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FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION
UNDER DELEGATION FROM THE CIVIL SERVICE COMMISSION

In the Matter of the Appeal of,)
LYNN HAVSALL) Hearing Examiner File:
) CS-03-001
Regarding an alleged wrongful discharge)
By the Department of Parks and Recreation) CSC Reference:
) 02-01-016
)
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

Lynn Havsall, Environmental Education Program Supervisor in the Recreation and Support Division of the Seattle Department of Parks and Recreation, timely appeals her discharge from employment. This matter came on for hearing on June 16, 17, and 18, and July 16, 2003. Appellant represented herself, with assistance from Mr. Todd Putnam. The Seattle Department of Parks and Recreation was represented by Jean Boler, Assistant City Attorney. The positions of the parties are as follows:

Parks Department Position:

The Department contends that appellant was terminated for a variety of reasons, including repeated violations of Workplace Expectations, repeated failure to adhere to and enforce Parks Department policies and procedures, consistent lack of judgment, discretion

and cooperation, repeated instances of insubordination, a failure to effectively supervise subordinate employees, and a refusal to take any personal responsibility for her actions, or show any interest or willingness in changing her behavior to work cooperatively within Department structures and guidelines. The Parks Department believes that Ms. Havsall's repeated pattern of behavior, her prior disciplinary record, and her unwillingness, or inability, to change her behavior made her impossible to supervise, and jeopardized the efficient and effective operations of the Department to such an extent that termination was justified.

Appellant's Position:

Ms. Havsall's position is that all the charges against her are untrue, a result of a campaign of harassment by her supervisors who were not used to subordinate employees standing up for themselves. She contends that she was doing a wonderful job supervising Camp Long, that she had too much work to do, and was only asking her supervisors for reasonable explanations to reasonable questions, which led to "explainable misunderstandings and miscommunications." She accuses two of her second level supervisors, Christopher Williams and Herbye White, of retaliating against her and engaging in a campaign to get rid of her, charging them with "nepotism" because they were allegedly friendly with the father of a subordinate employee of Ms. Havsall, Elimka James. Ms. Havsall had numerous conflicts with Ms. James, and felt that her supervisors did not support her and failed to discipline Ms. James appropriately.

The Hearing Examiner, having heard the testimony and the arguments of counsel, and having reviewed the evidence in this case now makes the following:

FINDINGS OF FACT

1. Appellant Lynn Havsall has been the Environmental Education Program Supervisor at Camp Long since March 31, 1999. Notice of Appeal; Testimony of Appellant; Appellant Exhibits 3, 5.
2. Although Ms. Havsall performed many parts of her job well, there were problems with the quantity and quality of her work in other areas almost immediately. Appellant Exhibit 5. These problems continued with each successive supervisor that Ms. Havsall had during her tenure with the Parks Department. Appellant Exhibit 16; City Exhibits 1, 3, 19, 20, 21, 33; Testimony of Appellant, Katie Gray, Charles Sablan, Christopher Williams and Herbye White.
3. Ms. Havsall's response to instruction or criticism from her supervisors was rarely cooperative. She refused to take responsibility for any workplace problems, blaming others for any difficulties that arose, and accusing her supervisors of harassment or retaliation rather than accepting any corrections, guidance or counseling. City Exhibits 23, 35; Testimony of Katie Gray, Charles Sablan,
4. It is undisputed that Ms. Havsall had received the Department's Workplace Expectations, and reviewed them carefully, by at least March 2000. Appellant Exhibit 62; Testimony of Appellant, Christopher Williams.

5. On January 16, 2003, Ms. Havsall was suspended for one day without pay as a result of a Fact Finding held on October 25, 2001 and continued on December 5, 2001. The Fact Finding concluded that Ms. Havsall had violated Workplace Expectations in numerous ways, by failing to accept responsibility for authorizing misuse of a City vehicle, by failing to ensure that security was maintained consistently at Camp Long, by engaging in frequent, inappropriate communication with the public on confidential personnel issues, and by engaging in hostile, combative and argumentative behavior towards her manager and second level supervisor. City Exhibit 37.

6. After Ms. Havsall's Loudermill hearing, held January 8, 2002, Superintendent Ken Bounds concurred with the recommendations from the Fact Finding, suspending Ms. Havsall for one day. Superintendent Bounds based his decision on the results of the Fact Finding, Ms. Havsall's work history with the Department, and her continued refusal to take any responsibility for the problems that led to the Fact Findings. Superintendent Bounds particularly noted Ms. Havsall's lack of self-reflection and her unwillingness to make the changes necessary to perform her job successfully. City Exhibit 43; Testimony of Ken Bounds.

