

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

ELIZABETH SCHLAGEL,
Complainant,

v.

COLORADO SCHOOL OF MINES,
Respondent.

Senior Administrative Law Judge (ALJ) Susan J. Tyburski held an evidentiary hearing in the above-captioned case on December 12, 2024 in the State Personnel Board's (Board) Courtroom 6. Throughout the hearing, Complainant appeared in person, representing herself. Respondent appeared through its attorney, Assistant Attorney General Michael J. Bishop, Esq. Respondent's advisory witness was Danielle Ostendorf, Respondent's Head of Collection Management and E-resource Librarian. The record was closed on December 16, 2024 after receipt of Complainant's written closing argument.

A list of exhibits admitted into evidence and a list of witnesses who testified at hearing, in the order of their appearance, are attached in an Appendix.

MATTER APPEALED

Complainant, a certified employee, appeals Respondent's termination of her employment for job abandonment pursuant to Board Rule 7-4. While Complainant admits that she was absent without leave for more than three (3) consecutive working days, Complainant alleges that she was unable to provide advance notice to Respondent due to a documented medical condition. Complainant therefore argues that, pursuant to Board Rule 7-4(A)(1), she should not have been terminated for job abandonment, and seeks reinstatement with back pay and benefits.

Respondent alleges that Complainant failed to provide documentation of a medical condition that prevented her from providing advance notice and argues that the evidence establishes that Complainant was able to provide advance notice. Respondent therefore argues that it properly construed Complainant's absence as job abandonment and an automatic resignation, pursuant to Board Rule 7-4.

For the reasons discussed below, Respondent's termination of Complainant's employment pursuant to Board Rule 7-4 is **affirmed**.

ISSUES TO BE DETERMINED

Did Respondent properly construe Complainant's absence as job abandonment and an automatic resignation, pursuant to Board Rule 7-4? If not, what is the appropriate remedy?

FINDINGS OF FACT

Background

1. Complainant was diagnosed with a Traumatic Brain Injury (TBI) in 2019. (Stipulated.)
2. On May 7, 2024, Respondent hired Complainant as a Library Technician III in Respondent's library.
3. Complainant's informal title was Resource Sharing Coordinator. She worked on circulation and interlibrary loan (ILL). (Stipulated.)
4. In June 2024, Danielle Ostendorf, Head of Collection Management & E-resources Librarian, became Complainant's direct supervisor. (Stipulated.)
5. On July 2, 2024, Complainant did not come to work and texted her colleague, Matt Simpson, Circulation Coordinator, to notify him of her absence. (Stipulated.)
6. On July 3, 2024, Complainant did not come to work and did not provide notice of her absence to Respondent. (Stipulated.)
7. On July 8, 2024, Complainant did not come to work and did not provide notice of her absence to Respondent. That same day, Ms. Ostendorf texted Complainant to make sure everything was okay and asked if Complainant needed time off. Shortly after sending this text, Ms. Ostendorf sent a follow up email to Complainant. (Stipulated.)
8. On July 10, 2024, Ms. Ostendorf received an anonymous call checking to see if Complainant had been to work. Because Complainant had not come to work, Ms. Ostendorf coordinated with Respondent's Human Resources (HR) department and Lakewood Police to initiate a wellness check for Complainant. (Stipulated.)
9. On July 11, 2024, Ms. Ostendorf spoke with Complainant on the phone. Complainant told Ms. Ostendorf that she'd been hit in the head by a sledgehammer, had a concussion, and spent time in the ICU. During the call, Complainant expressed concern with missing work and a desire to return to work. Ms. Ostendorf coordinated with HR and Complainant to provide information on how Complainant would be able to return to work. (Stipulated.)
10. On or about July 23, 2024, Complainant went on Short Term Disability ("STD") Leave. (Stipulated.)

11. On August 21, 2024, Complainant returned to work. (Stipulated.)

12. On the day Complainant returned to work, Ms. Ostendorf met with Complainant to facilitate her return and sent a follow up email to memorialize their conversation. (Stipulated.) During this meeting, Ms. Ostendorf reviewed Complainant's work schedule with Complainant and reminded Complainant that, if she was going to be "out," Complainant needed to let Ms. Ostendorf know.

