

FINDINGS OF FACT

I. With regard to the Findings of Fact of the Administrative Law Judge, the Commission decides as follows¹:

The Commission determines the Administrative Law Judge's Findings of Fact 1, 2, and 3 are supported by the preponderance of the admissible evidence of record and hereby adopts them as its own as hereinafter set forth.

1. Petitioner Kenneth L. Cassidy was an employee of the Division of Motor Vehicles for 17 years without being subject to prior disciplinary actions. At the time of his termination on March 20, 2008, he was an Assistant District Supervisor, assigned to the License and Theft Bureau at the Avent Ferry Road office (District III) in Raleigh, North Carolina.

2. The License and Theft Bureau is divided into two sections: (1) the theft or police side and (2) the emissions side. Several members of both sections work in the Avent Ferry Road office. These members share common areas at the office, including the parking lot, lunchroom, and smoking facility. Petitioner had no supervisory authority over emissions personnel who worked in this office or out in the field.

3. On August 10, 2007, William Gore became the Commissioner of the North Carolina Division of Motor Vehicles. Prior to his appointment, Gore served as a North Carolina District Court judge for ten years, and as a Superior Court judge for seventeen and a half years.

The Commission determines that Finding of Fact # 4 of the Decision of the Administrative Law Judge as written contains information that is not supported by the substantial evidence of record. Specifically, there is no evidence of record presented that anyone in the emissions program or DMV retired or resigned as a result of any "problematic hirings." For this reason, the Commission makes the following alternative Finding of Fact #4 with the portion of Fact # 4 that contains information not supported by the record shown in ~~strikeout~~.

4. Petitioner was the source for several unfavorable articles about the DMV printed in the **Raleigh News & Observer**. Petitioner told a **News & Observer** reporter that the DMV emissions specialists did not have enough work to do, and that the DMV had engaged in problematic hirings. James Burgess, an emissions specialist in the Avent Ferry Road office, was the purported beneficiary of one of these hirings. Reports of these hirings within the DMV led to an SBI investigation in 2007 which resulted in a dismissal. ~~and several subsequent retirements of~~

¹ Deletions are indicated by strikethrough and additions are indicated by underlining.

~~resignations by DMV personnel who had been involved.~~

The Commission determines that Finding of Fact # 5 and # 6 of the Decision of the Administrative Law Judge as written contains information that is not supported by a preponderance of the substantial evidence of record, specifically, as to Finding of Fact # 5, there is no evidence of record that the employees who complained of the Petitioner did so in retaliation for any information he gave to the newspapers. In addition, the Commission determines that Finding of Fact # 5 and # 6 do not contain all of the information that is supported by the substantial evidence of record that is necessary to make a complete and accurate findings of fact on the issue raised in Finding of Fact #5 and # 6. Specifically, it is erroneous for Finding of Fact # 6 to state that Commissioner Gore did no investigation, because it is undisputed that he interviewed three of the people who complained personally. T. pp. 18, 22, 27. Further, one of the complaints mentioned in Finding of Fact # 5 involved inappropriate touching. T. p. 23. Finding of Fact # 6 is further deficient in that it implies that as a practical matter the order of Commissioner Gore affected Petitioner's relationship with more than the 12 emissions employees that were stationed at the Avent Ferry Road Office where Petitioner worked. See, P. Ex. 1 # 16. For this reason, the Commission makes the following alternative Finding of Fact # 5 and #6 with additional relevant information of record shown underlined that makes Finding of Fact #5 and #6 conform to the relevant and material evidence of record and shows in ~~strikeout~~ the information in the Administrative Law Judge's Decision that is not supported by the substantial evidence of record.