7. Superintendent Bounds directed Ms. Havsall to participate in forming a Structured Work Plan with her supervisors and to follow that Work Plan. He specifically instructed Ms. Havsall to work cooperatively with her Manager and Director, and warned her that any further substantiated reports of her failure to cooperate with her Manager or

Director would be grounds for further discipline, up to and including termination. City Exhibit 43; Testimony of Ken Bounds.

8. Ms. Havsall's attitude towards the Parks Department, her willingness to take direction or instruction from her supervisors, and willingness to take responsibility for workplace problems and work cooperatively with others to resolve those problems did not improve after her suspension. Testimony of Christopher Williams, Katie Gray, Nicki Rivera. The record in this appeal is filled with numerous examples of Ms. Havsall's problems working effectively or cooperatively within the Parks Department structure.

9. Ms. Havsall continued to do certain parts of her job well, particularly the programming and educational aspects of Camp Long. Appellant Exhibits 3, 5, 8, 129, 130, 155, 159, 184, 230; Testimony of Appellant, Stewart Wechsler, Linda Marsh, Christine Gallegos. She had many supporters, both inside the Department and among members of the public and the Camp Long Advisory Council. Appellant Exhibits 18, 21, 23, 33, 36, 46, 49, 51, 68, 75, 85, 228, 243, 254, 288. Testimony of Appellant, Stewart Wechsler, Linda Marsh.

10. However, both before and after her suspension Ms. Havsall was often argumentative, confrontational and disrespectful in her communications with her supervisors and other Parks Department officials and co-workers. Appellant Exhibits 29, 293, 308, 312, 313, 318, 320, 340, 345, 357, 364, 372 ; City Exhibit 56; Testimony of Katie Gray, Charles Sablan, Christopher Williams, Nicki Rivera.

11. Ms. Havsall had severe problems accepting Parks Department hierarchy, taking instruction or correction from her supervisors, and working through the Department

chain of command. Appellant Exhibits 29, 42, 45, 48, 50, 56, 167, 204, 368, 372, 396; City Exhibits 5, 14, 33; Testimony of Katie Gray, Christopher Williams, Charles Sablan, Herbye White.

12. Ms. Havsall displayed a frequent tendency to escalate problems and conflicts with co-workers and supervisors rather than working to resolve them. Appellant Exhibits 19, 24, 57, 139, 240, 249, 265, 267, 268, 310, 322, 337; Testimony of Katie Gray, Christopher Williams, Jody Sinclair.

13. Two of these major conflicts with her supervisors were among the events that led to Ms. Havsall's termination as a result of her unwillingness to work within Departmental policy or accept decisions made by her supervisors if they did not suit her purposes. The first was the issue of the asbestos found in the lab tables that Ms. Havsall wanted to move from SPU to create a new Wonder Lab at Camp Long. The second was the conflict over burning pallets for special programs at Alki Beach.

14. In early 2002, Ms. Havsall negotiated with SPU to arrange a donation to Camp Long of lab tables and cabinets that were no longer needed at SPU. She considered this donation, which was to be the cornerstone of the new Wonder Lab at Camp Long, to be one of the crowning achievements of her work with the Parks Department, and clearly did not intend to let anything get in the way of acquiring the lab equipment. Appellant Exhibit 257; Testimony of Appellant, Charles Sablan.

15. By September 2002, Ms. Havsall was already frustrated with the Parks Department bureaucracy since it had taken several months to have her work orders

completed to disconnect the plumbing and electricity to the lab tables, and detach the cabinets from the walls so the equipment could be moved to Camp Long. Testimony of Appellant, Linda Marsh; City Exhibits 49, 56, 71.

16. Sometime after September 24, 2002, Facilities and Maintenance Senior Carpenter Rod Hammerbeck went to the SPU site to check on the work being done to detach the lab equipment. He saw a broken piece from a backsplash on one of the lab tables, and became concerned about the presence of asbestos in the tables. He took a piece to have tested, and instructed the Parks employees involved not to work any further on the project until the results of the tests came back. Mr. Hammerbeck received the test results confirming the presence of asbestos on September 30, 2002, and called Lynn Havsall that day, leaving her a voicemail message informing her about the asbestos and that it was against Parks Department policy to use the tables. Testimony of Rod Hammerbeck; City Exhibit 59.

17. Ms. Havsall claims that she did not listen to her voicemail messages for several days and thus did not receive Mr. Hammerbeck's voicemail until after she had moved the tables. She contends that it was only a coincidence that on October 1st and 2nd she and other Camp Long staff decided to move the lab equipment to Camp Long themselves rather than wait for Parks Facilities workers to complete the work order. Testimony of Appellant. The Hearing Examiner finds that Ms. Havsall's testimony she did not know of the presence of asbestos when she arranged to move the lab tables is not credible.

