

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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| SEMINOLE COUNTY SCHOOL BOARD, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | Case No. 11-1736 |
| |) | |
| MARY A. WILLIAMS, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on June 8, 2011, in Sanford, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ned N. Julian, Jr., Esquire
Seminole County School Board
400 East Lake Mary Boulevard
Sanford, Florida 32773-7127

For Respondent: Theobie Wells, Jr.,
Qualified Representative
Post Office Box 1334
Sanford, Florida 32772-1334

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner has just cause to terminate Respondent's employment.

PRELIMINARY STATEMENT

By letter dated March 11, 2011, William Vogel, as superintendent of public schools for Seminole County, Florida, notified Respondent, Mary A. Williams (Ms. Williams), that he would be recommending to Petitioner, Seminole County School Board (School Board), that Ms. Williams be terminated from her employment with the School Board. By letter dated March 28, 2011, Ms. Williams requested an administrative hearing. On April 12, 2011, a Petition for Termination (Petition) was issued and forwarded to the Division of Administrative Hearings. The Petition alleged that Ms. Williams had been absent without leave for more than three days.

On May 17, 2011, the School Board filed a Motion for Leave to Amend the Petition to add a charge of insubordination. The motion was granted by Order dated May 24, 2011, and the Amended Petition for Termination (Amended Petition) was deemed filed on May 24, 2011.

At the final hearing, the School Board called the following witnesses: Virginia Fisher, Cynthia Frye, Steve Bouzianis, John Reichert, and Bill Vogel. Petitioner's Exhibits 1 through 4, 6, 7, 14, and 15 were admitted in evidence. Ms. Williams testified in her own behalf. Respondent's Exhibit 1 was admitted in evidence.

The one-volume Transcript was filed on July 6, 2011. The parties agreed to file their proposed recommended orders within 15 days of the filing of the Transcript. The parties timely filed their proposed recommended orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Ms. Williams has been employed by the School Board for 15 years and is currently a 12-month custodian at Longwood Elementary School (School), located in Seminole County, Florida. As a 12-month custodian, Ms. Williams is allowed sick and annual leave.

2. Ms. Williams requested leave beginning July 7, 2010, to September 29, 2010, for back surgery. On August 10, 2010, the School received a letter dated July 8, 2010, from Ms. Williams's physician, advising that Ms. Williams had undergone surgery for a spinal disorder on July 7, 2010, and would need 12 weeks to recover prior to returning to work.

3. On October 1, 2010, Ms. Williams called the School and advised that she was not able to return to work and requested leave from September 30, 2010, through October 28, 2010. Her physician sent a letter dated September 30, 2010, to the School, advising that Ms. Williams would need an additional four weeks for recovery. By this time, Ms. Williams had exhausted all her paid leave and was on leave without pay. Ms. Williams was

unable to come to the School to sign the application for leave; however, the leave was approved by the principal of the School, Virginia Fisher (Ms. Fisher), who was Ms. Williams's direct supervisor.

4. By November 2, 2010, Ms. Williams was still unable to return to work, and her physician sent another letter to the School, advising that Ms. Williams would need an additional four weeks for recovery. Ms. Williams requested leave from November 2, 2010, to November 30, 2010. Again, Ms. Williams was unable to come to the School to sign the application for leave, but it was approved by Ms. Fisher.

5. By December 1, 2010, Ms. Williams was still unable to return to work and requested leave from December 1, 2010, through January 3, 2011. Her physician sent a letter to the School, stating that Ms. Williams needed an additional four weeks for recovery. Ms. Williams was unable to come to the School to sign the application, and the leave request was approved by Ms. Fisher.

6. Ms. Williams's physician sent a letter dated December 27, 2010, to the School, stating that Ms. Williams had not quite reached maximum medical improvement with respect to her recovery and that he would need to see her in four weeks for reevaluation. Ms. Williams signed and submitted an application

for leave for January 4, 2011, through January 24, 2011. The leave was approved.