Complainant's Absence From Work August 29, 2024 – September 6, 2024

13. On August 26, 2024, Jack Maness, University Librarian, became Complainant's Appointing Authority. (Stipulated.)

14. On August 29, 2024, Complainant did not come to work and did not provide notice of her absence. At 9:27 a.m., Ms. Ostendorf sent Complainant an email to request an update on her status. After receiving no response, Ms. Ostendorf called Complainant's cell phone and left a voice mail at 10:43 a.m.

15. At 12:30 p.m. on August 29, 2024, Complainant returned Ms. Ostendorf's call, and they spoke for approximately 5 minutes. (Stipulated.) Ms. Ostendorf reminded Complainant that, if she was unable to come to work, she was required to notify Ms. Ostendorf.

16. At 2:03 p.m. on August 29, 2024, Ms. Ostendorf sent Complainant a follow-up email. Ms. Ostendorf expected Complainant to return to work the next day and informed Complainant that she would be sending Complainant an invite for a virtual meeting with her on August 30, 2024. Ms. Ostendorf subsequently scheduled this meeting for 9:00 a.m.

17. On August 30, 2024, Complainant did not come to work and did not provide notice of her absence. At 9:03 a.m, Ms. Ostendorf sent Complainant a chat to remind her of their scheduled 9:00 a.m. meeting and provide the virtual link.

18. At 9:09 a.m. on August 30, 2024, Ms. Ostendorf called Complainant on her cell phone, and they spoke for approximately 11 minutes. During the conversation, Complainant stated that she would return to work on Tuesday, September 3, 2024. (Stipulated.)

19. On August 30, 2024, Britt Hoerauf, Senior Human Resources Advisor, sent Complainant an email to her personal and work addresses, informing her that she was aware of her absences without notice and offering to connect to see if Complainant needed any additional resources. (Stipulated.)

20. On September 3, 2024, Complainant did not come to work and did not provide notice of her absence. (Stipulated.)

21. On September 4, 2024, Complainant did not come to work and did not provide notice of her absence. (Stipulated.)

22. On September 4, 2024, Ms. Ostendorf consulted with Ms. Hoerauf and Mr. Maness, and confirmed that no one had received notice from Complainant of her absence. Additionally, Ms. Hoerauf called Complainant's mother. There was no answer, and Complainant's mother did not return Ms. Hoerauf's call. (Stipulated.)

23. At 4:19 p.m. on September 4, 2024, Ms. Ostendorf sent Complainant the following email:

You were a no show for your shifts on August 29, 2024 and August 30, 2024. When I called you on both of these days last week you were reminded to keep in touch and to notify me in advance or within 15 minutes of your shift start if you would not be able to make your shift. Then, you were a no call, no show to your shifts on September 3, 2024 and September 4, 2024.

Multiple attempts have been made to contact you, including calling your emergency contact.

Additionally, I was made aware that your medical condition may have changed and you were informed to speak [sic] with the Benefits Team in Human Resources about potential options. Human Resources has confirmed that you have not reached out to them to speak to them about your situation.

If any of this information is inaccurate, please reach out to Britt Hoerauf, our Human Resources Advisor. You can reach Britt at [phone number and email omitted].

If we do not hear from you by noon tomorrow, September 5, 2024, we will move forward with ending your employment per Board Rule 7-4.

24. On September 5, 2024, Complainant did not come to work and did not provide notice of her absence. (Stipulated.)

25. On September 5, 2024, Complainant called and spoke with her mother. Complainant later contacted a treatment facility; Complainant arranged a ride to the facility and was eventually admitted. Upon admission to the facility, staff allowed Complainant to retrieve phone numbers from her cell phone before they confiscated it so that she could make calls using a phone from the facility. (Stipulated.)

26. On September 5, 2024, Ms. Ostendorf confirmed with Ms. Hoerauf and Mr. Maness that no one had received notice from Complainant of her absence. Later that day, Ms. Ostendorf worked with Ms. Hoerauf to perform a wellness check on Complainant. (Stipulated.)

