

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HILLSBOROUGH COMMUNITY)
COLLEGE,)
)
Petitioner,)
)
vs.) Case No. 98-0199
)
CORINE DISMUKE,)
)
Respondent,)
_____)

RECOMMENDED ORDER

On May 12 through 13, 1998, a formal administrative hearing was held in this case in Tampa, Florida, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Maria N. Sorolis, Esquire
Allen, Norton & Blue, P. A.
324 South Hyde Park Avenue, Suite 350
Tampa, Florida 33606

For Petitioner: Corine Dismuke, pro se
10312 Penny Tree Place
Tampa, Florida 33624

STATEMENT OF THE ISSUE

The issue in this case is whether the Petitioner, Hillsborough Community College (the College), should terminate the employment of the Respondent, Corine Dismuke (Dismuke).

PRELIMINARY STATEMENT

On September 17, 1997, the College's Board of Trustees voted to terminate the Respondent's employment and gave her notice of a

right to formal administrative proceedings under Chapter 120, Florida Statutes (1997). Dismuke disputed the grounds for her termination and requested formal proceedings.

The College referred the matter to the Division of Administrative Hearings on November 17, 1997, but omitted Dismuke's request for formal proceedings and other attachments to the referral letter. Those materials were not supplied until January 12, 1998.

At final hearing, the College called six witnesses (including one by videotape) and had Petitioner's Exhibits 1 through 6 admitted in evidence (including the videotaped testimony.) The Respondent testified in her own behalf, called 20 other witnesses, and had CD Exhibits 1 through 5 admitted in evidence.

After presentation of the evidence, the College ordered the preparation of a transcript of the final hearing and asked for until June 12, 1998, to file proposed recommended orders. Both parties filed proposed recommended orders.

FINDINGS OF FACT

1. The Respondent, Corine Dismuke (Dismuke), was employed at Hillsborough Community College (the College) continuously from April 20, 1981. For eleven and a-half years, she worked in the Financial Aid office and was a good and valued employee. By 1994, however, Dismuke's relationship with a new supervisor had deteriorated, her morale was low, and she made her grievances known to the College. The College's ultimate resolution of

Dismuke's grievance was to transfer Dismuke to the College's Financial Services office in 1994.

2. For a time, Dismuke continued to experience difficulties at work despite the change. She thought that her new colleagues shunned and isolated her and that she was treated poorly and unfairly by her new supervisor, the Director of Financial Services, Barbara DeVries. Dismuke filed several grievances complaining about these things during her first year and a-half at Financial Services. Dismuke's supervisor thought Dismuke's attitude improved during Dismuke's second year in the Financial Services office. The evidence was clear that Dismuke was on good terms with some (but not all) of her colleagues.

3. Dismuke's attitude changed when she began to get indications in the spring of 1997 that her position would be adversely affected if the College implemented the recommendations contained in the report of a study undertaken by the firm of Coopers and Lybrand on the College's personnel classification systems and pay scales. Under the Coopers and Lybrand recommendations, Dismuke's position would be reclassified, and her salary would be frozen, so that Dismuke would not even get cost-of-living adjustments, until her salary came in line with the report's recommended salary for the new position.

Grounds for Termination and Termination Proceedings

4. On Monday, June 30, 1997, Dismuke entered her office suite and told a co-worker, Pete Scaglione, with whom she had always gotten along with well, that he had better consider

wearing a bullet-proof jacket because bullets could begin to fly soon. This upset Scaglione greatly because he perceived the comment as a direct threat to him. Scaglione assumed Dismuke's anger had something to do with the Coopers and Lybrand recommendations, which would have given Scaglione a modest salary increase.

5. Scaglione went to another fellow employee, Beatriz Maseda, who also was greatly concerned. Both Scaglione and Maseda were concerned that Dismuke would act on her statement to Scaglione, come to work with a gun, and start shooting. Maseda advised Scaglione to report the incident to DeVries. Scaglione was afraid that DeVries would not do anything and did not want to report the incident. Maseda convinced Scaglione to report it. They discussed a personnel rule requiring him to do so.

6. The College's Rule 6HX-10-1.017 provides:

Purpose:

The purpose of this administrative rule is to establish college policy that prohibits threats of violence by personnel, students, visitors or any other individual while at Hillsborough Community College.

