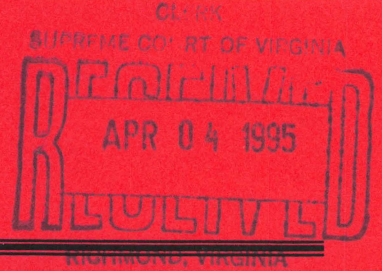


250 Va 542



IN THE

Supreme Court of Virginia

RECORD NO. 941729

VIRGINIA DEPARTMENT OF TAXATION,

Appellant,

v.

MAURIE L. DAUGHTRY,

Appellee.

JOINT APPENDIX

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01-05-93
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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

MAURIE L. DAUGHTRY,

Petitioner,

v.

Chancery No. 4450-RW

COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF TAXATION,

Respondent.

Serve: Willlliam H. Forst, Commissioner
Department of Taxation
2220 W. Broad Street
Richmond, Virginia

Mary Sue Terry, Attorney General
Supreme Court Building
101 N. Eighth Street
Richmond, Virginia

92 DEC 18 PM 4:40
REX A. SMITH, CLERK
BY _____ D.C.

PETITION

COMES NOW MAURIE L. DAUGHTRY, by counsel, and pursuant to § § 2.1-114.5:1(F) of the Code of Virginia, 1950, as amended, petitions this Court to enter an order requiring the Commonwealth of Virginia, Department of Taxation ("Respondent") to implement the October 2, 1992 grievance panel decision and, further, enjoining Respondent from transferring Petitioner to another office and compelling Petitioner to have a mental evaluation and from terminating Petitioner from employment. In support of this petition, Petitioner says as follows:

1. That Respondent, the Commonwealth of Virginia, Department of Taxation, is an administrative department of the government of the Commonwealth of Virginia established by § 2.1-1.1 of the Code of Virginia, 1950, as amended.

2. That Petitioner was employed by Respondent as a field tax representative in its Peninsula district office located in Newport News, Virginia.

3. That on or about March 13, 1992, Petitioner was dismissed from said employment by Respondent, through its agent.

4. That Petitioner thereafter filed a grievance for said dismissal pursuant to § 2.1-114.5:1 of the Code of Virginia, 1950, as amended.

5. That on or about October 2, 1992, a grievance panel, by majority vote, reversed the termination action of the Respondent and ordered the reinstatement of the Petitioner to the same or similar position.

6. That on or about November 25, 1992, Respondent, by a letter from the Tax Commissioner W. H. Forst, notified Petitioner that it was transferring her to its central office in Richmond, Virginia; that her position in that office would be State Tax Collection Representative and that she would be expected to report for work on December 15, 1992.

7. That said transfer would work extreme physical and financial hardships on Petitioner, who is a resident of Chesapeake, Virginia and is currently buying her home there in that she would be forced to either commute four hours each day to and from Richmond or would have to sell her home for a substantial loss, due to the short notice.

8. That the above-mentioned letter of William Forst also notified Petitioner that she would be required to undergo

a mental evaluation to determine her readiness for duty and produce a certificate to this effect prior to reporting to work.

9. That the transfer of the Petitioner as well as the requirement that she undergo a mental evaluation were not recommended by the grievance panel.

10. That the transfer of the Petitioner and the requirement of a mental evaluation is an attempt to put unduly burdensome conditions on Petitioner's employment so as to force the Petitioner to resign her position and thus violate the letter and spirit of the panel decision and if said acts continue it would cause irreparable harm and injury to Petitioner as to which there is adequate remedy at law.

11. That by a letter dated December 18, 1992, Respondent through William Forst, Tax Commissioner, notified Petitioner that if she did not comply with the conditions set forth in his November 25, 1992 letter by December 23, 1992, Petitioner will be considered to have resigned her employment with the Respondent and would thus be terminated from her employment.

WHEREFORE, your Petitioner prays this Court to enter an order requiring the Respondent to implement the October 2, 1992 grievance panel decision, and further that Respondent be enjoined from transferring the Petitioner to another office, compelling Petitioner to have a mental evaluation and from

terminating petitioner from her employment with the Department of Taxation.