7. Ms. Williams's physician submitted a Return to Work/School Certificate dated January 21, 2011, to the School, stating that Ms. Williams would be able to return to work on January 24, 2011, with the following restrictions: "light duty with no repetitive lifting over her head, lifting restriction of \leq 30 lbs."

8. Ms. Williams discussed the issue of light duty with Steve Bouzianis (Mr. Bouzianis), director of Human Resources, Staffing and Operations for the School Board. She told him that she had been advised by staff at the School that she needed to come back to work or submit a request for additional leave. Mr. Bouzianis informed her that she could not do the custodial job with the restrictions set by her physician. Ms. Williams was advised to submit a request for leave and was told that it would be approved.

9. By February 18, 2011, Ms. Williams had not submitted a request for leave or submitted a letter from her physician stating that she needed to be absent from work due to an illness. By letter dated February 18, 2011, Ms. Fisher enclosed a leave request form and directed Ms. Williams to complete the form and return it to her, along with a physician's statement substantiating Ms. Williams's need for her absences no later

than February 23, 2011. Ms. Fisher further advised that, if Ms. Williams could not obtain a physician's statement, Ms. Fisher would approve the leave for the remainder of the year as personal leave without pay.

10. Ms. Fisher advised in the letter of the consequences for failure to request leave and stated:

Should you fail to return to me your signed request for leave form and the supporting physician's statement (if applicable) by the date identified above [February 23, 2011], you will be considered as absent from duty without approved leave, and in violation of adopted School Board policy. In that event, the Superintendent of Schools will recommend to the School Board that you be suspended from your duties and further that your employment with the School Board of Seminole County, Florida[,] be terminated.

11. The School received a letter dated February 22, 2011, from Ms. Williams's physician, who stated that Ms. Williams could return to work on January 24, 2011, with the same restrictions previously listed on the Return to Work/School Certificate. On February 23, 2011, Cynthia Frye (Ms. Frye), who is Ms. Fisher's assistant, attempted to call Ms. Williams at her sister's telephone number, which is the number that Ms. Williams had given the School to contact in case of an emergency. At the time, Ms. Williams was living with her sister and staying some of the time with her son. Ms. Frye called at 2:37 p.m., and got no answer, and called again at 3:15 p.m., at which time she

spoke to Ms. Williams's sister. Ms. Frye told the sister that it was important that Ms. Williams call Ms. Frye.

12. Ms. Williams had not called Ms. Frye by the morning of February 24, 2011. Ms. Frye attempted to call Ms. Williams twice during the morning of February 24, 2011, and three times during the afternoon. On the last call, she left a message with Ms. Williams's sister that it was imperative that Ms. Williams call Ms. Frye that night or Ms. Frye could not help Ms. Williams.

13. By March 4, 2011, the School still had not heard from Ms. Williams. Ms. Fisher sent Ms. Williams a letter dated March 4, 2011, stating that, because Ms. Williams had not contacted the School to request leave, Ms. Williams's absences since January 25, 2011, were considered as absences from duty without approved leave. Ms. Fisher advised Ms. Williams that, based on Ms. Williams's third and continuing absences, Ms. Fisher would recommend to the superintendent of schools that Ms. Williams's employment with the Seminole County Public Schools be terminated.

14. When questioned at the final hearing concerning her reasoning for not requesting leave, Ms. Williams indicated that she wanted to work, but the School would not let her come back to work with light duty restrictions. She contacted her attorney and, based on his advice, did not request leave.

15. Ms. Williams's employment is governed by the Official Agreement between the Non-Instructional Personnel of Seminole County Board of Public Instruction Association, Inc., and the School Board (Agreement). Article VII of the Agreement provides:

Section 4.

* * *

B. A regular employee who has been hired for four (4) or more years may only be terminated for just cause except as otherwise provided in A. above.

* * *

Section 5.

A. Regular employees who have been hired for a minimum of three (3) continuous years (without a break in service) shall not be disciplined (which shall include reprimands), suspended or terminated except for just cause.