Rule:

Threats to do bodily harm or property damage by College personnel, students, visitors or any other individual against another while at Hillsborough Community College is totally inappropriate. A threat of violence, either verbal or written, expressed or implied, will not, under any circumstances, be tolerated at Hillsborough Community College. Any other threat of a material and substantial disruption to the operation of the College is also prohibited. An employee making any threat prohibited by this rule will be

disciplined in accordance with the appropriate administrative procedure, up to and including termination. A student making any threat prohibited by this rule will be disciplined in accordance with the appropriate administrative procedure, up to and including expulsion. Any other individual making any threat prohibited by this rule will be required to leave College property immediately. Notification will be made to the appropriate law enforcement agency where appropriate. The failure of any employee or student to report any threat prohibited by this rule that is made by students, employees, or any other person against any person or the operation of the College will also result in disciplinary action.

7. It is stipulated that Dismuke received notice of Rule 6HX-10-1.017 as well as the College's other personnel rules.

8. When DeVries was told of the incident the next day, she also was concerned that Dismuke would act on her statement to Scaglione. DeVries notified her supervisor, the College's Vice-President for Financial Affairs, Robert Wolf. Wolf was very concerned about DeVries' report to him and insisted on an immediate meeting with DeVries, Maseda, and Scaglione. Wolf ascertained that Dismuke actually made the comments in anger and that Scaglione and Maseda were genuinely afraid of Dismuke. Wolf also became concerned that Dismuke might act on her statement to Scaglione. He and DeVries discussed the incident and what action would be appropriate. DeVries thought that the seriousness of the threat warranted termination under the College's personnel rules, and Wolf agreed. Wolf told DeVries to monitor the situation and begin the process to terminate Dismuke.

9. Although Wolf and DeVries were concerned for the safety of the College's personnel, and thought the matter was serious enough to warrant termination under the College's personnel rules, neither took any immediate security measures to prevent Dismuke from carrying out the threat implied in her statement.

10. Thursday and Friday, July 3 and 4, 1997, were school holidays. On Monday, July 7, 1997, DeVries began an investigation consisting of interviews of some other employees in Financial Services. Her investigation ascertained that others also were afraid of Dismuke. One employee, Dana Livesay, reported to DeVries that on Monday, July 7, 1997, she overheard Dismuke on the telephone saying to someone, "You told me to call you if I started to lose it, before bullets started to fly, well, I'm about to lose it." After a pause, Dismuke added, "You tell me to be calm, well I don't want to be calm." Like Scaglione and Maseda, Livesay also was concerned for her safety and asked to have her work station moved farther away from Dismuke's.

11. DeVries decided not to discuss the matter with Dismuke. For one thing, she and Wolf already had decided that termination was appropriate. For another, DeVries did not think it was appropriate for her to confront Dismuke and discuss the incident since prior discussions had been unsuccessful in addressing Dismuke's grievances, Dismuke now had made threats that DeVries felt were directed towards her.

12. During the week of July 7, 1997, DeVries prepared an Employee Discipline Report notifying Dismuke that DeVries was

recommending termination and suspending her with pay pending termination. Out of concern for her safety and the safety of others at the College, DeVries made arrangements to have two City of Tampa Police Department officers present when she met with Dismuke on Thursday, July 10, 1997, to present her with the Employee Discipline Report. For their own safety (as well as for the safety of DeVries and other College personnel), the officers searched Dismuke for weapons and found none.

13. Dismuke refused to sign the Employee Discipline Report. DeVries and the police officers advised Dismuke that Dismuke was to leave the campus and not return, except to participate in an informal hearing to be held on Tuesday, July 15, 1997. The two police officers escorted Dismuke off campus. Dismuke remained calm and respectful and obeyed all instructions from the police officers without question. After Dismuke left, DeVries signed the Employee Discipline Report.

14. The informal hearing on July 15, 1997, was referred to by different names (including discipline hearing, post-discipline hearing, and pretermination hearing), and Dismuke seemed confused as to its purpose.

15. The July 15, 1997, hearing was conducted by a College administrator named Charles M. Sackett. Sackett questioned several witnesses, including Wolf, DeVries, Scaglione, Maseda, and Livesay. He gave Dismuke an opportunity to question the witnesses and to testify on her own behalf, but she declined. Dismuke thought it better to just listen to the evidence against

her because she did not feel prepared to cross-examine witnesses and present a case in her behalf and because she understood that the informal hearing would be followed by a formal hearing at which she would be better prepared. Sackett accepted written material from Dismuke but declined Dismuke's request that he obtain the witnesses' sworn answers to written questions Dismuke had drafted; however, he advised her how to obtain a tape recording and verbatim transcript of the informal proceeding.

