

STATE OF NEW YORK TIME AND ATTENDANCE DISCIPLINARY PANEL

IN THE MATTER OF THE TIME AND ATTENDANCE DISCIPLINARY BETWEEN

THE CIVIL SERVICE EMPLOYEES ASSOCIATION, UNION

and

STATE OF NEW STATE OF NEW YORK, OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

[REDACTED], EMPLOYER

GRIEVANT: [REDACTED]

CASE NO: [REDACTED]

DECISION

On February 23, 2017 a Time and Attendance disciplinary hearing was held in [REDACTED] New York before the undersigned Permanent Umpire to review the instant grievance filed by [REDACTED] in connection with a Notice of Discipline dated October 25, 2016. The Notice of Discipline charges Grievant with unauthorized/unscheduled absence. Grievant appeared at the hearing and was represented by CSEA Contract Administration Specialist Carisa Guild and CSEA Local [REDACTED]. The Employer was represented by Human Resources Specialists [REDACTED].

Background

Grievant is a Direct Support Assistant, Gr. 9 with nine years of service. This is Grievant's fourth Time and Attendance discipline. The prior disciplines were issued in March 2015 (settled, \$500 fine), June 2014 (settled, \$150 fine), November 2013 (settled, Letter of Reprimand). This fourth Notice of Discipline cites six absence occurrences in the nine month period of October 27, 2015 and July 17, 2016 for which the Employer has proposed termination.

Employer Position

The Grievant has had three prior absence-related disciplines. Since receiving this fourth discipline citing six absence occurrences in nine months, Grievant has had one additional unscheduled absence occurrence of six consecutive workdays. For five of the cited unscheduled absences, Grievant did not provide documentation; documentation was provided for the sixth cited absence, i.e., July 17, 2016. Grievant was "placed back on" Doctor Certification requirements effective June 22, 2016 - December

22, 2016. Grievant's recent time and attendance record supports the proposed penalty of termination.

The Employer provided copies of Grievant's attendance profile reports for the period covered by the Notice of Discipline as well as for the period since the Notice of Discipline was issued, a copy of the related interrogation, and copies of the relevant Doctor's Certificate memoranda. At the close of the February 23, 2017 hearing, the Permanent Umpire requested that the Employer produce additional supporting documentation, specifically Grievant's relevant Time and Accrual records and any medical documentation relating to the dates on the Notice of Discipline. These additional documents were provided in a timely fashion.

Union Position

Grievant's October 27, 2015 unscheduled absence was related to his son's serious health condition for which the doctor told Grievant on October 27 to take his son to a [REDACTED]. That appointment was on October 29. The November 16-17 absence was due to a [REDACTED] which had served as the basis for Grievant's earlier FMLA approval. Neither the October 27 or November 15-16 absences were covered by any Doctor's Certificate requirement. At the time of these first two cited absences Grievant was not under a Doctor's Certificate for his absences.

For the February 6-7, 2016 absence, Grievant supplied medical documentation covering February 4-7, with a return to work date of February 8, 2016. The March 13, 2016 absence was due to a vehicle accident, for which Grievant provided an insurance company confiring document.

The June 12-14, 2016 absence occurred during a brief period in which Grievant was not under any Doctor's Certificate requirements, as was noted at the Interrogation by the management representative. The last cited date, February 17, 2016 was covered by both a Doctor's Certificate and noted in the interrogation as covered by a July 18 doctor's note that excused Grievant from July 17 through July 18, with a return to work date of July 19, 2016. The Grievant's most recent FMLA application was completed on February 18 and, upon its amendment, referenced the absence to include February 17, 2016. This paperwork supported Grievant's FMLA approval through December 31, 2016.

In addition to his own serious health condition, the Union is working with the Grievant and his son's doctors to secure FMLA approval based on Grievant's son's serious health condition.

Discussion

The full record before this Permanent Umpire establishes that Grievant met his documentation requirements when such were in place. i.e., between November 17, 2015 and May 17, 2016, between June 22 and December 22, 2016 which, in part, extends beyond the scope of this Notice of Discipline, and between December 20, 2016 and June 20, 2017, also beyond the scope of this matter?

Additionally, based on the record evidence herein, Grievant's cited unscheduled absences as contained in the Notice of Discipline dated October 25, 2016, did not reach the Employer's threshold

of eight unscheduled absences in a twelve month period (July 17, 2015 – July 17, 2016) such as to warrant discipline under the Employer's Guidelines for Attendance.

Findings and Penalty

The unscheduled absences cited in the Notice of Discipline fail to establish a case for termination as sought by the Employer herein. Based on the record evidence, there is no basis to impose any penalty on Grievant for the absences cited in the October 25, 2016 Notice of Discipline.

Accordingly, the Notice of Discipline dated October 25, 2016 is hereby dismissed in it's entirely with prejudice.

Albany, New York
[REDACTED]



NANCY E. HOFFMAN, Permanent Umpire