MAURIE L. DAUGHTRY

By 

Of Counsel

Bruce C. Sams, Esquire
SAMS & HAWKINS, P.C.
500 Main Street
1110 Crestar Building
Norfolk, Virginia 23510
(804)627-8556

NOTICE OF APPLICATION
FOR INJUNCTION

TAKE NOTICE that, on Monday, December 21, 1992 at 8:00 o'clock a.m., or as soon thereafter as counsel may be heard, at the Circuit Court of the City of Newport News, Virginia, the undersigned, by counsel, will move for a temporary injunction in accordance with the prayers of the attached petition.

MAURIE L. DAUGHTRY

By 

Of Counsel

Bruce C. Sams, Esquire
SAMS & HAWKINS, P.C.
500 Main Street
1110 Crestar Building
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COMMONWEALTH of VIRGINIA

Department of Employee Relations Counselors

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Director

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Richmond, Virginia 23219

(804) 786-7994
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Toll Free (800) 552-9720

November 19, 1992

Mr. William H. Forst
Commissioner
Department of Taxation
2220 West Broad Street
Richmond, Virginia 23220

Dear Mr. Forst:

In your letter dated November 4, 1992, you have asked to have the panel decision in the grievance of Ms. Maurie Daughtry set aside. The basis for this request is that the panel did not decide the issue qualified for the panel hearing.

Ms. Daughtry was terminated from her employment with the Department of Taxation on March 13, 1992. In the grievance challenging that action, she described the nature of her challenge as an "unlawful dismissal" and a misapplication of the "Standards of Conduct and Performance". The panel concluded that the termination was not justified. You argue that the panel was limited to deciding the narrow issue of whether the action was taken consistent with policy and that the issue of whether the action was justified was not before the panel. To determine the issues presented, a careful review of the proceedings, including listening to over eight hours of testimony, was undertaken.

There are two preliminary points which must be made. Your request to have the decision set aside is untimely. While I respectfully defer to your representation that your agency was informed that this issue could be raised after receipt of the panel's decision on reconsideration, this advice, if given, was prior to my ruling of October 24. In that ruling, I explicitly informed you that compliance

Mr. William H. Forst
Commissioner
Department of Taxation
November 19, 1992
Page 2

matters must be raised within five work days of the alleged procedural violation. In this case, the panel decision was received by the agency on October 15 and the request for a compliance ruling was not made until November 4, which is nine days beyond the five work day time frame stipulated by the grievance procedure. In view of my October 24 ruling, any prior misunderstanding regarding this time frame could not serve as just cause for the delay.

Second, the General Assembly has expressly provided that grievance panel decisions are final and binding. The courts have consistently recognized this authority and have declined to review these decisions. I am bound, likewise, by the statutory language and am unable to set aside a decision because I may disagree with the results. The only authority I have is to determine whether a procedural violation occurred. I am very circumspect in determining compliance matters when the issue is disagreement with the decision, rather than the conduct of the panel.

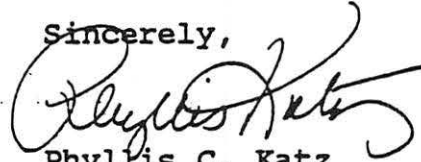
Your challenge centers on the scope of the matters decided by the panel. Contrary to your assertion, however, justification for the action taken is always a matter properly before a panel. Under the "Standards of Conduct and Performance", termination is never mandatory. When in the judgment of the agency mitigating factors exist, specified corrective action may be reduced. (See §VII of that policy.) Likewise, under the Employee Grievance Procedure, §IV.F(1), "[t]he panel may . . . consider mitigating circumstances and modify management's action consistent with written policy." Apparently, on the basis of evidence of mitigating circumstances, the panel concluded that termination was too severe and that Ms. Daughtry should be reinstated.

In addition to the authority of the panel to decide the justification or appropriateness of the action taken in this grievance, the panel decided the issue as articulated by the Department of Taxation. The Department presented substantial evidence during the hearing that, based on the misconduct and unsatisfactory performance of the grievant, the termination was justified. Having produced evidence and defended on these grounds, the Department's position, that the sole issue before the panel was whether policies were properly followed, is not tenable.