5. ~~After surmising that Petitioner was the source for the newspaper articles, employees in the emissions section and elsewhere were angry with him and retaliated by making~~ Employees in the emissions section made allegations concerning his conduct toward his fellow employees, such as: referring to call center employees as being dumb or stupid; repeatedly asking them why they were in the office, calling an emissions specialist a "Highway Patrol flunky"; telling an employee to shut off the television during her lunch break; telling another emissions specialist to stop having lunch with her daughter in the office; following emissions specialists around and pestering/harassing them and inappropriately touching one of them. No specific dates or times were given for the transactions.

6. Upon being informed of these allegations, Commissioner Gore, ~~without investigating~~ investigated some of them by personally interviewing three of the accusers. He then asked Petitioner to remain in his conference room for a meeting on January 4, 2008. Deputy Commissioner Wayne Hurder was also in attendance. Commissioner Gore explained that he had received complaints regarding Petitioner's conduct, as well as Petitioner's requests that employees speak to the media. Commissioner Gore then issued Petitioner a verbal order, later reduced to writing and presented to Petitioner on March 17, 2008. The order includes a signature line in the bottom corner for the addressee to acknowledge receipt; the signature line was never signed. The

order, dated January 4, 2008, reads:

You are hereby specifically directed not to issue instructions or directions to any emissions personnel employed by the N.C. Division of Motor Vehicles pending further orders. You are directed further not to socialize with, "joke" with, touch or otherwise have any personal or professional interaction with any said Emissions staff during working hours or while said personnel is present at duty stations at a DMV facility or in the field. This order does not purport to prohibit voluntary communication or association with said Emissions staff on private premises during non-work hours. Violation of this order will result in disciplinary action.

Petitioner acknowledged that the above order was the essence of what Commissioner Gore told him on January 4, 2008. Commissioner Gore's stated reason for this order was an effort to maintain peace and harmony in the workplace by putting distance between Petitioner and the emissions staff in District III. ~~some 100 members in the emissions section located in Raleigh and across North Carolina.~~ It was undisputed at the hearing that there were approximately 12 emissions staff in the Avent Ferry Office where the Petitioner was stationed. Five of the emissions staff testified against Petitioner at the hearing and all five testified that they had no business need nor any desire to communicate with him. None of the emissions staff testified that they were in any way inconvenienced by the order of January 4, 2008.

The Commission determines the Administrative Law Judge's Findings of Fact 7 and 8 are supported by the preponderance of the admissible evidence of record and hereby adopts them as its own as hereinafter set forth.

7. The next day, January 5, 2008, Commissioner Gore visited the Avent Ferry Road office where he told emissions employees not to have any interaction with Petitioner, and that Petitioner had been ordered not to have any interaction with emissions personnel in the DMV. He did not at any time provide a written order to emissions employees.

8. Commissioner Gore did not receive any further allegations, reports or complaints about conduct by Petitioner until March 12, 2008, more than two months later.

The Commission determines that Finding of Fact # 9 of the Decision of the Administrative Law Judge as written does not contain all of the information that is supported by a preponderance of the admissible evidence of record that is necessary to make a complete and accurate finding of fact on the issues raised in Finding of Fact #9. For this reason, the

Commission makes the following alternative Finding of Fact # 9 with additional relevant information of record shown underlined that makes Finding of Fact # 9 conform to the admissible evidence of record. Respondent takes exception to Finding of Fact #9 in that it implies that the meeting between Petitioner and Mr. Burgess was extremely brief. It was undisputed that the closed door meeting between Mr. Burgess and Petitioner was at least long enough for Cassidy to make a telephone call in an attempt to rescind the resignation of Burgess, and that while they were in the office together, Ms. Dunston came to the closed door, knocked on it, and spoke to Burgess. It is undisputed that the two were still in the office when Ms. Dunston left some minutes later. Petitioner estimated the time in the office with Burgess was 3-5 minutes and Ms. Dunston estimated it was at least 10 minutes. R. Ex. 12, pp. 33, 35; T. pp. 142, 143.