27. Complainant was in the same mental state from August 29, 2024, through September 5, 2024. At some point during that time period, Complainant contacted a delivery service to order products and also called friends. (Stipulated)

28. When Complainant went to the treatment facility, she did not ask the workers to contact Respondent. (Stipulated.)

29. On September 6, 2024, Complainant did not come into work and did not provide notice of her absence. (Stipulated.)

Respondent's Termination of Complainant's Employment

30. Complainant's extended absences caused library staffing problems and negatively impacted Respondent's ability to process interlibrary loan requests.

31. On September 6, 2024, Mr. Maness sent Complainant a Notice of Job Abandonment via email. Mr. Maness construed Complainant's absence from work without notice for more than three days as "job abandonment and therefore an automatic resignation," pursuant to Board Rule 7-4.

32. On September 13, 2024, Complainant responded to Mr. Maness's Notice of Job Abandonment via email. Complainant apologized and stated, "I should have communicated what was going on."

33. Complainant did not provide documentation to Respondent related to her absences from September 3-6, 2024. (Stipulated.)

34. On September 16, 2024, Complainant filed a timely appeal of the termination of her employment with the Board.

35. During the course of Complainant's appeal, Complainant produced documents verifying her in-patient treatment from September 5 – September 25, 2024. These documents do not indicate that Complainant was unable to contact Respondent during her in-patient treatment.

ANALYSIS

Board Rule 7-4(A) provides:

If an employee is absent without approved leave and advance notice for three (3) scheduled consecutive working days, the appointing authority, after making a reasonable effort to communicate with the employee, may construe the absence as a job abandonment and therefore an automatic resignation.

Board Rule 7-4(A)(1) provides:

In the case of a documented medical condition, employees may seek leave retroactively if the medical condition was of such nature that it prevented the employee from providing advance notice. In the event an employee provides medical documentation showing that the employee was unable to provide advance notice, appointing authorities shall not construe the absence as an automatic resignation.

The parties stipulated to the majority of the material facts in this case. The stipulated facts establish that Complainant was absent without leave or advance notice for more than three (3) consecutive working days. After Respondent made numerous unsuccessful attempts to communicate with Complainant, Respondent construed Complainant's absence as job abandonment and an automatic resignation pursuant to Board Rule 7-4(A).

Complainant alleges that she was unable to provide advance notice to Respondent due to a documented medical condition. Complainant argues that, pursuant to Board Rule 7-4(A)(1), she should not have been terminated for job abandonment. However, the preponderance of the evidence establishes that Complainant's condition did not prevent her from providing notice to Respondent of her absence from work.

On August 21 and 29, 2024, Ms. Ostendorf reminded Complainant that she needed to provide advance notice if she was unable to report to work. The parties' stipulated facts establish that, from August 29, 2024, through September 5, 2024, Complainant contacted a delivery service to order products and also called friends. However, Complainant failed to contact Ms. Ostendorf or anyone else at Complainant's workplace to let them know she was unable to report to work.

The parties' stipulated facts establish that, on September 5, 2024, Complainant called and spoke with her mother. Complainant later contacted a treatment facility. Complainant arranged a ride to the facility, where she was admitted. Upon admission to the facility, staff allowed Complainant to retrieve phone numbers from her cell phone before they confiscated it so that she could make calls using a facility phone. However, Complainant made no effort to contact Respondent concerning her absence from work. On September 13, 2024, in an email to Mr. Maness in response to his Notice of Job Abandonment, Complainant apologized and stated, "I should have communicated what was going on." During the evidentiary hearing, Complainant testified that she just "didn't think" about contacting Respondent.

The stipulated exhibits include documents verifying Complainant's in-patient treatment from September 5 – September 25, 2024. These documents do not indicate that Complainant was unable to contact Respondent during her in-patient treatment. In fact, Complainant filed the instant appeal with the Board during this in-patient treatment. While Complainant testified about her mental state following a traumatic brain injury, she failed to provide any medical documentation establishing that this condition prevented her

from notifying Respondent when she was going to be absent from work. Complainant's calls on September 5, 2024 to arrange for a ride and admission to a treatment facility establish that Complainant was not prevented from notifying Respondent of her absence.

