

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

SYLVIA CUTWRIGHT,  
Petitioner,

v.

PATHWAYS CENTER,  
Respondent.

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Docket No.: OSAH-SPB-DIS-1501736-141-Teate



FILED  
OSAH

OCT 14 2014

**INITIAL DECISION**

**I. Introduction**

*Kevin Westray*  
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Kevin Westray, Legal Assistant

In response to dismissal notification issued by Pathways Center,<sup>1</sup> (“Pathways”), Sylvia Cutwright (“Ms. Cutwright”) requested a hearing that was held on September 10, 2014 in Lagrange, Georgia. Ms. Cutwright represented herself and Stephanie Ellis, Pathways’s Human Resources Director, represented Pathway. For reasons indicated, Pathways’s dismissal of Ms. Cutwright’s employment is **REVERSED** and Pathways is directed to reinstate Ms. Cutwright and pay her back pay in accordance with State Personnel Board Rules and regulations.

The only witnesses were Stephanie Ellis for Pathways and Ms. Cutwright for herself.<sup>2</sup>

Ms. Cutwright prepared a written statement entitled “Appeal Phase 2” dated September 10, 2014 that was provided to the opposing party and to the Court that is admitted as Petitioner’s Exhibit 1.<sup>3</sup>

Neither party introduced any other documentation into the record as exhibits.

For purposes of clarity, the following documents that were submitted by Ms. Cutwright along with her appeal letter to the Office of State Administrative Hearings are admitted as ALJ Exhibits subject to objection within the 10-day appeal period:

ALJ Exhibit 1: a letter from Pathways dated January 21, 2014 imposing administrative leave for an indefinite period of investigation;

ALJ Exhibit 2: the first two pages of a letter dated from Pathways dated May 20, 2014 at the conclusion of the investigation;

<sup>1</sup> Pathways is a community service board that is subject to rules and regulations of the the Department of Behavioral Health and Developmental Disabilities (DBHDD) and the State Personnel Board (SPB).  
<http://dbhdd.georgia.gov/region-6>.

<sup>2</sup> Ms. Cutwright stated that she subpoenaed witnesses who did not appear; however, she did not tender copies of the subpoenas.

<sup>3</sup> The statement was read in part into the record and was created as an aid to present what she opined to be relevant statements for her testimony. (Testimony of Ms. Cutwright).

ALJ Exhibit 3: a letter from Ms. Cutwright dated May 28, 2014 appealing termination indicated in the May 20, 2014 letter from Pathways;

ALJ Exhibit 4: a letter from Pathways dated June 13, 2014 acknowledging the May 28, 2014 appeal and extending suspension with pay;

ALJ Exhibit 5: a letter dated June 16, 2014 (signed June 17) from Ms. Cutwright to Pathways's executive director;

ALJ Exhibit 6: a letter from Pathway's Chief Executive Officer dated June 25, 2014 upholding the dismissal; and

ALJ Exhibit 7: a written statement that Ms. Cutwright produced for her hearing on September 10, 2014

## **II. Findings of Fact**

### *Background Employment Information*

1. Ms. Cutwright has been employed by Pathways since October 16, 1989, a term of employment that exceeded 24 years before her dismissal on June 30, 2014. She initiated employment as an Instructor and was promoted twice to become the Program Coordinator, the position she held at termination. She directly supervised 12 to 14 staff members and indirectly supervised 25 to 29 staff members. She also dealt with individual consumers' day-to-day issues and was on call 24 hours seven days a week. (Testimony of Ms. Cutwright; ALJ Exhibits 5 and 7; Petitioner Exhibit 1).
2. Prior to the suspension with pay that began on January 21, 2014 and continued until her dismissal on June 30, 2014, Ms. Cutwright received no counseling, written reprimands or performance reviews that indicated that she had failed to meet Pathways's performance expectations. (Testimony of Ms. Cutwright; ALJ Exhibits 1, 5, and 7).

### *Suspension with Pay on January 21, 2014*

3. After Stephanie Ellis received five complaints regarding Ms. Cutwright's job performance in December 2013, Pathways elected to suspend Ms. Cutwright with pay "for the period of time it takes to conduct an internal investigation" regarding three alleged violations that were alleged to violate Pathways's Code of Personal and Ethics Policy (L-04) and the Department of Behavioral Health and Developmental Disabilities's (DBHDD) Client's Rights Policy 290-4-9. The three alleged violations were: (1) failing to provide consumers with timely and adequate care (Neglect/Abuse); (2) creating an uncomfortable/hostile work environment; and (3) creating a backlog of consumer activity notes (for quality of care and billing purposes) that extend beyond sixty (60) days. (Testimony of Ms. Ellis; ALJ Exhibit 1).