9. On March 10, 2008, James Burgess, an emissions specialist working in the Avent Ferry Road office, submitted his resignation. After Bobby Flaherty, Petitioner's immediate supervisor, told Petitioner that James Burgess had resigned, Petitioner saw Burgess leaving the office; spontaneously asked him to step into Flaherty's office; he told Burgess that he was sorry Burgess felt he had to resign; he wished Burgess well; they shook hands and parted company. Petitioner estimated the time of his meeting with Mr. Burgess to be 3-5 minutes and Ms. Dunston estimated the time to be at least 10 minutes.

The Commission determines the Administrative Law Judge's Findings of Fact # 10, # 11, # 12, and # 13 are supported by the preponderance of the admissible evidence of record and hereby adopts them as its own as hereinafter set forth.

10. Ms. Dunston saw Petitioner and Burgess enter Flaherty's office, and reported this incident to Debbie Brewer, her supervisor. At the hearing, Ms. Dunston testified that she did not know what the men said during their conversation. On March 12, 2008, Ms. Dunston met with Commissioner Gore to discuss Petitioner's action. The DMV conducted an internal investigation on March 12 and March 13, 2008, into the allegation of Petitioner's conduct with Burgess. G.C. Lockamy, a supervisor in the Office of Professional Standards, interviewed Ms. Dunston, Mr. Burgess, and Petitioner. When asked whether he had violated Commissioner Gore's order, Petitioner answered, "Yes I did. Yes I did. Yes." At the conclusion of his Internal Affairs Investigation report, Mr. Lockamy concluded that Petitioner had violated the Commissioner's order. During this investigation, Ms. Dunston told Lockamy that she heard Petitioner tell Burgess that he had not done anything wrong and did not need to resign.

11. On March 17, 2008, Petitioner was placed on Investigatory Placement with pay, notified of his Pre-disciplinary conference on March 18, and presented with the written version of Commissioner Gore's order, dated January 4, 2008. On March 20, 2008, Petitioner was dismissed for unacceptable personal conduct, specifically: willfully failing to follow a lawful order given to him by a superior officer.

12. On June 3, 2008, the N.C. Department of Transportation Employee Relations Committee held a grievance hearing for Petitioner. Following the hearing, the Committee unanimously recommended that Petitioner be reinstated and issued a written warning for failing to follow Commissioner Gore's order. The Committee also recommended that allegations of Petitioner's inappropriate personal conduct be thoroughly investigated.

13. After reviewing the Committee's recommendation, Petitioner's dismissal was upheld by the Chief Deputy Secretary for the N.C. Department of Transportation, who concluded that DMV management had just cause to dismiss Petitioner for insubordination. Petitioner subsequently filed a Petition for a Contested Case Hearing alleging lack of just cause for his dismissal and asking to be reinstated with an award of back pay and attorney's fees.

Per N. C. G. S. § 150B-36(b1), the Commission determines that additional Findings of Fact that are supported by the preponderance of the admissible evidence of record and are not in dispute are needed to correctly decide this case and therefore it adopts Additional Findings of Fact #14-42, as set out underlined with the references to the record included.

14. In the latter part of 2007, it was reported that while at DMV headquarters, the Petitioner had encountered the new head of the DMV call center, Renee Summerlin. Petitioner reportedly asked Ms. Summerlin something to the effect of whether she had those “dumb asses” (referring to the call center employees) in line yet. This was apparently the first time Mr. Cassidy had met Ms. Summerlin. T pp 19-22, 117-120.

15. As a result of the report, Mr. Hurder was charged by Commissioner Gore to counsel the Petitioner regarding this incident. During the counseling session, the Petitioner admitted making the statement to Ms. Summerlin, and admitted it was wrong to refer to her employees in this manner. After discussing the incident, Mr. Hurder advised the Petitioner that it would be appropriate to call Ms. Summerlin and apologize. The Petitioner stated that he would do so. At the hearing, the Petitioner testified that he had attempted the call, but the line was busy and he did not think it was appropriate to leave a message. T pp. 118-120.