16. After the informal proceeding, Sackett prepared a report which recommended to interim College President, Dr. Jeff Hockaday, that the "termination of Ms. Dismuke's employment with the College be affirmed." Wolf and Executive Vice-President Dr. Diana Ferreira signed the Employee Discipline Report on July 15, 1997; Hockaday signed the next day and required that Dismuke's suspension with pay continue, pending action by the College's Board of Trustees on the termination recommendation.

17. The position of Human Resources Vice-President was vacant during the summer of 1997, and the Employee Discipline Report was not signed by anyone from the College's Human Resources Department. Jerry Inman, Human Resources Compensation and Employee Records Manager, initiated a Personnel Action Notice (PAN) to place the termination recommendation on the agenda for the meeting of the College's Board of Trustees scheduled for the September 17, 1997.

18. On August 1, 1997, Dr. Gwendolyn Stephenson became the President of the College. She satisfied herself that the pending

proceedings for Dismuke's termination were appropriate and proceeded with them. (She also proceeded with action to terminate another employee for threatening violence.)

19. Dismuke thought the Board meeting on September 17, 1997, was her formal termination hearing, and she came prepared to defend herself. Instead, she was informed: that she already had had her "pretermination hearing"; that she could make a presentation to the Board prior to its decision on the termination recommendation but only would have an opportunity for a full-blown, formal hearing if the Board of Trustees approved the recommendation for her termination; and that one option would be to request hearing before the Division of Administrative Hearings (DOAH) under Chapter 120, Florida Statutes (1997). The Board voted to terminate Dismuke. (The Board member who seconded

the motion to terminate Dismuke commented that it was "the only way to get to a post-termination hearing.")

Dismuke's Defenses

A. Denial.

20. Dismuke's first defense was that she never made the statements attributed to her. As part of this defense, Dismuke suggested that the witnesses (including Scaglione, whom Dismuke considered to be her one good friend in Financial Services until June 30, 1997), conspired with Barbara DeVries to fabricate grounds to terminate her. This defense is rejected as being untrue. First, it is clear that Dismuke was very angry as a result of what she viewed to be the unfair impact of the results of the Coopers and Lybrand study on her personally. This perceived injustice had the effect of reviving all of her earlier grievances and animosities against the College and her supervisor. The statements attributed to Dismuke are consistent with her past behavior under similar circumstances. Dismuke has a history of using threats of violence to get attention and to get her way.

21. Dismuke herself insisted on calling Carolyn Speed-Green, the Assistant to the President for Institutional Equity, to testify and sponsor a report Speed-Green wrote during the College's efforts to resolve Dismuke's acrimonious dispute with her former supervisor in Financial Aid in 1994. The report included a copy of a letter Dismuke wrote to the President of the College stating that Dismuke drove to work one day with a gun and

the intention of shooting her supervisor before she "returned to reality," but changed her mind because she could go to jail for that and decided to call in sick. Speed-Green's report also referenced evidence that Dismuke had made a similar statement (that she "started to shoot" the supervisor) in a meeting with the supervisor three years earlier.

22. Dismuke claimed that the incident related in the letter to the President in 1994 and in the earlier statement to her supervisor were fabricated to get attention and the response she desired from the College. Another witness called by Dismuke, Sandra Rodriguez (f/k/a Sandra Castro) testified that, within a few weeks after Dismuke began work in Financial Services, Dismuke told the witness that Dismuke actually came to work with a gun and with the intention of shooting her supervisor. But the apparent admission could have been another fabrication for effect.

23. Even in her own testimony at the final hearing in this case, Dismuke made a veiled threat of violence. After describing how desperate she would be if she did not get her job back with back pay, she made a plea that it was "time that someone took the initiative to stop all this madness. Once I'm out on the street, I don't know how I'm going to act. They're all saying that I'm violent. They're all saying that I'm crazy. When I'm out on the street homeless and hungry with my two grandchildren, who's to say if I won't become violent."

B. "Threat Against Another."

24. As previously mentioned, the College's Rule 6HX-10-1.017 prohibits "[t]hreats to do bodily harm . . . against another while at Hillsborough Community College." Dismuke's next, alternative defense was that, if found to have uttered the statements attributed to her, her threats were not "against another" and did not violate Rule 6HX-10-1.017.

