

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

OLAYINKA OGUNYEMI)
)
 Appellant,)
)
 v.)
)
SEATTLE CITY LIGHT)
)
 Respondent.)
 _____)

File No.
CSC-10-01-020

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CIVIL SERVICE COMMISSION

Introduction

Seattle City Light suspended Olayinka Ogunyemi for one day. Ms. Ogunyemi timely appealed the suspension to the Civil Service Commission. The Commission delegated the matter to the Hearing Examiner, pursuant to SMC 4.04.250. The hearing was held before the undersigned Deputy Hearing Examiner on February 14 and 16, 2011. The record was held open through March 31, 2011, to allow the Appellant to offer additional evidence obtained through a public disclosure request that was still pending at the time of hearing, and to allow the Department to respond to the offered evidence. Represented at the hearing were the Appellant, Charles Hampson and by Olayinka Ogunyemi, pro se; and Respondent Seattle City Light, by Erin Overbey, Assistant City Attorney.

After due consideration of the evidence elicited during the hearing the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. On December 7, 2010, Seattle City Light (SCL) Superintendent Carrasco ordered that the Appellant, Olayinka Ogunyemi, be suspended for one day, and determined that she was not eligible for any job promotions or discretionary out-of-class opportunities for one year. The discipline was based on her alleged violation of SCL's Workplace Expectations, her job expectations, and the confidentiality provisions of SCL's Executive Management Reporting (EMR) database system.
2. Ms. Ogunyemi is employed by SCL as a Personnel Specialist. She has been working for the City of Seattle since 1990, and has been employed full-time as a Personnel Specialist with SCL since 2000.

3. Ms. Ogunyemi received a verbal warning in June, 2007, from DaVonna Johnson, who at that time was the Talent Acquisition and Development Manager. The warning cited various instances in which the Appellant, according to Ms. Johnson, had failed to meet Workplace Expectations regarding customer service, accountability, and excellence.

4. In August 2007, Ms. Johnson issued a written reprimand to the Appellant for what was described as a "continued failure to meet job performance expectations" and her failure to follow SCL Workplace Expectations and her 2007 performance expectations. The reprimand specifically cited the Appellant's failure to show up on time to meet with an interview panel and provide them with interview materials.

5. The EMR system is an Access database that includes SCL employee employment histories, payroll records, leave dates, training history and other employee information. EMR is considered confidential information by the City and SCL, and access to EMR is limited to employees who require access to perform their job duties. Other employees who request access to EMR are required to have that request first approved by the Human Resources Division.

6. When an authorized user opens the EMR program, the first screen which appears is a "Confidentiality Agreement" statement. The user must select the "Acknowledge" box and enter the user's name and password in order to access EMR.

7. On September 23, 2009, a number of SCL employees received notification that their positions were proposed to be abrogated as part of SCL's 2010 budget proposal to the City Council.

8. As part of her duties, Ms. Ogunyemi has access to EMR.

9. On October 5, 2009, Ms. Ogunyemi was at her work station when she was approached by two other SCL employees, Marla Parisi and Marlene Kaiser. At that time, Ms. Parisi was an Administrative Specialist in the Talent Acquisition Unit of the Human Resources Business Unit, and Ms. Kaiser was an Administrative Specialist I in the Customer Care Division.

10. Ms. Kaiser had concerns about whether she would be laid off as part of the budget changes, and had asked Ms. Parisi for information as to how many people had more or less seniority than she did. Ms. Parisi had previously had access privileges to EMR, but on this date, she no longer had access. Ms. Parisi brought Ms. Kaiser over to Ms. Ogunyemi, and asked how many Administrative Specialist I's were at City Light.

11. Ms. Ogunyemi's initial response to this request was to tell Ms. Parisi to look up this information, but Ms. Parisi responded that she did not have access to EMR. Ms. Ogunyemi did not believe Ms. Parisi's statement regarding lack of access to EMR, given that Ms. Parisi had previously had rights to such access. Instead, Ms. Ogunyemi suspected that Ms. Parisi either did not know how to access the information from the

database, or was simply too lazy to pull it up herself. However, because Ms. Ogunyemi has been criticized by management in the past for not providing good customer service, she decided to help Ms. Parisi. She accessed EMR, pulled up a list of employee names and hiring dates, and told Ms. Kaiser and Ms. Parisi that there were 10 or 11 Administrative Specialist I's.

12. Ms. Parisi then stated that Ms. Kaiser wanted a copy of the list shown on the screen, so Ms. Ogunyemi printed it off. Ms. Parisi took it out of the printer, and gave the list to Ms. Kaiser. Ms. Parisi and Ms. Kaiser went back to Ms. Parisi's desk and discussed the list and the pending layoffs. While they were talking, Ms. Parisi's supervisor, Anna-Lyn Hurlbut, walked by the desk and saw the list. She asked Ms. Parisi what the list was; Ms. Parisi told her it was a report that Ms. Ogunyemi had given her.