18. Ms. Havsall's subsequent behavior shows that she disagreed with Department policy forbidding acquisition of asbestos-containing material, and that she fully intended to complete the move of the lab equipment to Camp Long regardless of any obstacles the Parks Department tried to place in her way. She refused to accept the instructions of Parks Department Senior Environmental Analyst Jody Sinclair not to proceed with installation of the lab equipment, spending inordinate amounts of time researching and arguing her position that the encapsulated asbestos in the lab tables was not dangerous. Testimony of Appellant, Nina "Jody" Sinclair; City Exhibit 60.

19. Rather than halt all work on the Wonder Lab project, as a reasonable employee would have done, and work through proper Department channels to try to convince her supervisors and Parks Department officials to change the asbestos policy or make an exception for the lab tables which were already City property, Ms. Havsall did everything she could to parse her supervisor's instructions and try to find ways to move ahead with the project and shame and embarrass the Parks Department into allowing her to keep the equipment. On October 3, 2002, after she admits being informed of the asbestos in the lab tables, she immediately chose to send out a fancy announcement of the Grand Opening of the Wonder Lab scheduled for October 23, 2002, sending the invitation to a large list of media, City Council members, and other public officials. Testimony of Appellant, Charles Sablan; City Exhibit 61; Appellant Exhibit 325.

20. Ms. Havsall continued work installing the lab tables at Camp Long, claiming that placing and gluing the table tops on the cabinets was not dangerous, until she received a

specific written directive from her Division Director Herbye White on October 8, 2002, commanding her to “cease and desist” all work on the project. City Exhibit 65. Even after that Ms. Havsall continued to issue invitations to the opening of the Wonder Lab and continued to move lab equipment from SPU to the Camp Long, claiming that glass and steel wall cabinets could not contain asbestos, and should therefore not be covered by Mr. White’s directive. City Exhibit 66, 75; Testimony of Appellant, Charles Sablan, Herbye White.

21. Ms. Havsall’s behavior in regards to the pallet burning incidents at Alki Beach is similarly argumentative, obstructionist and disingenuous. The first conflict over burning pallets occurred in June 2002, in connection with Camp Long’s Summer Solstice bonfire program. Ms. Havsall complained strenuously that her manager, Katie Gray, was “retaliating” against her by directing Parks workers to remove pallets that Ms. Havsall and Camp Long naturalists had stacked on the beach to burn, claiming that Ms. Gray had never communicated to her that they could not burn pallets on the beach. Testimony of Appellant; City Exhibits 50, 51.

22. After that, Ms. Gray had a meeting with Ms. Havsall where Ms. Gray clearly told her that the Parks Department would not allow illegal material such as pallets to be left on the beach, and would not allow illegal materials to be burned on the beach. City Exhibit 70; Testimony of Katie Gray, Appellant. Ms. Havsall chose to parse these instructions as well to find a way to do what she wanted. She never asked for clarification as to whether pallet burning was allowable, but rather instructed her staff that they could burn pallets for the Autumn Equinox bonfire in September as long as they did not stack them on the beach

in advance of the program. Even after they were caught, and Ms. Havsall was specifically instructed by Katie Gray that pallet burning was not allowed, Ms. Havsall refused to accept Department policy, but continued to argue that pallet burning was not technically prohibited under the applicable state regulations. Testimony of Appellant, Stewart Wechsler; City Exhibit 64.

23. A Fact Finding was held as a result of these events, as well as numerous other problems and conflicts Ms. Havsall had with her immediate supervisor, Charles Sablan, and her repeated failures to follow his instructions or complete tasks he asked her to do. City Exhibits 53, 68, 83; Appellant Exhibit 397; Testimony of Charles Sablan, Nicki Rivera.

24. The result of the Fact Finding was that the Division Director Herbye White found that Ms. Havsall had violated the Department's Workplace Expectations and continued to demonstrate unacceptable conduct in numerous ways, including her lack of judgment, discretion and cooperation with her supervisors and Parks Department policies, her repeated defiance of instructions and insubordination, and her failure to supervise and guide subordinate employees, including ARC employee Stewart Wechsler. Mr. White recommended that Ms. Havsall be dismissed from her employment. City Exhibit 83, Testimony of Herbye White, Nicki Rivera.

25. Ms. Havsall had a Loudermill hearing with Superintendent Ken Bounds on December 5, 2002. During the hearing she chose to discuss the specifics of only the most minor allegation against her, the charge that she and Stewart Wechsler removed plants from South Lake Union without permission, and ignored all the more serious charges. She spent

most of the hearing, orally, and in her written submission to Superintendent Bounds, arguing that the charges against her were fabricated and were the result of a campaign of harassment against her by her former Director Christopher Williams and the current Director Herbye White due to nepotism and favoritism because of her problems with Elimka James. City Exhibit 84; Appellant Exhibit 378; Testimony of Ken Bounds, Appellant, Nicki Rivera.

