbert, MSW, to investigate the incidents. Gilbert is a 21-year employee of the Employer. During her employment, she has been a child protective services social worker investigator, child protective services supervisor, and office chief for the office of risk management, and she is currently deputy director for field operations. The Union did not challenge Gilbert's qualification to conduct the investigation and prepare a report.

When the Employer initiated its investigation, it contended that Shakerine mishandled 15 calls. After interviewing Shakerine's supervisors and reviewing relevant documents, Gilbert issued a report on January 22, 2007. Gilbert concluded that the Employer had evidence to support seven of the 15 charges. Gilbert considered that those seven charges involved conduct that was "especially concerning." The record includes extensive technical evidence regarding this specialized and critical area of State service. The Employer terminated Shakerine, in part, due to her conduct in the seven charges of work performance deficiencies sustained by Gilbert. At hearing, the parties presented detailed testimony and documents regarding the appropriateness of Shakerine's responses to those seven intake calls listed in the termination letter. The Employer alleged that Shakerine's responses failed to meet its standards and expectations.

2. Unauthorized absences and failure to follow directives. The Employer charges that Shakerine was absent without leave and insubordinate on six work days in October 2006. On November 6 and 17, Gilbert interviewed Shakerine about those charges.

A. Unauthorized absences. On Friday September 29, 2006, pending the disciplinary investigation regarding Shakerine's alleged work performance issues, the Employer reassigned Shakerine from the central intake unit (where her 4-10 work schedule hours had been 4:30 p.m. to 2:00 a.m.) to the customer service specialist unit (where her 5-8 work schedule hours were 8:00 a.m. to 5:00 p.m.). Wednesday, October 4 was Shakerine's first work day in the new assignment. Shakerine did not grieve the change.

October 4 Shakerine did not show up for work.. She stated that her work hours had changed and told management "I can't come in." The Employer charged her with eight hours of unauthorized leave without pay. The Union argues that it is natural to expect that an employee reassigned from the 4:30 p.m. to 2:00 a.m. shift to the 8:00 a.m. to 5:00 p.m. shift would have difficulty in adjusting to that major schedule change. Shakerine did not grieve the change; accordingly, I consider the change to have been consistent with the terms of the collective bargaining agreement and Shakerine had a duty to comply with the order. In addition, I note that Shakerine's last work day on her former work schedule was September 20, which was *14 days* before her first day of work in her new assignment. Shakerine had a reasonable opportunity to adjust to the new schedule; the Union's argument has no merit. After completing her investigation, Gilbert concluded that this charge of being absent without authorization was substantiated by the facts. Based on my review of the record, I reach the same conclusion.

October 5—Shakerine did not show up for work as scheduled but did appear in the afternoon for an investigatory meeting with the Employer and her Union representative. The Employer charged her with six hours of unauthorized leave without pay. After completing her investigation, Gilbert concluded that the charge of being absent without authorization was substantiated by the facts. Based on my review of the record, I reach the same conclusion.

October 6—Shakerine did not report to work and later told the Employer (and testified at hearing) that her absence had been verbally approved during the meeting on the afternoon of Thursday October 5. The Employer denies that it approved the absence. Area Administrator Diana Chesterfield testified that she denied Shakerine's request and told her that any absence would be unauthorized. Phillips testified that she recalled Shakerine saying something to the effect that she would not be at work on Friday but would be on the following Monday. Phillips also testified that Chesterfield did not explicitly approve Shakerine taking Friday off; instead, Chesterfield said something to the effect of "we expect you on Monday." Most significantly, Shakerine's direct supervisor, Gretlyn Dawson, testified that Shakerine called her on the morning of Friday October 6 to report that she would be *late* to work because of going to the post office and grocery store; instead, Shakerine did not report to work *at all* on October 6. Gilbert concluded that this charge of being absent without authorization was substantiated by the facts.

I note that: (a) the October 1 reassignment was involuntary; (b) Shakerine did not show up for work on the first two days of her new assignment (Wednesday October 4 and Thursday October 5); (c) on Thursday October 5, she did not submit a written leave request for Friday October 6; (d) she did not receive clear authorization to take October 6 off of work; and (e) she called Dawson on the morning of October 6 to say that she would be late—thereby indicating that she had not received authorization to be *absent* that day. I credit the testimony from Chesterfield and Dawson and find it is more likely than not that Shakerine did not request and obtain approval for leave for October 6 and instead simply failed to report to work. Based on my review of the record, I conclude that the Employer proved its charge that on October 6 Shakerine was absent without authorization.