Mr. William H. Forst
Commissioner
Department of Taxation
November 19, 1992
Page 3

After reviewing the entire proceedings, I must conclude that matters decided were consistent with the issue qualified. With all routes of appeal exhausted, the decision of the panel must be implemented immediately.

Sincerely,



Phyllis C. Katz
Director

PCK:13:ew

copy: Ms. Maurie L. Daughtry
Wanda N. Allen, Esq.
Mr. Randy Kiah
Ms. Lana Murray
Dorthula H. Powell-Woodson, Esq.
Ms. Hermine Douglas
DPT Policy Section

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

MAURIE L. DAUGHTRY,

Petitioner,

v.

Chancery No. _____

COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF TAXATION,

Respondent.

DECREE

This cause came to be heard, ex parte, upon the prayer for temporary injunction contained in the petition of MAURIE L. DAUGHTRY, in support thereof, and was argued by counsel.

UPON CONSIDERATION WHEREOF, it appearing to the Court that Petitioner is entitled to the relief prayed for, it is hereby

ORDERED, ADJUDGED AND DECREED that Respondent be and it is hereby restrained and enjoined from requiring Petitioner to report to work at its Central Office in Richmond, Virginia, requiring Petitioner to undergo mental evaluation prior to reporting to work and from discharging her for failure to comply with said conditions.

This injunction order shall be effective from December 21, 1992, the date of this order until December 28, 1993, at 8:36 AM *for a further hearing at* which time it shall stand dissolved unless prior thereto it shall have been enlarged or a further injunction shall have been granted by further order of this Court.

I certify that the document to which this authentication is affixed is a true copy of a record in the Newport News Circuit Court, that I have custody of the record and I am the custodian of that record.

ENTER: 12-21-92

Handwritten signature
Judge

Rex A. Davis, Clerk

8

By *Handwritten signature* D.C.

EX 3

I ASK FOR THIS:

PCSB

p.q.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

MAURIE L. DAUGHTRY,

Petitioner,

v.

CHANCERY NO. 924450W

COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF TAXATION,

Respondent.

RESPONDENT'S REPLY TO PETITIONER'S MOTION FOR CONTEMPT AND
MOTION TO DISMISS PETITION TO IMPLEMENT GRIEVANCE PANEL DECISION

NOW COMES Commonwealth of Virginia, Department of Taxation, by counsel, and responds to Petitioner's motion for contempt and moves the Court to dismiss the petition to implement panel decision:

I. INTRODUCTION

A. Proceedings in this Court

Petitioner, an employee at the Virginia Department of Taxation, initiated this case by requesting an ex parte injunction, which was apparently issued by this Court on December 21, 1992, against the Virginia Department of Taxation ("the Department"), with an expiration date of December 28, 1992. By that order, the Department was enjoined from (a) requiring Petitioner to report to the Department's Central Office in Richmond, (b) requiring Petitioner to undergo medical evaluation prior to reporting to work and (c) discharging her for failure to comply with these

conditions. Thereafter, on January 5, 1993, Petitioner filed a motion for contempt against the Department, alleging that the Department's failure to pay Petitioner (during her absence from work) violated the "letter and spirit of the Court's order" and constituted constructive discharge of Petitioner. Apparently, Petitioner has also filed a petition to implement a decision of the grievance panel dated October 2, 1992, relating to Petitioner's termination from employment with the Department. The purpose of this pleading is to respond to each of these matters and to ask the Court to dismiss the proceedings for lack of subject matter jurisdiction.

B. Statement of Fact

Petitioner Marie Daughtry ("Daughtry") is employed as a field representative of the Virginia Department of Taxation ("the Department"). As of March 13, 1992, she was assigned to the Peninsula District Office of the Department, having been transferred to that office in December of 1990 due, in part, to conflicts she had with supervisors in her previous assignment in the Department's Norfolk office.

On March 13, 1992, Daughtry was terminated from employment by the Department on the basis of two written notices issued under the State Employees' Standards of Conduct. One charge, issued March 13, 1992, alleged that she threatened to kill her supervisor. This charge was issued as a group III Offense for which an employee is

normally terminated. The second charge, also issued on March 13, 1992, alleged unsatisfactory job performance. It was issued as a Group I offense. (Charging documents are attached as Exhibits 1 and 2).