25. It does seem that Scaglione misunderstood Dismuke's intent in thinking that Dismuke was threatening to shoot him. Rather, it seems that her statement was meant to imply that she would be shooting someone else but that Scaglione should wear a bullet-proof vest to avoid being injured by a stray bullet. But regardless which was Dismuke's intent, her statement threatened not only Scaglione but also all of the employees in her work area.

26. Dismuke does not seem to appreciate the seriousness of the threats embodied in the words she uttered. Clearly, several of her co-workers, including DeVries, felt threatened by Dismuke's statements, and their feelings were not unwarranted.

C. Alleged Selective Enforcement.

27. Dismuke also argues that the College treated her unfairly because another employee, Sladen McLaughlin, was not terminated for threatening a co-worker, Mattie Brown. According to Brown, Brown went to McLaughlin's work-station to get information she needed to trouble-shoot a telephone problem, and McLaughlin told her to leave because he did not want to talk to her about it. When she persisted, McLaughlin "viciously" rose

from his chair and told her to get her "uppity ass" out of his office. According to McLaughlin, he just got angry at the manner of Brown's persistence and told her not to act like a "smart ass." Either way, it was not clear from the evidence that McLaughlin threatened Brown with violence or bodily harm. He

certainly did not threaten to shoot her. There is no comparison to Dismuke's threats.

28. In addition, contrary to Dismuke's defense, she was not the only employee terminated at the Board's September 17, 1997, meeting for violating Rule 6HX-10-1.017. See Finding 18, supra.

D. Alleged Violation of Progressive Discipline.

29. Dismuke also argued that the College should not be permitted to terminate her because it did not follow its progressive discipline procedure.

30. It is clear that while the College's Administrative Procedure 2.043 provides for progressive discipline, the procedure also affords supervisors discretion to skip one or more steps in the procedure. Specifically, immediate termination is authorized "if an employee's performance . . . is serious enough to warrant such actions." Termination for Dismuke's threatening statements was not an abuse of discretion.

E. Alleged Procedural Violations.

31. Dismuke also argued that, under Administrative Procedure 2.049, she was entitled to receipt of a Personnel Action Notification (PAN) from the President via the Associate Vice-President of Personnel Services but that she only received an unsigned copy of the Employee Discipline Report from DeVries.

32. Administrative Procedure 2.049 was not introduced in evidence. Administrative Procedure 2.043, which was introduced in evidence, provides in pertinent part:

A recommendation for termination must be included on an Employee Discipline Report

form for review and approval by the unit administrator, the Campus/District-level Vice

President, and the Executive Vice President (where applicable) and the President. . . .

The Associate Vice President for Human Resources will notify the employee that the President is recommending his/her termination by certified mail, return receipt requested, with a copy of the Employee Discipline Report form.

33. It was not clear from the evidence that Dismuke did not receive a PAN; the evidence was that Jerry Inman, Human Resources Compensation and Employee Records Manager, initiated the PAN for Dismuke's termination during a vacancy in the position of Associate Vice President for Human Resources. The purpose of the PAN was to place the termination recommendation on the agenda for the meeting of the College's Board of Trustees scheduled for the September 17, 1997. It was not clear from the evidence that Dismuke did not receive her copy of the PAN.

34. It also was not clear from the evidence that Dismuke did not receive a copy of the signed Employee Discipline Report. The copy she received from DeVries on July 10, 1997, was not signed, but the original was signed by several College officials after Dismuke refused to sign it.

35. Dismuke also complained that several College administrators other than the College President recommended her termination. Dismuke argued that only the College President was authorized to do so. Clearly, the ultimate recommendation for termination placed before the College Board of Trustees normal comes from the president (or acting president), as occurred in this case. However, just as clearly, the College President is

entitled to obtain recommendations from other administrators as part of the president's decision-making process. In this case, Acting President Hockaday initially recommended termination based on the recommendations of other College administrators, and President Stephenson did the same. There was no procedural infirmity in either termination recommendation.

F. Alleged Double Jeopardy.

36. Dismuke also argued that it was unfair "double jeopardy" to suspend her and terminate her for the same offense. To the contrary, the evidence was clear that Dismuke was suspended with pay pending the Board's decision on the College President's recommendation of termination. This was in accordance with the College's Administrative Procedure 2.043. The suspension with pay and the termination were both part of the imposition of a single discipline. There was no "double jeopardy."

G. No Rules on Termination Hearings.

37. There was no evidence of any rules providing for or governing either the July 15, 1997, hearing or the hearing before the Board of Trustees on September 17, 1997.