13. The next day, Ms. Hurlbut again asked Ms. Parisi about the list, and was told that Ms. Kaiser had asked for the list because of the pending layoffs. Ms. Hurlbut told Ms. Parisi that the list was confidential and was not to be shared with her co-workers. Ms. Hurlbut also reported the incident to Jen Swidler, Talent Acquisition Manager.

14. SCL subsequently conducted an investigation concerning the October 5, 2009 incident. The investigators concluded that Ms. Parisi violated her expectation to maintain confidentiality and also violated SCL's Workplace Expectations for Accountability and Integrity.

15. The investigators found that Ms. Ogunyemi did not intentionally violate the confidentiality requirements for EMR. But they concluded that she had been negligent in failing to ascertain the purpose behind Ms. Parisi's request for EMR access, and in providing the information to her. The investigators concluded that Ms. Ogunyemi violated her obligation to maintain the confidentiality of employee information in the EMR, a violation of her job expectations and SCL Workplace Expectations.

16. An SCL committee composed of Berle Hardie, Janis Kawamura, and Patsy Taylor was charged with making a recommendation as to possible discipline in Ms. Ogunyemi's case. The committee, as is its practice, considered the investigation reports, Ms. Ogunyemi's history of previous discipline, and other disciplinary cases that might be comparable. In this case, there was no other example of a disciplinary action involving the EMR, although there were other examples of failing to meet workplace or job expectations. The fact that the Appellant had not intended to breach the confidentiality of the EMR information, and the involvement of Ms. Parisi, were also considered by the committee.

17. The committee members agreed that Ms. Ogunyemi's action merited a one-day suspension. It is not disputed that, had the Appellant never received any previous discipline, the committee would not have recommended a suspension, and would have recommended lesser discipline. However, the committee unanimously determined that a one-day suspension was appropriate in light of the progressive discipline policy.

18. A one-day suspension is considered by SCL human resources management to be a low level of discipline.

19. At her Loudermill hearing on October 19, 2010, the Appellant and her representative met with SCL Superintendent Carrasco to discuss the recommended discipline. The Superintendent considered the incident, the Appellant's long employment history, her prior discipline, and the Appellant's response to the recommended discipline. The Superintendent has on occasion reduced a suspension to a lesser disciplinary action when he believes that the employee has taken responsibility for having committed an error. In this case, the Superintendent concluded that the Appellant had not acknowledged committing an error in judgment, and that the suspension was warranted. On December 7, 2010, he issued a letter ordering a one-day suspension and also ordered that the Appellant was not eligible for any job promotions or discretionary out-of-class opportunities for one year from the date of this letter.

20. "City Light Workplace Expectations – Accountability" states in part that it is an expectation for all employees to "Perform all assigned job duties effectively and productively, and within the standards set for your position." SCL Exhibit 9.

21. An "Expectation Statement" signed by the Appellant in 2009, includes the following job expectations for the Appellant: "Maintain confidentiality when performing all job tasks; specifically hiring processes (including information pertaining to applicants, panel members and candidates for all hiring processes.) Coach hiring managers and panelists on the importance of confidentiality. If in doubt as to whether information is confidential, ask your supervisor or the HR officer."

22. The record was held open after the hearing to allow the Appellant to receive certain documents that she had requested from the Personnel Department as part of a public records disclosure request. The Appellant's request sought the names of all employees who had been disciplined between 2000 and 2010, for certain reasons. The records obtained by the Appellant pertained to wide variety of disciplinary measures, imposed by SCL as well as other departments, during 2008, 2009 and 2010.

23. SCL objected to admission of the records of disciplinary measures imposed by departments other than SCL. SCL referred to a previous CSC Order, in *Wong v. Fleets and Facilities*, CSC-06-01-007, in which the Hearing Officer denied admission of evidence regarding discipline imposed by other City Departments, as not relevant, since "individual Departments determine disciplinary actions separately."

24. Personnel Rule 1.3.3.C provides that

A regular employee may be suspended, demoted or discharged only for justifiable cause. This standard requires that:

1. The employee was informed of or reasonably should have known the

consequences of his or her conduct;

2. The rule, policy or procedure the employee has violated is reasonably related to the employing unit's safe and efficient operations;

3. A fair and objective investigation produced evidence of the employee's violation of the rule, policy or procedure;

4. The rule, policy or procedure and penalties for the violation thereof are applied consistently; and

5. The suspension or discharge is reasonably related to the seriousness of the employee's conduct and his or her previous disciplinary history.

