

BARBARA CLAY,

Grievant,

v. Docket No. 96-HHR-315

DEPARTMENT OF HEALTH AND HUMAN

RESOURCES/PINECREST HOSPITAL,

Respondent.

DECISION

Grievant, Barbara Clay, grieves her termination for falsification of client medical records and states:

Management has unjustly dismissed [me] from my position of a Health Service Worker at Pinecrest Hospital

Grievant seeks reinstatement to her position with backpay and all benefits and seniority, and to have all documents relating to her termination removed from her file. As this is a dismissal, this grievance was filed directly at Level IV pursuant to W. Va. Code §29-6A-4(e). A Level IV hearing was held on October 2, 1996, and this case became mature for decision on November 1, 1996, the deadline for the parties' proposed findings of fact and conclusions of law.

On July 30, 1996, Mr. Ray Nutter, Resident Advocate, was asked by his supervisor to check into a potential client problem. She informed him that according to the client records three clients on B-1 had not received baths for at least 12 to 19 days. Client baths are scheduled twice a week, some of them on the evening shift, which is from 3:00 p.m. to 11:00 p.m..

At approximately 3:30 p.m., Mr. Nutter went to B-1 and asked the charge nurse, Mary Davis, for the binder with the client records. She told him Grievant had the book in the sun parlor. Mr. Nutter went to the parlor and observed Grievant making marks down a page. He checked the records for the three clients' and found that the clients' 3 to 11 records reflected that most of the patient care had been completed, and the amount of food these clients had eaten of their evening meal was charted even though they had not yet been served. Mr. Nutter

asked Grievant if this is what she had been marking, and her response was, "Yes." Mr. Nutter asked Grievant when this report was to be completed and Grievant's responses were, "Uh oh, did I do something wrong?", and "No one told me when." Mr. Nutter then took the binder to the nurses' station, while Grievant followed, and he asked Ms. Davis when the reports for the 3 to 11 shift were to be completed. She replied, "At the end of the shift, when the work was done." Mr. Nutter took the binder, copied the forms Grievant had completed, and notified his supervisor of the problem.

On August 1, 1996, Mr. Nutter reviewed the clients' records to see if they had been bathed. He found the previous charts had been changed. Where the record had previously reflected the clients had not received baths or shampoos, the 0's had been crossed out and the notations changed to show the clients had received this care. Mr. Nutter copied these changes and brought this problem to the attention of his supervisor.

Ms. Elsie McCray, Director of Nursing, testified that all Health Service Workers ("HSW") are instructed on charting, and that the care is not to be charted until the work is done, at the end of the shift. She also stated that HSW's are instructed about the proper way to correct an error in a client chart. She noted incorrect record keeping could seriously affect a client's health and could result in deleterious side effects. For example, incorrect record keeping in the area of bowel evacuation could cause a client to receive a medication he did not need for constipation or could result in a bowel obstruction requiring surgery. Poor record keeping in the area of daily skin care could result in a client not receiving the proper care and could result in decubitus ulcers. Ms. McCray testified that the various accreditation committees that review patient care records hold the standard of "if it's not charted it wasn't done."

Because Mr. Ernest Eades, Administrator for Pinecrest Hospital, was on vacation during the time it was necessary to take the disciplinary action against Grievant, Mr. Ivan Withers, Assistant Administrator, met with Grievant on August 8, 1996, to discuss her dismissal. Ms. McCray and Ms. Elizabeth Thewes, Director of Administrative Services, were also present. At the start of the meeting Grievant was told her actions were viewed as very serious and unless she could provide a compelling reason she would be dismissed. Grievant admitted she had filled out thereports early, thus, falsifying them, but stated she had bathed her clients. She asked to keep her job and stated she would not engage in this incorrect behavior again. Mr.

Withers, Ms. McCray, and Ms. Thewes then met to discuss the issue.

Because Grievant had not provided a compelling reason why she should not be dismissed and the charges were so serious, she received her letter of termination on August 8, 1996. This letter stated the reasons for Grievant's dismissal as: 1) failure to give the required care; 2) falsification of records by charting care prior to its completion; and 3) incorrectly changing records to indicate care not previously charted. This letter detailed her failure to complete client records properly, discussed her prior disciplinary problems, and listed the resulting actions taken against Grievant. Grievant was also informed both at the meeting and in the letter, of her right to meet with Mr. Eades and to file a grievance.

Grievant asked to meet with Mr. Eades, and on August 13, 1996, that meeting took place. Grievant contended at this meeting that she was treated unfairly, and that another HSW that had done the same thing she had done only received a suspension. Mr. Eades noted the behavior of the other HSW was not as egregious and then reviewed Grievant's prior disciplinary problems. During this meeting, Grievant admitted she had charted care before it was received and had later changed the document to reflect the required care. She again repeated she had bathed her clients. Mr. Eades stated that falsification of client records is a very serious offense. He noted he had discussed the situation with his staff and the Division of Personnel prior to taking action, and dismissal was viewed as appropriate for the offense. He also noted that the accreditation, licensure, and funding for the institution could be seriously compromised by incorrect recording and the failure to follow the required care guidelines.