October 24—Shakerine was late to work one hour due to oversleeping and requested to use vacation leave. The Employer denied the request and charged her one hour of unauthorized leave without pay. Gilbert concluded that the charge of being absent without authorization was substantiated by the facts. Based on my review of the record, I reach the same conclusion.

October 30—Shakerine was late to work 1.6 hours due to oversleeping and requested to use vacation leave. The Employer denied the request and charged her 1.6 hours of hour of unauthorized leave without pay. Gilbert concluded that the charge of being absent without authorization was substantiated by the facts. Based on my review of the record, I reach the same conclusion.

October 31—Shakerine was late to work 0.7 hours due to oversleeping and traffic problems; she requested vacation leave. The Employer denied the request and charged her 0.7 hours of unauthorized leave without pay. Gilbert concluded that the charge of being absent without authorization was substantiated by the facts. Based on my review of the record, I reach the same conclusion.

B. Failure to follow directives

1. Failure to provide medical verification forms as directed. On September 13, 2006, Phillips gave Shakerine a memo requiring compliance with certain reporting and verification requirements after absences due to personal or family member illnesses. Phillips cited a provision of Article 12.5: "If the Employer suspects [sick leave] abuse, the Employer may require a written medical certificate for any sick leave absence." Phillips' memo stated, in part: "Failure to comply with the above requirements may result in absences being designated as unauthorized. Unauthorized absences and/or failure to follow the above medical verification requirements may result in disciplinary action, which could result in discharge from employment."

On November 17, the Employer reiterated its September 13 directive to Shakerine. In particular, the memo concluded: "Failure to comply with the above requirements may result in absences being designated as unauthorized. Unauthorized absences and/or failure to follow the above medical verification requirements may result in disciplinary action, which could result in discharge from employment."

On December 20, Shakerine was absent for a non-FMLA related reason; on a form, she wrote: "sick—mental health care due to excessive work environment stress." Shakerine did not obtain prior approval for the absence and failed to provide the required medical verification form. The Union argued that Shakerine initially believed that the Employer was required to prove sick leave abuse before it was entitled to require an employee to provide a medical certificate for a sick leave absence. Dawson conducted an investigation on January 3, 2007 and on January 4 issued a report concluding that the charge of failing to provide a required form was substantiated by the facts.

Shakerine failed to first comply with the December 20 directive and then grieve it. Her conduct violated the fundamental labor relations principle of "work now, grieve later." Based on my review of the record, I conclude that Shakerine failed to provide a required medical verification form, as directed.

2. Failure to finish sentence in a referral, as directed. On September 2, Shakerine started making a referral but left a sentence incomplete and the report unfinished. Supervisors directed her several times from that date to December 22—to complete the sentence; she did not do so. The Employer did not discipline Shakerine immediately but included this incident as a charge that was investigated by Gilbert (November 6 and 17, 2006) and Dawson (January 3, 2007).

The Union asserts that the Employer issued the directive to finish the sentence during the time that it was investigating Shakerine's failure to finish the sentence and that Shakerine refused to do so until she conferred with her Union representative to determine whether finishing the sentence would have any impact on the investigation. The Union did not cite any authority in support of its argument that Shakerine's refusal was protected union activity or authorized by the parties' contract. After completing their investigations, Gilbert and Dawson concluded that the September and December charges of failing to finish the work assignment were substantiated by the facts.

Again, Shakerine's December 22, 2006 conduct violated the basic labor relations principle of "work now, grieve later." Based on my review of the record, I conclude that on that day Shakerine failed to comply with a legitimate Employer directive to finish the sentence and the report.

3. Being less than honest in communications with management.

a. September 20, 2006 incident—leaving work early. On this date, Shakerine was scheduled to work until 2:00 a.m. At 10:20 a.m., saying that work was slow and she had to prepare for a union meeting the next day, she asked Phillips for permission to leave work early or to take an unauthorized absence. Phillips denied the request. After Phillips' shift ended and she left work, Shakerine gave the duty supervisor a leave slip stating that she wanted to take an "unauthorized absence," a form of leave without pay. The supervisor initialed the slip to acknowledge that he had seen it, but he did not sign and approve the leave request. At no time that evening did Shakerine tell the Employer that she was experiencing any pain or discomfort. At about 11 p.m., Shakerine left work and went to a hospital emergency room. The attending physician wrote a note that stated: "The Patient was injured on 9/21/2006 and was evaluated on 09/21/2006. The Patient should be able to return to work

1 day from today on 09/22/2006." Around noon on September 21, Shakerine faxed that note and a cover memo to Phillips. In her cover letter, she wrote:

Last night I thought I had a broken or fractured rib. I was in so much pain. A few days ago while in my yard I lost my footing and slipped onto the metal fence railing and felt like something happened. But the pain had been tolerable and on and off until last night. So after I left work about 11 pm I went to the [emergency room] and they x-rayed and, thank God, there are no broken ribs.