D. The appointing authority may suspend an employee with justifiable cause pending the implementation of a demotion or discharge.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to delegation from the Civil Service Commission under SMC 4.04.250. Under Civil Service Commission Rule 5.31, City Light must show by a preponderance of the evidence that there was justifiable cause for the suspension, as described in Personnel Rule 1.3.3.C.
2. As noted in the findings, the record was held open after the hearing to allow the Appellant to offer certain documents that she had requested but had not yet received at the time of hearing. SCL has objected to the admission of documents pertaining to discipline imposed by departments other than SCL. The Appellant's offer did not explain why disciplinary measures imposed by other Departments would be relevant to her appeal. Each department may have different workplace expectations, and the rules give discretion to appointing authorities to decide which factors are relevant when determining the appropriate discipline (Rule 1.3.3.B). Thus, information regarding discipline imposed by departments other than SCL would not be relevant and is not admitted into the record.
3. The Appellant knew that the EMR information was confidential and was only to be shared with employees who had a legitimate business purpose for that information. The Appellant was also aware of, and had agreed to, the SCL Workplace Expectations and the 2009 expectations for her position. Both the confidentiality policy for the EMR database and both sets of expectations are reasonably related to the safe and efficient operations of SCL.
4. The investigation included interviews with all persons directly involved with the October 5, 2009 incident, and the Appellant was provided an opportunity to review the draft report and to offer comments. The investigation was shown to be objective and fair.

5. The appeal issues raised by the Appellant are related to whether there has been a consistent application of the rule and penalties for its violation, and whether the suspension is reasonably related to the Appellant's conduct and previous disciplinary history.

6. No comparable incidents or disciplinary decisions by SCL involving the disclosure of EMR information were shown. However, the broader category of "failure to meet expectations" has been the basis for disciplinary decisions. In this case, the Appellant was disciplined after previous disciplinary actions that were also based on her failure to meet job and workplace expectations. The progressive discipline policy applied by SCL was consistent with its approach to other employees and to the Appellant. The Appellant has also argued that SCL should have provided a "corrective action plan" for her, but there was no showing that SCL is required to adopt such a plan prior to disciplining an employee.

7. The Appellant argues that she did not intentionally violate the confidentiality requirements. There is no dispute as to this point; SCL acknowledges that the Appellant did not intentionally disclose the EMR information, and that she believed that Ms. Parisi already had access to EMR. For example, Ms. Kawamura's testimony shows that the committee made the recommendation for a one-day suspension, which it considered to be at the low end of the scale, because the Appellant's violation was unintentional.

8. The Appellant argues that the discipline is excessive and that the incident was caused by Ms. Parisi's false representations. While it is true that Ms. Parisi initiated the incident, SCL's decision was based on the Appellant's response, i.e., failing to exercise proper judgment to at least inquire into why Ms. Parisi and Ms. Kaiser (who was present as well) wanted the information, before deciding whether to share the information. SCL has clearly identified the EMR as confidential, and has promulgated a specific expectation for the Appellant, as a Personnel Specialist, to maintain confidentiality when performing all job tasks. The issuance of a one-day suspension, which is considered by SCL to be a low level of discipline, was reasonably related to the Appellant's error and her previous disciplinary history.

9. The Appellant is a long-time SCL employee, takes great pride in her work, and strives to perform her job faithfully; she is obviously appalled at being suspended for what she thought was good customer service. But these factors, including Ms. Parisi's role and the Appellant's intentions, were taken into consideration by SCL. The Superintendent would have had discretion to respond differently to this incident, but the question before the Commission is whether there was just cause for the one-day suspension and one-year bar on promotional opportunities that was actually ordered. The just cause standard of Rule 1.3.3.C was met in this case. SCL could reasonably suspend the Appellant for one day and declare her ineligible for promotional or out-of-class opportunities for a year, based on her failure to maintain the confidentiality of the EMR records, and her violation of workplace expectations. Therefore, the order should be affirmed.

Decision

The appeal is hereby denied. The Superintendent's December 7, 2010 decision to suspend the Appellant for one day and render her ineligible for promotions or out-of-class opportunities for one year, is hereby affirmed.

Entered this 5th day of April, 2011.



Anne Watanabe
Deputy Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

CSC Rule 6.02 provides that: "Any party may file a petition for review with the Commission of all or any part of the Presiding Officer's final decision. The petition must be filed at the Commission's office, and served on all other parties, no later than ten (10) days following the date of the issuance of the Presiding Officer's final decision. The party seeking review must file an original and four copies of the petition and any related briefs submitted."