16. The License and Theft Bureau of the DMV is divided into two parts, the “theft” or police side, and the emissions side. The emissions portion of the License and Theft Bureau is funded by federal grant money and is separate from the “theft” portion. The emissions personnel at the Avent Ferry office have a supervisor in charge of them. The two programs were distinct to the point that there was little or no official need to interact between the two groups, as admitted by the Petitioner. T pp 23-25, 140, 161, 216; R. Ex. 12, p. 27 lines 16-18, p. 28 lines 2,3.

17. Emissions specialists such as Ms. Johnson, Ms. White, and Ms. Dunston spend

most of their time in the field auditing emissions stations. They spend some time in the office writing reports and doing other tasks. T pp. 106-107, 133.

18. On one occasion, Deborah Dunston was watching television while eating her lunch in the break room at the Avent Ferry office, an accepted practice. Petitioner told her to turn off the television and to go to her office which she did. Petitioner then told Ms. Dunston he was only joking. On many occasions Petitioner questioned why Ms. Dunston was at the office, even though she had legitimate business there, and Petitioner had no authority over her. T pp. 134-136.

19. After the January 4, 2008 order of Commissioner Gore, Petitioner's interference with Ms. Dunston ceased. Ms. Dunston had no business need, nor any desire to speak with the Petitioner, and no desire for him to speak with her. T pp. 133, 140-141.

20. Brenda Johnson was offended by the Petitioner's repeated questioning of why she was at the Avent Ferry office even though she had legitimate business there. T pp. 198, 199.

21. After the January 4, 2008 order of Commissioner Gore, Petitioner's questioning of Ms. Johnson ceased. Ms. Johnson had no business need, nor any desire to speak with the Petitioner, and no desire for him to speak with her. T p. 199.

22. Angie White was offended that the Petitioner followed her to the printer and other places in the office. At the printer, the Petitioner would routinely pick up what she had printed, look at it, and then hand it to her. In addition, at times he would put his hands on her shoulders. On at least two occasions, he pulled up on her belt loops causing her to rise up on her toes. On one occasion he tied her scarf around her neck. In addition he made sarcastic comments to her that offended her. One time he squeezed her wrist to the point that it caused tears to come to her eyes. This was the only time he actually hurt her. On one occasion while Ms. White was leaving the office, Petitioner stopped her and inspected a box she was carrying as if he suspected her of stealing from the office. T pp. 163-169. Testimony of Angie White, R. Ex. 8.

23. The incident of the Petitioner tying the scarf around Angie White's neck was witnessed by Brenda Johnson. Petitioner admitted to a lesser version of this event. Deborah Dunston witnessed the Petitioner making rude comments to Ms. White. (T pp. 138-139, 272).

24. To avoid the Petitioner, Ms. White to the extent possible, scheduled her office time to coincide with the Petitioner's lunch hour when he was out of the office. In addition, she had her computer connected to a printer that was out of sight of the Petitioner's office in an effort to have him stop following her to the printer and removing and inspecting what she had printed. She also took work home because she had difficulty getting work done in the office due to the Petitioner's behavior. T pp. 170, 175-176, 191-192. R. Ex. 8.

25. Ms. White tried to cope with the Petitioner's behavior on her own and did not want to make a complaint. T p. 180; R. Ex. 8.

26. After the January 4, 2008 order of Commissioner Gore, Petitioner quit following Ms. White, touching her, reading her documents on the printer, and making rude comments. Ms. White had no business need, nor any desire to speak with the Petitioner, and no desire for him to speak with her. T p. 171, 181.