Daughtry was provided separate written notification of her termination by letter from John E. Neagle, Assistant Director for the Field Services Division of the Department (Exhibit 3). That letter explained that Daughtry was terminated because of the two charges issued in March of 1992 and because of the accumulation of two other prior Group II offenses.

Daughtry appealed her termination through the employee grievance procedure available to classified state employees pursuant to § 2.1-114.5:1 of the Code of Virginia. She presented her appeal to a three person panel, which, by decision dated August 21, 1992, overruled the termination because of "mitigating circumstances", and recommended that she be returned to work if and when she has been fully evaluated "by a mental health professional who certifies that the employee can return to a potentially stressful environment and can meet the daily demands of work". The panel also recommended that she be assigned to another office (Exhibit 4).

Due to some questions raised about the panel's decision, the panel convened again and modified its original decision to take out the recommendations concerning Daughtry's medical evaluation and transfer (because it was ruled that the panel did not have the authority to require the Department to take these actions). The

panel issued a new ruling (dated October 2, 1992), which, by a 2-1 margin, again reversed the termination and ordered Daughtry's reinstatement to the same or similar position (Exhibit 5).

By letter dated November 25, 1992, the Department head, Commissioner Forst, advised Daughtry that she would be reinstated effective December 1, 1992 (Exhibit 6) and would receive full back pay. He also notified her that she would be transferred to the Richmond Office due to conflicts and threats she had made to supervisors in the Norfolk and Peninsula Offices. He adopted the earlier recommendations of the grievance panel by requiring that she produce a certificate of her readiness for duty from a mental health physician by December 15. To give her time to do this and to prepare for her transfer, Forst gave her leave with pay from December 1 to December 15.

Despite Forst's directions to her, Daughtry did not provide a medical certificate prior to reporting to work in Richmond on December 16. On that date, she met with the Department's Human Resources Manager, Tom Garton, who advised her again of the necessity to obtain medical certification. After meeting with Garton on December 16, 1992, she left her work assignment and has refused to return to work. Accordingly, the Department placed her on unauthorized absence status (without pay) until December 23, 1992, and warned her that unless she reported to work on or before that date with the requisite medical certification, the Commissioner would consider her as having resigned from employment with the Department. This admonition was repeated in a letter

dated December 18, 1992 (Exhibit 7).

Daughtry never obtained the required certification. Instead, she arranged, through counsel, to have an ex parte injunction issued against the Department by this Court, by which the Department was enjoined from transferring her to Richmond or terminating her employment. That injunction was honored, despite the Department's position that the Court is without jurisdiction to entertain the petition filed by Daughtry for reasons specified herein.

II. LEGAL ARGUMENTS

A. Petitioner's Motion For Contempt Is Frivolous

Civil contempt is available as a sanction for a party's disobedience of a court order and may be imposed to compel a party to comply with the order. See e.g., United States v. United Mine Workers, 330 U.S. 258 (1947). Petitioner's motion for contempt is frivolous for the simple reason that the Department did not violate the ex parte injunction issued herein. Pending resolution of this matter, Petitioner has not been terminated or required to do anything. At and prior to the time the injunction was issued, Petitioner was in the employment of the Department on an unauthorized leave without pay status pending her reporting to work. She was advised orally that she would be in that status as of December 16, 1992, and by letters (See Respondent's Exhibits 6 and 7) from the Department. The Department has maintained this

status quo since the entry of the injunction, in obedience to the order and on advice of counsel. The order does not address or even make reference to the issue of pay, and the Department has no authority to pay Petitioner when she is not working or on authorized leave. Accordingly, the motion for contempt is clearly frivolous and should be summarily rejected by this Court.

B. This Court Does Not Have Jurisdiction To Entertain This Petition

While the Department has obeyed the ex parte injunction issued by this Court, it respectfully submits that the Court does not have jurisdiction to entertain this Petition. The Virginia Supreme Court in Murray v. Stokes, 237 Va. 653, 378 S.E.2d 834 (1989), recognized that judicial review of personnel issues involving classified state employees is limited to those circumstances identified for such review under the Virginia Personnel Act ("the Act") (§ 2.110 et seq. of the Virginia Code). The transfer and assignments of state employees (and related non-disciplinary matters) are not issues identified for judicial review, and, accordingly, cannot be reviewed by this Court.