The Employer charged Shakerine with failing to be honest regarding the reason she left work, because she did not inform management that she was in pain or had a medical reason to leave early. The Employer and Shakerine discussed that issue during October 6 and November 6 meetings regarding her alleged May-September 2006 work performance deficiencies. On October 6, Shakerine said that she had told co-workers that evening about being in pain, but she declined to give Gilbert the name of those individuals. The Employer interviewed the staff who were at work during Shakerine's September 20 shift; none of them recalled Shakerine telling them of an injury or being in pain. After completing her investigation, Gilbert concluded that Shakerine had failed—at work on the evening of September 20—to report the real reason for her absence. Gilbert concluded that the charge was substantiated by the facts. Based on my review of the record, I conclude that the Employer proved that Shakerine had been dishonest in this incident.

b. November 17, 2006 response to investigation of May 24, 2006 intake call. The Employer charges that on November 17 Shakerine allegedly supported a May 24 decision by referring to two later reports, dated May 28 and 29. Shakerine made no attempt to manipulate or alter the dates of the various reports. She testified at hearing, reasonably, that her response was mistaken. (Tr 345.) Contrary to Gilbert's conclusion that the charge of dishonesty was sustained, I conclude that Shakerine was simply mistaken. In this instance, she made an error; she was not dishonest.

c. Unfinished sentence in report. In mid-2006, Shakerine received a call and started making a referral but left a sentence incomplete and the report unfinished. Supervisors directed her several times to complete the sentence; at one point, she asserted that she had finished the sentence. After completing their investigations, Gilbert and Dawson concluded that Shakerine did not finish the sentence and was dishonest in claiming that she had done so. Based on my review of the record, I reach the same conclusion.

Other events in Shakerine's work history that resulted in reprimands

1. September 15, 2006 reprimand—inappropriate behavior during supervisory meeting. On September 8, 2006, the Employer scheduled September 13 as the date for a monthly supervisory conference with Shakerine. Shakerine stated that her union representative was not available on that date. The Employer stated that the meeting was a supervisory conference; directed Shakerine to attend; and informed Shakerine that she could bring a co-worker with her to the meeting and that the union was welcome to participate. On September 13, Shakerine refused to participate, stating that she did not have a union representative in attendance to represent her. On September 15, the Employer issued a reprimand to Shakerine. After stating that the reprimand was "for your lack of professionalism while your supervisor was trying to assist and help you," the Employer described Shakerine's behavior in detail and stated that Shakerine "clearly showed a disregard to your supervisor's right to direct and supervise her employees." The reprimand stated that Shakerine's behavior was "totally inappropriate and will not be tolerated." The letter included several directives and concluded: "Should additional information come to my attention regarding your violation of my directives it will result in further disciplinary action, which can include your dismissal from employment." Neither Shakerine nor the Union grieved the letter of reprimand; accordingly, I consider its contents to be accurate. The Employer's February 23, 2007 termination letter does not refer to the above. However, the letter of reprimand is relevant to the extent that it provided Shakerine with notice about the Employer's standards and expectations (she was to follow her supervisors' directives) and as a consideration in evaluating the level of discipline imposed by the Employer.

2. September 18, 2006 reprimand—inappropriate responses to June 24, 2006 caller. On June 24, 2006, Shakerine received an intake call from a mandatory reporter requesting a field response worker. Shakerine did not respond to the request in the manner specified by the Employer. In a July 13 meeting with her supervisor, Shakerine said that she did not remember the incident. On September 18, Area Administrator Diana Chesterfield issued Shakerine a letter of reprimand about the incident, stating that the letter was intended "to convey to you the serious nature of your misconduct." Further, she stated:

You are not to document your own personal opinion, assumption, dissention or other editorial comments in a legal document. . . You are being directed to follow the duty supervisor's directives . . . You are warned that should additional information come to my attention regarding your violation of my directives it will result in further corrective and/or disciplinary action, which can include your dismissal from employment.

Neither Shakerine nor the Union grieved the letter of reprimand; accordingly, I consider its contents to be accurate. The Employer's February 23, 2007 termination letter does not refer to the above. However,

the letter of reprimand is relevant to the extent that it provided Shakerine with notice about the Employer's standards and expectations (she was to follow her supervisors' directives) and as a consideration in evaluating the level of discipline imposed by the Employer.