27. Emissions Specialist Robert Carpenter worked at the Avent Ferry office on occasion. Mr. Carpenter was offended in particular on one occasion, the Petitioner referred to him as "a highway patrol flunky" and asked him "what do you know?", a reference to the fact that Mr. Carpenter had once worked for the Highway Patrol. After this statement, Mr. Carpenter attempted to walk away, and the Petitioner grabbed his arm. From then on Mr. Carpenter avoided the Petitioner as much as possible. After the January 4, 2008 order from Commissioner Gore, Mr. Carpenter had no further complaints regarding the Petitioner. T p. 214.

28. Rather than launch an investigation into the information he had been given concerning the above events that could lead to the Petitioner's discharge, Commissioner Gore decided to try to bring peace to the Avent Ferry office by having the Petitioner and the emissions staff stop having contact with each other. Under the above circumstances, including the fact that Petitioner had no apparent need to converse with the emissions staff, and they with him, and the apparent ease of compliance, the order of January 4, 2008 by Commissioner Gore was reasonable. T pp. 31-38, 83-98.

29. After the order by Commissioner Gore of January 4, 2008, all complaints to the Commissioner's Office from employees of the Avent Ferry office concerning the Petitioner ceased. T pp. 38-42.

30. Since the Commissioner received no more complaints about the Petitioner, it appeared that the order of January 4, 2008 was successful in achieving its intended goal of bringing peace to the Avent Ferry office. T pp. 38-39, 65.

31. On or about March 10, 2008, James Burgess, an emissions specialist in the Avent Ferry office submitted his resignation effective March 24, 2008. T pp 41, 120-121.

32. On March 10, 2008, at approximately 2:40 p.m., Petitioner was on the back porch of the Avent Ferry office and saw James Burgess come up the steps to the rear door. Mr. Burgess was in his blue work uniform worn by the emissions specialists. Petitioner admitted that Mr. Burgess looked as if he was on duty. Petitioner told Mr. Burgess that he wanted to speak to him.

T p. 304; R. Ex. 12, p. 34, lines 8-14.

33. Petitioner then led Mr. Burgess to the office of his supervisor. He and Mr. Burgess entered the supervisor's office and Petitioner shut the door. T pp 142-143. R. Ex. 12, p. 35, lines 2-4.

34. The supervisor was not present, as the Petitioner had just seen him leave. There were only a few people in the Avent Ferry office at the time, perhaps four out of the twenty-three or so theft and emissions employees whose duty station was the Avent Ferry office. P. Ex. 1, p. 8, # 16.

35. No evidence was presented that Petitioner had ever previously used Mr. Flaherty's office before March 10, 2008. Petitioner's own office was located next to Mr. Flaherty's office. By his own admission, Petitioner would have been less likely to be noticed meeting with Mr. Burgess in Mr. Flaherty's office rather than his own, since anyone looking for Petitioner would likely look in Petitioner's office, not Mr. Flaherty's. R. Ex. 12, p. 48, lines 19-22.

36. Petitioner's purported reason for using his supervisor's office instead of his own was that it had more room. This purported reason is not believable since Petitioner's office had previously been occupied by Greg Lockamy and it had room for more than two people to meet and talk. T. P. 234.

37. Petitioner shut the door to his supervisor's office to speak to Mr. Burgess, so he would not be seen.

38. Petitioner admitted at his deposition, and at the hearing that at all times, including when he was speaking to Mr. Burgess, he was aware of the order of Commissioner Gore. T p. 303; R. Ex. 12, p. 45, lines 1-5.

39. Petitioner's contention at both his deposition and at the hearing was that he thought his meeting with Mr. Burgess did not violate Commissioner Gore's order because he thought since Mr. Burgess had resigned, he was no longer an emissions employee subject to Commissioner Gore's order. This interpretation is not believable since there is no indication even from Petitioner that anyone, including Mr. Burgess told Petitioner that Mr. Burgess's resignation was effective immediately, and in fact, it was not effective until March 24. T p 309.

40. Petitioner admitted at his deposition and at the hearing that following Commissioner Gore's order was neither difficult nor onerous and only made the job easier. T p. 301, 308). R. Ex. 12, p. 44, lines 23-25.