Grievant did not testify in her own behalf as is her right pursuant to W. Va. Code §29-6A-6. Grievant did present the testimony of another HSW, Ms. Bonnie Scott. [\(See footnote 1\)](#) Ms. Scott testified that it was appropriate to chart care before it was given because she works with these clients every day and knows what they will do. She indicated that at 3:45 p.m., she would be able to know how many times a client would urinate during the remaining seven hours of her shift, and how much of his meal he would eat. Ms. Scott also stated she was never told a time when the client records were to be done. Ms. Scott also stated she was informed of the proper method for correcting a mistake on the form, and that she never gone back and changed any client record.

Issues

Grievant's only argument appears to be that she was unjustly dismissed. No reasons were presented as to why Grievant thought her termination was inappropriate. Although Grievant did complain in her meeting with Mr. Eades that she was treated differently than Ms. Scott, she did not identify this as an issue either on her grievance form or at hearing. [\(See footnote 2\)](#) Thus, this potential issue is not before the undersigned. [\(See footnote 3\)](#) Respondent argues it had good cause to terminate the Grievant's employment as she put both her clients' health and the institution's funding and accreditation in jeopardy.

Discussion

In a disciplinary action, the burden of proof is on the Respondent to prove the charges by a preponderance of the evidence. W. Va. Code §29-6A-6; Perdue v. Dept. of Health and Human Resources/Huntington State Hosp., Docket No. 93-HHR-050 (Feb. 2, 1994). A classified civil service employee can only be dismissed for good reason, and this means "conduct of a substantial nature directly affecting the rights and interests of the public, rather than upon trivial and inconsequential matters, or mere technical violations of a statute or official duty without wrongful intent." Oakes v. W. Va. Dept. of Finance and Admin., Syl. Pt. 1, 264 S.E.2d 151 (W. Va. 1980). In this case Respondent has met its burden of proof and demonstrated Grievant improperly completed client records, charted care she had not given, and recorded incorrect information. Respondent has also proven that when Grievant was confronted with these allegations, she then altered the client records to reflect the care these clients should have received. It is important to note three things: 1) the hospital will never know when and if these clients received their baths for the days in question; 2) the hospital now has cause to question most of the data recorded by Grievant; and 3) any accrediting agency reviewing the records will find the care was not given. Grievant's behavior must be seen as "conduct of a substantial nature affecting the rights and interests of the public." Id.

The above facts and discussion will be supplemented with the following formal findings of fact and conclusions of law.

Findings of Fact

1. On July 30, 1996, Grievant charted client behavior, activity, and care after she had completed only 45 minutes of her eight hour shift. Some of the areas she charted were hygiene, bowel and bladder activity, positioning, skin care, ambulation, food intake, and client's mental status. This care had not been given, and this data had not been assessed at the time it was recorded.
2. Three clients under Grievant's care had not received a bath for 12 days, 13 days, and 19 days.
3. After Grievant was confronted with her incorrect recording behavior, she falsified and improperly changed these client charts to reflect the required care had been given.
4. Grievant had been instructed in her training and orientation that care was to be charted after it had been done.

Conclusions of Law

1. In a disciplinary action the burden of proof is on the Respondent to prove the charges by a preponderance of the evidence. W. Va. Code §29-6A-6; Perdue v. Dept. of Health and Human Resources/Huntington State Hosp., Docket No. 93-HHR-050 (Feb. 2, 1994).
2. A classified civil service employee can only be dismissed for good reason, and this means "conduct of a substantial nature directly affecting the rights and interests of the public, rather than upon trivial and inconsequential matters, or mere technical violations of a statute or official duty without wrongful intent." Oakes v. W. Va. Dept. of Finance and Admin., Syl. Pt. 1, 264 S.E.2d 151 (W. Va. 1980).
3. Respondent has met its burden of proof and demonstrated Grievant improperly completed client records, charted care she had not given, and recorded incorrect information, and thus engaged in "conduct of a substantial nature affecting the rights and interests of the public. . .". Oakes, supra.
4. Respondent has also met its burden of proof and established that when Grievant was confronted with these allegations, she then altered the client records to reflect the care these clients should have received.

Accordingly, this grievance is DENIED.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A- 7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judge is a party to such appeal, and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

JANIS I. REYNOLDS

Administrative Law Judge

Dated: November 27, 1996

[Footnote: 1](#)

Ms. Scott was another HSW on B-1, and she received a three day suspension for completing her charting prior to the end of the shift. No testimony was elicited from Ms. Scott about her personal situation other than she had never changed a client's record. Her testimony was only offered on the narrow issue of when HSW's are to chart, and whether it was proper and acceptable to chart client activity before it occurs.

[Footnote: 2](#)

Because Grievant did not avail herself of the opportunity to file proposed findings of fact and conclusions of law, this issue was not raised at any time during the grievance process.

[Footnote: 3](#)

However, in the interest of fairness, the undersigned reviewed the record for evidence of discrimination. W. Va. Code §29-6A-2(d) defines discrimination as "differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing." To prove discrimination or favoritism a grievant must establish a prima facie case which consists of demonstrating:

(a) that he is similarly situated, in a pertinent way, to one or more other employee(s);

(b) that he has, to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;

and,

(c) that such differences were unrelated [to] actual job responsibilities of the grievant and/or other employee(s), and were not agreed to by the grievant in writing.

If a grievant establishes a prima facie case, a presumption of discrimination or favoritism exists, which the respondent can rebut by presenting a legitimate, nondiscriminatory reason for the action. However, the grievant may still prevail if he can demonstrate the reason given by the respondent was pretextual. Steele, et al. v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).