Positions of the Parties

Employer. The Employer provided notice to Shakerine regarding the type of conduct that would lead to discipline, but all employees are expected to know without specific notice that certain conduct (such as poor work performance, absenteeism, refusal to follow directives, and dishonesty) is prohibited. In addition, the central intake unit is analogous to a 9-1-1 call center; social worker intake workers such as Shakerine are appropriately held to a higher standard of conduct than employees who are not involved in the law enforcement system. Shakerine knew the standards of employment and the way to handle allegations of child abuse and neglect. The reprimands issued to Shakerine also put her on specific notice that particular conduct was unacceptable.

The Employer investigated the charges in a timely manner. In September 2006, after Shakerine's supervisors determined that they could not supervise her, Field Operations Director Steve Wickmark learned of Shakerine's performance deficiencies and misconduct. He promptly reassigned her effective October 1 and initiated an investigation. Gilbert issued the investigatory report on January 22, 2007. Wickmark held a pre-disciplinary meeting on February 16 and dismissed Shakerine on February 23.

The Employer proved all of its charges, and termination is warranted. Shakerine repeatedly demonstrated that she could or would not be rehabilitated. She refused to acknowledge mistakes, she became increasingly defiant to supervisory direction, and she was dishonest to the point that the Employer lost all trust in her. With Shakerine's unwillingness to take direction, accept responsibility, and work with her supervisors, the Employer could no longer risk having her in such a critical position. The Employer' mission is to protect children; it had no choice but to terminate her.

Union. The alleged performance problems occurred before September 18, 2006, when the Employer reprimanded Shakerine. The Employer cited no intake call performance issues between that date and the February 23, 2007 termination date. It is not fair for the Employer to issue a disciplinary letter that puts Shakerine on notice that any further incidents may result in escalating discipline and then terminate her based upon acts that had already occurred when that notice was issued.

As to the specific performance concerns, the Employer knew of the incidents when they occurred but did not discipline her at those times. The Employer asked Shakerine in November to respond to the May-September conduct allegations; at that late date, she had no independent recollection of the events. It is patently unfair to stockpile performance issues, with no mention to an employee that these issues may warrant discipline, and then to ask that employee to formulate a response to the multitude of issues months after they actually occurred.

The alleged errors were not so egregious or numerous as to justify termination. As to Shakerine's performance between May 24, 2006 and September 15, 2006, the Employer investigated 15 allegations of performance issues and decided that only seven were worthy of discipline. During that time, Shakerine processed 297 referrals and 181 SER reports, a total of 478 actions. The Employer has not demonstrated that seven allegations out of 478 constitutes an egregious error rate. The Employer did not show that it has zero tolerance for errors by intake social workers.

The Employer did not prove just cause by clear and convincing evidence, and it failed to establish that termination is the appropriate level of discipline.

Discussion

The Employer has the burden of proving, by a preponderance of the evidence, that its discharge of Shakerine was for just cause. To make that determination, I address three questions.

Was the disciplinary procedure fair? The Union does not dispute that the rules Shakerine allegedly violated are reasonably related to the Employer's operation; they are published; and Shakerine knew, or reasonably should have known, of them. The Union does argue that the Employer's delay in investigating the alleged May-September 2006 work performance deficiencies violated a procedural guarantee that is part of the Employer's Article 27.1 commitment to discipline employees only for just cause.

For an employer to establish that it had just cause to discipline an employee, it generally must show that it took reasonably prompt and timely action and conducted a fair investigation. Under the just cause disciplinary standard, a thorough investigation must be conducted reasonably promptly, to assure that the subject individual and witnesses can provide information with relatively fresh recollections.

Aside from the merit of the charges, the Union argues responded that the investigation occurred so long after the alleged intake call performance misconduct that Shakerine could not reasonably be expected to remember them and explain her actions. The sequence of events is:

(a) The cited work performance intake calls occurred on May 25, July 26, September 2 (four incidents), and September 15;

(b) Shakerine's supervisors obviously learned about the alleged errors at *some* point and eventually brought them to the attention of Field Operations Director Wickmark. It is reasonable to find that the supervisors knew or reasonably should have known of the asserted errors within two or three days after they occurred;

(c) The Employer delayed taking any significant action regarding those asserted deficiencies until mid-September 2006, when Wickmark learned of them and started the investigation;

(d) Gilbert did not interview Shakerine until November 6 and 17—over five *months* after the initial incidents and over *two months* after the final five incidents. Aside from a ten day period (October 6 to 16) in which the Employer and the Union considered the appointment of different investigators and agreed on Gilbert, the Employer offers no reason for the extraordinary delay from the seven incidents to its investigatory interviews. (I recognize that Gilbert, undoubtedly, had many responsibilities in addition to the investigation.)