### *Internal Investigation*

4. Ms. Ellis conducted the internal interview from January 22, 2014 until April 30, 2014. During that time, she conducted 35 interviews. She concluded that somewhere between 62% and 65% of those interviews supported Pathways's allegations. At least two of those interviewed were new employees, one of whom voiced a complaint on January 20, 2014, and another on January 26, 2014. However, none of the parties interviewed were identified by name or specific statement. The consumer activity notes that were allegedly falsified were not identified. Ms. Ellis's testimony is conclusory and is not supported by any testimony or documentation to support Pathways's allegations.<sup>4</sup> (Testimony of Ms. Ellis).

### *Adverse Action and Appeal*

5. On May 20, 2014, Ms. Ellis notified Ms. Cutwright of the results of the internal investigation and of her dismissal. Ms. Cutwright appealed that determination on May 28. Pathways acknowledged the appeal and extended the date through which Ms. Cutwright would receive pay to June 30, 2014. Ms. Cutwright denied all allegations in detail on June 16 just prior to meeting with Jade Benefield, Pathway's Executive Director, on June 17. On June 25, 2014, Mr. Benefield upheld the dismissal decision effective June 30. On July 9, Ms. Cutwright timely filed the current appeal. (ALJ Exhibits 2, 3, 4, 5, and 6; OSAH Form 1).

### **III. Conclusions of Law**

1. Under Georgia law, "[c]lassified employees . . . may be dismissed from employment or otherwise adversely affected as to compensation or employment status only if such action is taken in accordance with the rules and regulations of the State Personnel Board governing adverse actions and appeals for classified employees." O.C.G.A. § 45-20-8(a) (2014). The procedure for adverse action against a classified employee's employment must include, at a minimum, providing the classified employee with reasons for the adverse action and "an opportunity to file an appeal and request a hearing which may be held before either the [State Personnel Board] or an administrative law judge." O.C.G.A. § 45-20-8(b) (2014).

2. Dismissal is a type of adverse action authorized "for disciplinary purposes or for pending criminal court action when such pending criminal court action may deter the employee's effectiveness in employment." Ga. Comp. R. & Regs. 478-1-.24 (7)(b)(1) (2009).<sup>5</sup> More specifically, the appointing authority may suspend an employee for disciplinary purposes because of: (1) negligence or inefficiency in performing assigned duties; (2) inability or unfitness to perform assigned duties; (3) insubordination; (4) misconduct; (5) conduct reflecting discredit on the department; (6) commission of a felony or other crime involving moral turpitude; (7) chronic tardiness or absenteeism; (8) failure to report for or remain at work without justifiable cause; (9)

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<sup>4</sup> Although Ms. Ellis was given an opportunity to submit documentation to support her allegations, she declined to do so. (Hearing record).

<sup>5</sup> This adverse action preceded June 20, 2014, the effective date of Ga. Comp. R. & Regs. 478-1-26 (3) and (4) (2014) that replaced provisions related to suspension without pay formerly contained in Ga. Comp. R. & Regs. 478-1-24 (7) (2009).

failure to process performance appraisals in a timely manner; or (10) political activity in violation of 478-1-.08. Ga. Comp. R. & Regs. 478-1-.24 (7)(b)(1)(i). In its adverse action letter, Pathways relies only on three allegations that reasonably arise within "negligence or inefficiency in performing assigned duties" and possibly "misconduct."

3. In an adverse action against a classified employee, Pathways has the initial burden of proof and going forward. Ga. Comp. R. & Regs. 616-1-2-.07 (1). An adverse action denotes a disciplinary action taken by an appointing authority, which results in the suspension without pay, demotion, reduction in salary, or dismissal of a permanent employee. Ga. Comp. R. & Regs. 478-1-15.101. Pathways's decision to dismiss Ms. Cutwright constitutes an adverse action within the meaning of this rule. The appointing authority may dismiss an employee for numerous specified reasons, including misconduct as well as negligence or inefficiency in the performance of assigned duties. Ga. Comp. R. & Regs. 478-1-.15 (8). The record contains insufficient admissible evidence to support Pathways's decision to dismiss Ms. Cutwright either on the basis of misconduct and/or negligence and inefficiency in performing her assigned duties, or for any other reason indicated in State Personnel Board rules. This burden must be met by a preponderance of the evidence presented. Ga. Comp. R. & Regs. 616-1-2-.21 (4). Pathways has not met its burden with a preponderance of the evidence presented.

#### IV. Decision

**IT IS ORDERED** that Pathways's June 25, 2014 dismissal is **REVERSED** and reinstatement is directed with back pay to June 30, 2014, reduced by other compensation received since that date in accordance with State Personnel Board rules.

**SO ORDERED**, this 8<sup>th</sup> day of October 2014.

  
Steven W. Teate  
Administrative Law Judge