Plaintiff in Stokes, who held a temporary position with a state agency, sought to reverse a determination of his agency head that he was not entitled to a permanent salaried position based upon an interpretation of Rule 8 of the Rules for the Administration of the Virginia Personnel Act. The agency head relied upon the interpretation of Rule 8 by the Director of DPT in

rejecting the employee's claim. The employee successfully challenged DPT's interpretation in circuit court and the employer agency appealed to the Virginia Supreme Court.

Concluding that the General Assembly intended to preclude judicial relief of most personnel issues affecting state employees by the adoption of comprehensive legislation governing personnel administration, the Court in Stokes concluded that the trial court lacked jurisdiction to review DPT's administrative ruling:

Thus we hold that judicial review of the interpretation of a personnel policy regarding employee compensation by the Director of the Department of Personnel and Training is precluded under the Virginia Personnel Act.

Therefore, the trial court had no jurisdiction to entertain a bill of complaint seeking review [of the Director's interpretation].

237 Va. 657. The Court also found "legislative intent shown throughout the [Personnel] Act to preclude judicial review in certain areas." Id.

Stokes is applicable to the case at bar. There is no provision within the Act for judicial review of the matters raised herein, which relate to Petitioner's transfer and the Department's requirement that she produce a medical certificate of her ability to perform her job. These are routine and non-disciplinary matters within the prerogatives of agency management.

Petitioner's remedy for the Department's alleged wrongs, if any, must be through the state grievance system. It is noteworthy, however, that the General Assembly has reserved to agencies the

"exclusive" right to manage certain aspects of personnel administration, which are not subject to review under the grievance system, among which are the "transfer and assignment" of state employees. § 2.1-114.5:1(B)(vii).

In this case, Petitioner's complaint against the Department is a challenge to her transfer and the requirement that she produce a medical certificate attesting to her fitness to work. Both requirements are within management's discretion and are reasonable considering that Petitioner had made a death threat against a supervisor. The grievance panel, while finding that Petitioner should not be terminated, obviously shared the Department's concern about Petitioner's stability by recommending that she be transferred and required to submit to a full psychiatric examination. These recommendations were part of the panel's decision in its August 21 ruling (Respondent's Exhibit 4); they were later removed from the revised October ruling only because the panel has no authority to bind the Department to those conditions. That the recommendations were made, however, is evidence of the appropriateness of the Department's action in adopting them.

C. Petitioner Cannot Invoke The Jurisdiction Of
This Court By Labelling Her Petition As One
Seeking Implementation Of The Panel's Decision

One of the few issues arising in personnel administration within state government that is subject to judicial review is the implementation of a panel decision pursuant to § 2.1-114.5:1(F) of

the Act. As shown by Respondent's Exhibit 5, the panel's decision was simply that Petitioner should be reinstated to "the same or similar position," because the panel did not believe termination was appropriate. That decision was fully implemented by the Department, as shown by the Commissioner's letter to Daughtry of November 25, 1992. The panel did not, nor could it, specify where Petitioner is to be assigned or prohibit the Department from requiring a medical certificate from the Petitioner. If these requirements are subject to challenge, they must be challenged in a separate grievance proceeding. Otherwise, state employees can avoid the procedure at their whim by resorting to the courts. The limitations placed upon judicial review of personnel matters by the General Assembly must be honored by the courts as a matter of law and public policy to permit effective personnel administration.

That state employees cannot obtain judicial review of their supervisor's actions by the simple expedient of labelling their complaints as petitions to implement a panel decision was recognized by the Virginia Court of Appeals in Department of Taxation v. Logan, 11 Va. App. 306 (1990). In this case, the Department of Taxation, following a panel decision, reinstated a terminated employee to a lesser position. The employee sought to challenge the Department's action by filing a petition to "interpret and enforce" the panel's decision. Both the trial court and the Court of Appeals ruled that the employee must separately grieve the demotion because the courts lack jurisdiction to entertain such a petition. The basis for the ruling was that the

grievance panel did not have the authority to demote - that was exclusively within the authority of agency management and could be challenged only through a separate grievance procedure.