(e) Gilbert issued her investigatory report on January 22, 2007;

(f) Wickmark conducted a predisciplinary hearing on February 16, 2007 and terminated Shakerine on February 23, 2007.

In this case, the Employer made several charges and assigned Gilbert and Dawson to investigate them. Most notably, the Employer assigned Gilbert in *October* to investigate Shakerine's alleged May-September 2006 failure to correctly process intake calls regarding allegations of child abuse and neglect, and Gilbert then did not interview Shakerine until *November*. Those delays can reasonably be expected to have hindered Shakerine from being able to recall and explain her work performance in those incidents. Indeed, Shakerine testified at hearing that she was unable, during the investigation, to recall the reason for several of her actions. I conclude that the Employer's investigation of Shakerine's alleged

May-September 2006 work performance charges did not meet the requirements of Article 27.1. To the extent that the Employer's investigation of the May-September charges violated Article 27.1, no remedy is appropriate, because this case turns on other charges.

Did the Company prove that Shakerine engaged in the misconduct for which she was discharged? In addition to Shakerine's alleged May-September 2006 work performance deficiencies, the Employer terminated her for several other reasons. As noted above, I have concluded that the Employer proved, following timely investigations, that Shakerine: (1) was absent without leave on six occasions in October 2006; (2) failed to comply with a December 20 directive to provide a required medical verification form, as directed; (3) failed to finish a sentence in a report, as directed; (4) was dishonest in leaving work early on September 20, 2006 without telling the Employer, before leaving, the reason for her absence; and (5) failed to finish a sentence in a report and then dishonestly claimed that she had completed the sentence.

Under the circumstances, is discharge within the range of reasonable penalties for the proven misconduct? Just cause requires that discipline, considering all the circumstances, be proportionate to the proven charges. In evaluating whether the discharge met the contractual just cause requirement, I consider a variety of factors. Here, Shakerine's proven misconduct involved several key aspects of her job. First, she was absent from work without authorization at least five times. Her work absences, it is reasonable to assume, required other intake social workers to cover for her and could have required supervisors to arrange for a replacement. Second, she refused, on several occasions, to complete a particular assignment. Her persistent refusal to complete a simple work assignment caused the report to be incomplete for months and unnecessarily caused additional work for her supervisors and managers. Third, she was dishonest. Her dishonesty poisoned the trust required in her work relationship with her supervisors, managers, and fellow social workers, particularly in a work setting that is similar to a 9-1-1 emergency communication center. From this chronology, the picture that emerges is one of an employee who had performance problems and was frequently resistant to supervisory authority.

The Employer's counseling and issuance of reprimands to Shakerine gave her clear notice that she needed to correct her behavior. Despite that notice, her failings continued. Despite her history of misconduct, the Employer did not follow its reprimands of Shakerine with any suspension but instead proceeded directly to terminating her.

The Employer's agreement to discipline employees only for just cause includes a requirement

generally to follow the principles 'of progressive discipline. In this case, what is the likelihood that a form of discipline less than termination would correct Shakerine from engaging in future misconduct?

While the Employer was investigating Shakerine's May-September 2006 work performance deficiencies, she engaged in additional alleged misconduct that the Employer investigated and, as discussed above, proved. As a practical matter, the Employer could not impose progressively more severe discipline for the September-December 2006 incidents until completing the investigation and making a decision about the May-September 2006 incidents. Further, the Employer's workplace is similar to a 9-1-1 emergency communication center in which employee honesty and forthcoming behavior is reasonably expected and demanded. I conclude that, by the time that Gilbert and Dawson finished their investigations and issued their reports in January 2007, it was not unreasonable for the Employer to terminate Shakerine for her September-December 2006 misconduct. Under the circumstances of this case, termination is a reasonable response to the seriousness and volume of the proven charges.

Conclusion

The Employer's termination of Shakerine did not violate Article 27.1 of the parties' collective bargaining agreement in a manner that warrants any remedy. I deny the grievance.

Respectfully submitted,

William Greer
Arbitrator

April 15, 2008

Portland, Oregon

In the Matter of the Arbitration
between
State of Washington, Department of Social and Health Services
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Washington Federation of State Employees
Soheyla Shakerine Termination Grievance
AAA Case No. 75-390-00296-07

Award

The Employer's termination of Shakerine did not violate Article 27.1 of the parties' collective bargaining agreement in a manner that warrants any remedy. I deny the grievance.

Respectfully submitted,

William Greer
Arbitrator

April 15, 2008

Portland, Oregon