CONCLUSIONS OF LAW

38. The parties agree that this is a proceeding under Section 120.57(1), Florida Statutes (1997). Section 120.569(1), Florida Statutes (1997), provides:

The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding

under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact.

39. The parties also agree that the issue for determination in this case is whether the College had "just cause" for terminating the Respondent, Corine Dismuke.

40. The College had the burden to prove "just cause." The standard of proof in a proceeding involving termination of employment is a "preponderance of the evidence." See McNeill v. Pinellas County School Bd., 678 So. 2d 476, 477 (Fla. 2d DCA 1996); Dileo v. School Bd. of Dade County, 569 So. 2d 883 (Fla. 3d DCA 1990); Allen v. School Bd. of Dade County, 571 So. 2d 568 (Fla. 3d DCA 1990). The College had to prove "just cause" by a preponderance of the evidence.

41. In this case, it is clear that the College met its burden of proof. The facts are clear that the College had "just cause" to terminate Dismuke's employment under the College's Rule 6HX-10-1.017. It also was clear that none of Dismuke's defenses had merit.

42. As for the apparent absence of rules providing for or governing either the July 15, 1997, hearing or the hearing before the Board of Trustees on September 17, 1997, the absence of such rules does not prohibit the holding of those hearings. If the former hearing had not been held, Dismuke's Employee Discipline Report would have been forwarded directly for a PAN. The latter hearing was required for the Board of Trustees, a public body, to take action on the termination recommendation. Any inadequacies in those proceedings were cured by this post-termination hearing under Section 120.57(1), Florida Statutes (1997).

43. The actual purpose of the July 15, 1997, hearing probably was to serve as a pretermination hearing under federal constitutional procedural due process requirements. As stated in Stephens v. Geoghegan, 702 So. 2d 517, 526 (Fla. 2d DCA 1997):

In 1985, the United States Supreme Court discussed an employee's procedural due process rights [footnote omitted] in the context of a discharge. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). It noted that an employee who is threatened with the loss of a job in which he has a property right [footnote omitted] is entitled to procedural due process, and further discussed what was necessary to preserve this right before termination. The Loudermill Court observed that an elaborate pretermination hearing is not required. It held that, before discharge, the employee must have notice of the charges against him. He must be given an explanation of the employer's evidence and an opportunity to present reasons, either in person or in writing, why the proposed action should not be taken. 470 U.S. at 546, 105 S.Ct. at 1495, 84 L.Ed.2d at 506. The Court's holding rested in part on the fact that the pertinent state law provided an employee with a full post-termination hearing.

44. Assuming that Dismuke had a property interest in her employment, the July 15, 1997, hearing met the requirements of Loudermill. Notwithstanding the absence of rules governing the pretermination hearing, Dismuke was given "an explanation of the employer's evidence and an opportunity to present reasons, either in person or in writing, why the proposed action should not be taken." She chose not to make a presentation at that hearing, perhaps wrongly thinking she could do so at the September 17, 1997, hearing before the Board of Trustees. In any event, this

proceeding under Section 120.57(1), Florida Statutes (1997), provided Dismuke with a full post-termination hearing. It is concluded that the absence of rules governing the July 15 and

September 17, 1997, hearings did not result in a violation of Dismuke's procedural due process rights.

45. Even if the absence of rules governing the July 15 and September 17, 1997, hearings could be construed to have resulted in a violation of Dismuke's procedural due process rights, it was held in Simmons v. Department of Natural Resources, 513 So. 2d 723, 724 (Fla. 1st DCA 1987):

[T]his is not the place to vindicate the violation of such due process rights, at least in the context of this case. The fact is that the appellant was eventually given a full and complete post-termination hearing which we find properly resulted in an order approving the termination.

The rationale in Simmons applies to this case. This post-termination hearing under Section 120.57(1), Florida Statutes (1997), is not the place to litigate federal due process claims.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Board of Trustees of the Hillborough Community College enter a final order terminating the employment of the Respondent, Corine Dismuke.

DONE AND ENTERED this 13th day of July, 1998, in Tallahassee, Leon County, Florida.

J. LAWRENCE JOHNSTON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway

Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of July, 1998.

COPIES FURNISHED:

Maria N. Sorolis, Esquire
Allen, Norton & Blue, P.A.
324 South Hyde Park Avenue, Suite 350
Tampa, Florida 33606

Corine Dismuke, pro se
10312 Penny Tree Place
Tampa, Florida 33624

Dr. Gwendolyn H. Stephenson, President
Hillsborough Community College
Post Office Box 31127
Tampa, Florida 33631

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.