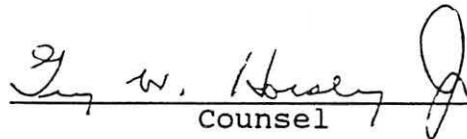
Similarly, Petitioner cannot challenge her transfer and required medical review by simply citing this Court's authority to implement panel decisions. The panel's authority was to order reinstatement; the Department obeyed and implemented this mandate and the Petitioner's filing must be dismissed for lack of jurisdiction.

WHEREFORE, for the reasons stated above, the Department asks that the Court reject Petitioner's motion for contempt and dismiss the Petition filed herein for lack of subject matter jurisdiction.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TAXATION

By:


Counsel

Mary Sue Terry
Attorney General of Virginia

Milton K. Brown, Jr.
Deputy Attorney General

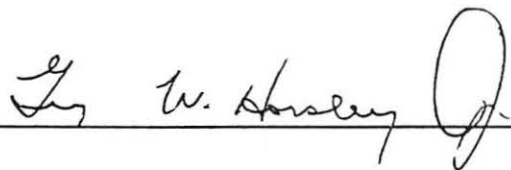
Neil A.G. McPhie
Senior Assistant Attorney General

Guy W. Horsley, Jr.
Senior Assistant Attorney General

Office of the Attorney General
101 North Eighth Street
Supreme Court Building
Richmond, VA 23219
(804) 786-3149

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Respondent's Reply to Petitioner's Motion for Contempt and Motion to Dismiss Petition to Implement Grievance Panel Decision was mailed first-class, postage prepaid, this 7th day of January, 1993, to Bruce C. Sams, Esquire, Sams & Hawkins, P.C., 1110 Crestar Bank Building, Norfolk, VA 23510.



8:56-P2/8:24

2
1 V I R G I N I A:
IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS
2
3

4 -----
5 MAURIE L. DAUGHTRY,
6 Petitioner

CHANCERY
NO. 924550W

7 v.
8 COMMONWEALTH OF VIRGINIA,
9 Respondent.
10 -----

11 TRANSCRIPT OF PROCEEDINGS

12 DATE: January 20, 1993
13

14
15 BEFORE: The Honorable R. T. West
16

17 APPEARANCES: SAMS AND HILL
18 Attorneys for the Petitioner
19 223 East City Hall Avenue, Suite 202
20 Post Office Box 3007
21 Norfolk, Virginia 23514
22 BY: BRUCE C. SAMS, ESQUIRE
23 Of Counsel
24
25 COMMONWEALTH OF VIRGINIA
Office of the Attorney General
101 N. 8th Street
Richmond, Virginia 23219
BY: GUY W. HORSLEY, JR., ESQUIRE
Senior Assistant Attorney General

COPY
21

1 else to go. And certainly we don't quarrel with that. It's in
2 the Code, for one thing, that the Court has jurisdiction to
3 implement a panel decision.

4 Where we have our quarrel with this particular
5 case is what is labeled as a petition to implement a decision,
6 that labeling in and of itself does not confer the jurisdiction
7 of the Court and as the evidence will show today, the panel
8 decision in this case was fully implemented. So maybe subject
9 matter jurisdiction is not the proper label to put on our
10 objection. But I think that once the evidence is in and the
11 Court will see that there's no reason for this to be before the
12 Court. I wanted to state that.

13 THE COURT: Okay. You may proceed. Thank
14 you.

15
16 THOMAS L. GARTON,
17 a Witness, having been first
18 duly sworn, was examined and
19 testified as follows:

20
21 DIRECT EXAMINATION

22
23 BY MR. HORSLEY:

24 Q. Would you state your name, sir?

25 A. Thomas L. Garton.

1 Q. How are you employed?

2 A. I'm human resource manager for the Virginia
3 Department of Taxation.

4 Q. And how long have you been so employed?

5 A. Since 1977.

6 Q. Can you tell the Court generally what your
7 duties are in this position?

8 A. I'm responsible for all personnel functions
9 for the Department of Taxation.

10 Q. Is one of your responsibilities to be the
11 keeper, if you will, of the personnel records of the employees
12 of the department?

