

Decision

Filed: October 6, 2015

State of Louisiana
Civil Service Commission

Docket No. S-17992

Michelle Parker

Versus

Louisiana State Board of Medical Examiners

Rule(s): 12.2; 13.19(s)2

Topic(s): Dismissal; improper and unprofessional conduct, violation of agency confidentiality policy; retaliation

Appearances: Michelle Parker, in proper person
Leslie Lanusse and Brooke Duncan, counsel for LSBME

Statement of the Appeal

The Louisiana State Board of Medical Examiners (LSBME) employed Michelle Parker as an Accountant Supervisor 1 and she served with permanent status. By letter dated October 28, 2014, LSBME dismissed Ms. Parker from her position effective November 5, 2014, for engaging in improper, unprofessional conduct and violating the agency's confidentiality policy.

On November 24, 2014, Ms. Parker appealed her dismissal. In her appeal, she denies the allegations of the dismissal letter and alleges that she is the victim of retaliation. As relief, Ms. Parker requests reinstatement and back pay.

I held a public hearing on August 7, 2015, in New Orleans, Louisiana. Based upon the evidence presented and pursuant to the provisions of Article X, § 12(A) of the Louisiana Constitution of 1974, as amended, I make the following findings and reach the following conclusions.

Findings of Fact

1. LSBME employed Michelle Parker as an Accountant Supervisor 1 and she served with permanent status.

2. LSBME licenses and regulates eleven categories of health care providers, including physicians. Its compliance investigation unit investigates complaints made by the members of the public against health care providers, which are confidential in nature. Ms. Parker did not work in the compliance investigation unit and her job duties did not involve the investigation or processing of complaints.

3. In early 2014, Ms. Parker requested and received clarification from LSBME's human resources office regarding employees' use of funeral leave under the Civil Service Rules and agency policy.

4. In September of 2014, Ms. Parker sent a letter to LSBME regarding what she perceived as problems with its administration.

5. On October 6, 2014, E.C. filed a complaint in person with LSBME about a physician.¹ He spoke with Lester St. Amant, Compliance Investigator 4-B, and Virginia Madere, Compliance Investigator 2, of LSBME's compliance investigation unit.²

6. As E.C. was leaving the LSBME building, he was approached by Ms. Parker, who asked him why he was at LSBME. E.C. replied that he "had to take care of some business." Ms. Parker asked him if he was complaining about a doctor; E.C. acknowledged that he was. Ms. Parker then informed him that he had "spoken to the wrong man," i.e. Mr. St. Amant.

7. Ms. Parker told E.C. that Mr. St. Amant was a former New Orleans police officer and that he was one of the "crooked" ones, as Mr. St. Amant "took money from doctors." E.C. asked Ms. Parker, "So, I'm really not going to get anything done?" Ms. Parker responded, "Yes." Ms. Parker stated to E.C. that LSBME was "very racist" in its personnel practices and that she had reported LSBME employees for making fraudulent meal reimbursement claims.

8. E.C. immediately reported Ms. Parker's statements to Mr. St. Amant. Cecilia Mouton, LSBME's Executive Director, and Mr. St. Amant later met with E.C. and assured him that his complaint would be handled honestly, fairly and professionally.

9. Rule IV of LSBME's Employee Handbook states in relevant part as follows:

CONFIDENTIALITY

...

Workplace: As in any workplace, employees must have access to information that is sensitive. Improperly passing on sensitive information can be very disruptive to the office as well as to the agency. Employees

¹ The complainant is identified by his initials in this decision to protect his confidentiality.

² I have taken judicial notice of Ms. Madere's job title from the LaGov Human Capital Management system (HCM).

should be discreet with this type of information in allowing it to flow through the organization using the proper supervisory chain.

Discussion and Conclusions of Law

An employee with permanent status in the classified civil service may be disciplined only for cause expressed in writing. Cause for disciplinary action is conduct of the employee that is prejudicial to the public service or detrimental to its efficient operation. *Bannister v. Dept. of Streets*, 666 So.2d 641 (La. 1996). The right of a classified state employee with permanent status to appeal disciplinary actions is provided for in Article X, § 8(A) of the Louisiana Constitution of 1974. That section states that “[t]he burden of proof on appeal, as to the facts, shall be on the appointing authority.” The appointing authority is required to prove its case by a preponderance of the evidence, which is evidence that is of greater weight or more convincing than that which is offered in opposition thereto. Proof is sufficient to constitute a preponderance when, taken as a whole, it shows the fact or causation sought to be proved as more probable than not. *Wopara v. State Employees’ Group Benefits Program*, 2002-2641 (La. App. 1 Cir. 7/2/03); 859 So.2d 67.

LSBME charges Ms. Parker with engaging in improper, unprofessional conduct and violating the agency’s confidentiality policy.

On October 6, 2014, Ms. Parker accosted E.C. as he was leaving the LSBME building and interrogated him about his complaint, even though she did not work in the compliance investigation unit and her job duties did not involve the investigation or processing of complaints. She then made very serious allegations of professional misconduct against Mr. St. Amant, other coworkers, and LSBME.

E.C.’s complaint was confidential and absolutely none of Ms. Parker’s business. Her confronting him about his complaint was in itself a violation of confidentiality, as doing so was completely outside of her job duties. Ms. Parker’s statements to E.C. that Mr. St. Amant is corrupt, her coworkers are thieves, and LSBME is racist were inappropriate and unprofessional. E.C. was not a governmental official vested with authority to investigate her allegations; he was simply a citizen seeking LSBME assistance.

Ms. Parker’s behavior and statements were clearly disturbing to E.C. and undermined his confidence that his complaint would be properly handled, as he immediately reported Ms. Parker’s misconduct to Mr. St. Amant. Her actions reflected poorly on the agency and were detrimental to the state service. LSBME has thus proved cause for discipline against Ms. Parker.

In her appeal, Ms. Parker claims that her dismissal is in retaliation for having questioned the agency’s application of funeral leave in early 2014 and sending a letter to LSBME in September 2014 regarding alleged mismanagement. Retaliation is a form of non-merit factor discrimination; therefore, under Civil Service Rule 13.19(s)2, Ms. Parker had the burden of proof on this issue.

After a careful review of the record, and in light of Ms. Parker's obvious misconduct, I am unpersuaded that LSBME dismissed her over funeral leave questions posed six months earlier and a complaint letter that she did not even introduce into evidence at the hearing. Ms. Parker has therefore failed to prove that she is the victim of retaliation.

The Supreme Court of Louisiana has held that it is the duty of the Commission and its Referees to independently decide from the facts presented whether the appointing authority has legal cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *AFSCME, Council #17 v. State ex rel. Dept. of Health and Hospitals*, 789 So.2d 1263 (La., 2001). Ms. Parker engaged in improper, unprofessional conduct and violated E.C.'s confidentiality, all to the detriment of the state service. Based upon the foregoing reasons, I conclude that LSBME proved legal cause for discipline and that the penalty imposed, dismissal, is commensurate with the offenses.

Accordingly, this appeal is hereby denied.

Brent C. Frederick
Civil Service Commission Referee