Mr. Maness credibly testified that Complainant's absence from work resulted in a staffing shortage and problems processing interlibrary loan requests. Despite these problems, Respondent made numerous attempts to contact Complainant and help her return to work. Both Ms. Ostendorf and Ms. Hoerauf offered their assistance in providing resources to Complainant to enable her to return to work. Mr. Maness explained that, while Complainant was a good worker when she showed up, other employees had to cover for Complainant when she was absent. Finding coverage for Complainant was especially difficult when Respondent did not have advance notice of her absence. Mr. Maness testified that, ultimately, he had an obligation to everyone else in the library, and felt he had no choice but to construe Complainant's continuing absence without notice as job abandonment pursuant to Board Rule 7-4(A).

The ALJ finds that the preponderance of the evidence in this case establishes that Complainant failed to prove that her medical condition was "of such nature that it prevented [Complainant] from providing advance notice" of her absence from work and failed to provide "medical documentation showing that [Complainant] was unable to provide advance notice." Therefore, the ALJ finds that the preponderance of the evidence establishes that Respondent properly construed Complainant's absence without approved leave and advance notice for three (3) scheduled consecutive working days as job abandonment and an automatic resignation, pursuant to Board Rule 7-4.

CONCLUSIONS OF LAW

Respondent properly construed Complainant's absence without approved leave and advance notice for three (3) scheduled consecutive working days as job abandonment and an automatic resignation, pursuant to Board Rule 7-4.

ORDER

For the above reasons, Respondent's termination of Complainant's employment pursuant to Board Rule 7-4 is **affirmed**.

Dated this 21st day of
January, 2025, at
Denver, Colorado.

/s/ [REDACTED]
Susan J. Tyburski
Senior Administrative Law Judge
State Personnel Board
1525 Sherman Street, 4th Floor
Denver, CO 80203

CERTIFICATE OF SERVICE

This is to certify that on the 21st day of January, 2025, I electronically served a true and correct copy of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** and the attached **NOTICE OF APPEAL RIGHTS** as follows:

Elizabeth Schlagel
[REDACTED]

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[REDACTED]

APPENDIX

EXHIBITS

RESPONDENT'S EXHIBITS ADMITTED: The following exhibits were stipulated into evidence: Exhibits 1-13.

WITNESSES

The following is a list of witnesses who testified in the evidentiary hearing in order of initial appearance:

Danielle Ostendorf, Head of Collection Management and E-resource Librarian
Brittany Hoerauf, Senior Human Resources Advisor
Jack Maness, University Librarian
Elizabeth Schlagel, Complainant

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS:

1. To abide by the decision of the Administrative Law Judge ("ALJ").
2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is served to the parties. § 24-4-105(15), C.R.S. and Board Rule 8-53(A)(2).
3. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is served to the parties. §§ 24-4-105(14)(a)(II) and 24-50-125.4(4), C.R.S. The appeal must describe, in detail, the basis for the appeal, the specific findings of fact and/or conclusions of law that the party alleges to be improper and the remedy being sought. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline referred to above. *Vendetti v. Univ. of S. Colo.*, 793 P.2d 657 (Colo. App. 1990) and § 24-4-105(14) and (15), C.R.S.
4. The parties are hereby advised that this constitutes the Board's motion, pursuant to § 24-4-105(14)(a)(II), C.R.S., to review this Initial Decision regardless of whether the parties file exceptions.

RECORD ON APPEAL

The cost to prepare the electronic record on appeal in this case is \$5.00. This amount does not include the cost of a transcript, which must be paid by the party that files the appeal. That party may pay the preparation fee either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS. A party that is financially unable to pay the preparation fee may file a motion for waiver of the fee. That motion must include information showing that the party is indigent or explaining why the party is financially unable to pay the fee.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a neutral and certified court reporter and filed with the Board within 59 days of the date of the designation of record. See Board Rule 8-53(A)(5)-(7). For additional information contact the State Personnel Board office at (303) 866-3300 or email at: dpa_state.personnelboard@state.co.us.

BRIEFS ON APPEAL

When the Certificate of Record of Hearing Proceedings is mailed to the parties, signifying the Board's certification of the record, the parties will be notified of the briefing schedule and the due dates of the opening, answer and reply briefs and other details regarding the filing of the briefs, as set forth in Board Rule 8-54.

ORAL ARGUMENT ON APPEAL

In general, no oral argument is permitted. Board Rule 8-55(C).

PETITION FOR RECONSIDERATION

Motions for reconsideration are discouraged. See Board Rule 8-47(K).