41. Petitioner made no attempt to challenge the order of January 4, 2008 either by the grievance procedure contained in the License and Theft Bureau policy, or grievance rights afforded by N.C.G.S. § 126-34. T p. 306.

42. Commissioner Gore terminated Petitioner because Petitioner was insubordinate in violating the order of January 4, 2008, which would undermine his authority as Commissioner. Commissioner Gore held Petitioner to a high standard as both a sworn law enforcement officer and a supervisor. T pp. 42-44.

CONCLUSIONS OF LAW

II. With regard to the Conclusions of Law, of the Administrative Law Judge, the Commission decides as follows:

The Commission determines the Administrative Law Judge's Conclusions of Law # 1, #2, # 4, and # 5, are not incorrect as a matter of law and hereby adopts them as its own as hereinafter set forth. The Commission declines to adopt Conclusion of Law number 3 as written because it cites administrative rules that do not apply to the Respondent. The Commission's substituted conclusions of law provide the same substance as the conclusion but with the proper citation.

1. Petitioner was a career State employee at the time of his dismissal. Because he is entitled to the protections of the North Carolina State Personnel Act, and has alleged that Respondent lacked just cause for his dismissal, the Office of Administrative Hearings has jurisdiction to hear his appeal and issue a Decision to the State Personnel Commission. N.C. Gen. Stat. §§ 126-1 et seq., 126-35, 126-37(a) (2007).

2. N.C. Gen. Stat. § 126-35(a) provides that "No career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause." In a career State employee's appeal of a disciplinary action, the department or agency employer bears the burden of proving that "just cause" existed for the disciplinary action. N.C. Gen. Stat. § 126-35(d) (2007).

~~3. 25 N.C.A.C. 11.2301(e) enumerates two grounds for disciplinary action, including dismissal, based upon just cause: (1) unsatisfactory job performance, including grossly inefficient job performance; and (2) unacceptable personal conduct. One definition of "unacceptable personal conduct" is insubordination, which is the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is considered unacceptable personal conduct for~~

~~which any level of discipline, including dismissal, may be imposed without prior warning. 25 N.C.A.C. 11.2304(b)(8) (2007).~~

The Commission's rules provide that personal misconduct is grounds for disciplinary action. 25 N.C.A.C. 1J.0608. Insubordination is defined as a form of misconduct. 25 N.C.A.C. 1J.0614.(h) In addition, personal misconduct is also defined as conduct for which no reasonable person should expect to receive a warning. 25 N.C.A.C. 1J. 0614(i)(1).

4. The Division of Motor Vehicles, License and Theft Bureau General Rules of Conduct defines Insubordination as the "failure or deliberate refusal of any member to obey any lawful order given by any superior officer." General Directive 2.07 (B)(2). To appeal an unlawful or unjust order, members must submit an appeal in writing to a higher authority through proper channels. 2.07 (B)(7). Because the order to Petitioner was issued by the DMV's highest supervisor, Petitioner would have had to appeal to the DOT Secretary who approved his firing.

5. N.C.D.E.N.R. v. Clifton Carroll, 358 N.C. 649, 599 S.E.2d 888 (2004), states that the fundamental question in determining just cause is whether the disciplinary action taken was just. Citing further, "Inevitably, this inquiry requires an irreducible act of judgment that cannot always be satisfied by the mechanical application of rules and regulations." Our Supreme Court said that there is no bright line test to determine "just cause"—it depends upon the specific facts and circumstances in each case. Furthermore, "not every violation of law gives rise to 'just cause' for employee discipline."