* * *

C. An employee may be suspended without pay or discharged for reasons including, but not limited to, the following provided that just cause is present:

1. Violation of School Board Policy
2. Violation of work rules
3. Insubordination--Refusal to follow a proper directive, order, or assignment from a supervisor
4. While on duty, the possession and/or the use of intoxicating beverages or controlled

substances after reporting for work and until after the employees leaves the work site after the equipment, if applicable, has been checked in

5. Endangering the health, safety or welfare of any student or employee of the District

6. The conviction of a felony in the State of Florida or notice of conviction of a substantially parallel offense in another jurisdiction

7. An act committed while off duty, which because of its publication through the media or otherwise adversely affects the employee's performance or duties, or disrupts the operations of the District, its schools, or other work/cost centers

8. Excessive tardiness

9. Damage to School Board property

10. Improper use of sick leave

11. Failure to perform assigned duties

12. Other infractions, as set forth from time to time in writing and disseminated by the Superintendent or designee.

* * *

Section 11. Absence Without Leave

A. Employees will be considered absent without leave if they fail to notify their principal, appropriate director or supervisor that they will be absent from duty and the reason for such absence.

B. Absence without leave is a breach of contract and may be grounds for immediate dismissal.

* * *

Section 15.

Employees shall report absences and the reason for such absences prior to the start of their duty day in accordance with practices established at each cost center. An employee who has been determined to have been AWOL shall be subject to the following progressive discipline procedures:

1st Offense--Written reprimand and one day suspension without pay.

2nd Offense--Five day suspension without pay.

3rd Offense--Recommendation for termination.

Each day that an employee is AWOL shall be considered a separate offense. However, any documentation of offenses in this section shall be maintained in the employee's personnel file.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2010).^{1/}

17. The School Board has the burden to establish the allegations in the Petition by a preponderance of the evidence. McNeill v. Pinellas Cnty. Sch. Bd., 678 So. 2d 476 (Fla. 2d DCA 1996).

18. As a custodial worker, Ms. Williams is considered to be an educational support employee pursuant to section

1012.40(1)(a), Florida Statutes. Section 1012.40(1)(b)

provides:

(b) Upon successful completion of the probationary period by the employee, the employee's status shall continue from year to year unless the district school superintendent terminates the employee for reasons stated in the collective bargaining agreement, or in district school board rule in cases where a collective bargaining agreement does not exist, or reduces the number of employees on a districtwide basis for financial reasons.

19. The Agreement, which is the collective bargaining agreement applicable to the case, provides that regular employees can be terminated only for just cause. The Agreement also provides grounds for discipline, including termination. Such grounds include insubordination and absence without leave.

20. The School Board has established that Ms. Williams was insubordinate when she failed to submit a request for leave after being given a directive to do so by Ms. Fisher in her letter dated February 18, 2011. Ms. Fisher advised Ms. Williams that the consequence of not following the directive would be a recommendation that Ms. Williams's employment be terminated. Based on Ms. Williams's insubordination, there is just cause to terminate her employment.

21. The School Board has established that Ms. Williams has been absent without leave since January 25, 2011. The Agreement appears to have conflicting sections dealing with discipline for

being absent without leave. Article VII, Section 11, provides that being absent without leave may be grounds for immediate termination. Article VII, Section 15, sets forth progressive discipline for being absent without leave going from a reprimand for the first offense and culminating in termination for a third offense. However, the same section also provides that each day an employee is absent without leave constitutes a separate offense. Ms. Williams has had more than three offenses based on the length of her absences without leave. Based on the length of her absences without leave, there is just cause to terminate her employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered terminating Ms. Williams's employment with the School Board.

DONE AND ENTERED this 28th day of July, 2011, in
Tallahassee, Leon County, Florida.



SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of July, 2011.

ENDNOTE

^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2010 version.

COPIES FURNISHED:

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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.