26. Ms. Havsall presented no evidence either at the Loudermill or during her appeal of any conspiracy against her by Christopher Williams and Herbye White other than her own belief that any criticisms of her own behavior were unfounded. There is no evidence that either Mr. Williams or Mr. White had a close relationship with Mike James, a former long-time Parks Department employee, or even knew that Elimka James was his daughter during the time of Ms. Havsall's conflicts with Ms. James, much less that either Director would risk his own employment with the City in order to harass Ms. Havsall for any improper motive. Testimony of Appellant, Christopher Williams, Herbye White.

27. Superintendent Bounds found Ms. Havsall's conduct during the Loudermill and her charges of conspiracy and harassment to be a total avoidance of personal responsibility for her actions. He found that all the allegations against her were substantiated and showed that she continually violated Workplace Expectations in numerous ways. He concluded that Ms. Havsall's persistent disregard of department policies and procedures and her stubborn defiance of authority left him no choice but to terminate her employment. City Exhibit 84; Testimony of Ken Bounds.

with disciplinary actions rendered by the Department in other situations. Ms. Rivera testified that she had researched past employee actions quite extensively and had never found a situation where an employee had repeatedly refused to follow her supervisor's instructions to such a degree or shown such a blatant disregard for Departmental policies.

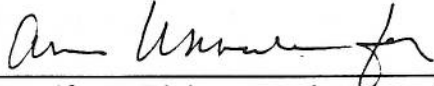
Testimony of Nicki Rivera.

Based upon the above Findings of Fact, the Hearing Examiner now makes the following:

CONCLUSIONS OF LAW

1. There is no evidence that there was any retaliation against or harassment of appellant based on any improper motive by her supervisors.
2. The Department had justifiable cause to discipline appellant.
3. Under the circumstances of this case, with an employee who was so disruptive to Department operations, and so unwilling to cooperate or modify her behavior to conform to Department expectations, termination is an appropriate discipline.

DATED this 31st day of July, 2003.



Jennifer S. Divine, Hearing Examiner *pro tem*
Office of Hearing Examiner

DECISION

There cannot be any doubt that the Parks Department had justifiable cause to dismiss an employee such as Lynn Havsall, who repeatedly showed such disregard for Departmental policies and procedures, such open defiance of her supervisor's authority, and such a strong desire to operate exactly as she wanted at all times, regardless of instructions from anyone else in the Department. As the Assistant City Attorney put it, Ms. Havsall seemed to be more interested in taking on the Parks Department than in working for it.

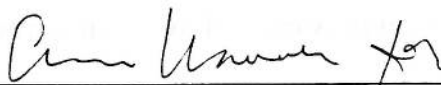
Although Ms. Havsall clearly loved her job at Camp Long, and excelled at the programming and public education aspects of the position, she had difficulties with many of the administrative and managerial tasks that were also a necessary part of her job. To say she did not take criticism well is an understatement. As a result Ms. Havsall had serious conflicts with each of her supervisors, particularly during her last two years at Camp Long. While a conflict with one supervisor might be explainable, it is not credible to believe that Ms. Havsall's constant battles with successive direct managers, as well as her Division Directors, were somehow caused by a conspiracy of these supervisors against her, rather than the result of Ms. Havsall's abrasive and confrontational communication style.

Ms. Havsall was disciplined for similar behavior previously, and specifically warned that further failures to work cooperatively with her supervisors could result in termination. After her one-day suspension, the Parks Department gave Ms. Havsall numerous chances to change her behavior and improve her attitude towards working within the Parks Department structures. Her behavior did not improve. Ms. Havsall continued to refuse to

work smoothly or cooperatively with her managers, and took every chance she could to go over their heads, or behind their backs, if she did not agree with a supervisory decision. Ms. Havsall's desire seemed to be to operate Camp Long as her private kingdom subject only to her own opinions and decisions, with no regard for the authority of anyone over her in the Parks Department chain of command.

Faced with such a recalcitrant employee, who was almost impossible to supervise effectively, and who showed no ability or willingness to modify her independent behavior and accept the Departmental hierarchy, the Parks Department made a reasonable decision to terminate her employment. It does not appear that any disciplinary action short of termination would have served to bring Ms. Havsall's conduct in line with Departmental Workplace Expectations or caused her to accept supervisory instructions that she did not agree with. The Department of Parks and Recreation has met its burden of showing justifiable cause for Ms. Havsall's termination.

DATED this 31st day of July, 2003



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