The Commission determines that Conclusions of Law # 6 and # 7 of the Decision of the Administrative Law Judge as written contain information that is not supported by the preponderance of the admissible evidence of record and are erroneous as a matter of law and it therefore declines to adopt them and they are shown in strikeout. In addition, the Commission determines that Conclusions of Law # 6 and # 7 do not contain all of the information that is supported by the findings of fact that is necessary to make complete and accurate conclusions of Law in this case. For this reason, the Commission makes the following alternative Conclusions of Law # 7 #8 and #9 with additional relevant information shown underlined that make Conclusions of Law # 6, #7, #8 and # 9 conform to the Findings of Fact and are correct as a matter of law and necessary to decide the case correctly.

6. Respondent has ~~not~~ met the burden of persuading by the greater weight of the evidence presented that it had just cause to terminate Petitioner's employment. ~~The second sentence of the order was overly broad and unreasonable by its terms: "You are further directed not to socialize with, "joke" with, touch or otherwise have any personal or professional~~

~~interaction with any said Emissions staff during working hours or while said personnel is present at duty stations at a DMV facility or in the field" forbade all types of communication. According to this directive, Petitioner could not shake hands with or wish emissions specialists "Good Morning", "Happy Birthday", or "Merry Christmas". Petitioner could not apologize to emissions specialists if he spilled coffee in the lunchroom or say "thank you" if an emissions specialist held a door open for him to pass through. Under this order, Petitioner could not warn emissions specialists if the drinking water in the Avent Ferry Road office was contaminated and he was the first person to learn such news; could not warn them or push them away from the path of a moving vehicle in the parking lot; nor could he alert an emissions specialist that a spouse or family member was in a car accident if he happened to answer the phone call reporting same, whether it was from an emissions specialists or some other person. Commissioner Gore swore that he issued this order in an effort to maintain peace and harmony between Petitioner and the emissions staff. Petitioner did not violate the purpose for Commissioner Gore's order when he spoke with Burgess. In fact, Petitioner was furthering the purpose for the order by promoting peace and harmony through expressing regret upon learning of the Burgess resignation and wishing him well. His appropriate comments to Burgess were reasonable under the circumstances existing at the time they were made.~~

~~7. Under the specific facts and circumstances of this case, Petitioner's interaction with Mr. Burgess was not unacceptable personal conduct constituting just cause for his dismissal because the second sentence of this order is excessive, punitive, unreasonable and not lawful as it chilled appropriate speech and effectively made Petitioner a pariah in his workplace.~~

~~7. Commissioner Gore was an authorized supervisor of Petitioner. N.C.G.S. § 20-49 (2007).~~

~~*The following additional conclusions of law are necessary to more fully explain the Commission's decision.*~~

~~8. No reasonable person subject to the authority of the Commissioner would expect to receive a written warning for violating an order of the Commissioner.~~

~~9. Petitioner's willful violation of Commissioner Gore's order was unacceptable personal conduct, and just cause for dismissal per 25 N.C.A.C. 1J .0614(h), (i) (1), (5). Petitioner's dismissal was therefore with just cause.~~

ORDER

Pursuant to G.S. § 126-37, the State Personnel Commission hereby orders that the decision of the Administrative Law Judge in favor of the Petitioner be reversed and the Respondent's disciplinary action with regard to the Petitioner's employment, i.e., termination, be affirmed and the Commission hereby finds that the Respondent met its burden of proving that it had just cause for Petitioner's dismissal.

APPEAL

Pursuant to G.S. § 150B-45, any party wishing to appeal the Commission's decision may commence such an appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of the Commission's Decision and Order. Pursuant to G.S. § 150B-47, the State Personnel Commission is required to file the official record in the contested case within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the petition must be sent to the State Personnel Commission at the time the appeal is initiated in order to insure timely filing of the record.

BY: _____
Delores Joyner for the
State Personnel Commission

Date

cc: The Honorable Eugene A. Conti, Jr.
Mr. Kenneth L. Cassidy
Mr. Neil Dalton, Special Deputy Attorney General
Mr. Michael C. Byrne, Esq.
Ms. Angela Faulk
Ms. Kim Hausen