13 A. Yes, it is.

14 Q. Now, is the plaintiff in this case, Maurie
15 Daughtry, are you familiar with her?

16 A. Yes, I am.

17 Q. And how is she employed?

18 A. She was originally employed as a state tax fee
19 representative, I think, in 1984 in our Norfolk district office.

20 Q. And how is she employed today?

21 A. Today she's employed as state tax collection
22 representative assigned to the Richmond central office.

23 Q. All right. I'd like to draw your attention to
24 some documents that have been prefiled with the Court and to
25 show you them one by one and get you to identify them. Do you

1 have Ms. Daughtry's file with you today?

2 A. Yes, I do.

3 Q. I am going to show you what's been marked,
4 what I have marked as Defendant's Exhibit Number 1 which is a
5 document dated March 13th.

6 MR. HORSLEY: May I approach the witness?

7 THE COURT: Yes, you may.

8
9 BY MR. HORSLEY:

10 Q. And I ask you if you can identify that,
11 please, sir?

12 A. Yes, I can.

13 Q. All right. What is that document, sir?

14 A. It's a written notice form that's used in the
15 State personnel system to issue disciplinary action against the
16 employees.

17 MR. HORSLEY: Your Honor, these documents that
18 have been prefiled with the Court, and counsel has also gotten a
19 copy of them, what I'd like to do is just run through the
20 documents and have them made a part of the record.

21 THE COURT: All right.

22
23 BY MR. HORSLEY:

24 Q. Now, this document has been marked as
25 Defendant's Exhibit Number 1 and is dated March the 3rd, '92.

Did this come from Ms. Daughtry's personnel file?

A. Yes, it did. There's been one modification because of the panel decision.

Q. Was there another charge that was issued around the same time?

A. Yes, there was.

Q. I'll show you that document which has been marked as Defendant's Exhibit Number 2 and ask if you could identify that, please.

MR. SAMS: Your Honor, I have an objection. I have a problem. If we're here to retry the defendant, I mean the petitioner, as to whether or not the State feels that she's a good employee -- the issue here is whether the transfer was done in accordance with the grievance panel and not just simply done in the State's attempt to get back at Ms. Daughtry. For Mr. Garton to come here and go through her personnel files and say, We looked at her job performance and some taxpayers complaining is not the issue here. The issue here is the grievance panel's decision and for Ms. Daughtry to be placed on trial here as to her performance with the Department of Taxation, I think, is irrelevant for this proceeding.

I think we need to narrow this as to whether or not she's able to work in Norfolk or able to work in Newport News as opposed to being shipped up to Richmond, because the State says that they did this based on some allegations of

1 problems with her in Norfolk and Newport News and I strongly
2 object to going bit by bit onto what happened, retrying the
3 grievance panel's hearing and bring forth everything as though
4 we don't have the witnesses here to support all of that, and Mr.
5 Garton is just going to be going by hearsay and unsubstantiated
6 testimony that he's going to present.

7 MR. HORSLEY: We're just setting a procedural
8 background to the transfer. We're not trying to retry the case.
9 These are documents to show how the transfer came to be.

10 THE COURT: Go ahead.

11

12 BY MR. HORSLEY:

13 Q. Would you look at Defendant's Exhibit Number
14 2?

15 A. That's an early written notice of
16 unsatisfactory job performance.

17 Q. Did Ms. Daughtry receive a letter explaining
18 the nature of these charges and the consequences of them?

19 A. Yes, she did.

20 Q. Dated March 19th. Would you look at the
21 document in front of you? Can you identify it?

22 A. Yes.

23 Q. And that's the document that's been marked as
24 Defendant's Exhibit Number 3? Is that Defendant's Exhibit 3?

25 A. That's correct.

1 Q. And what was the purpose of that letter?

2 A. The purpose of that letter was to explain to
3 Ms. Daughtry the reasons that she was terminated.

4 Q. All right. Now, did Ms. Daughtry appeal these
5 two charges that resulted in her termination through the state
6 grievance?

7 A. Yes, she did.

8 Q. And do you have a record in front of you of
9 the results of that appeal?

10 A. Yes, I do.

11 Q. Is that Defendant's Exhibit Number 4?

12 A. Yes, it is.

13 Q. All right. Would you look at that document
14 and explain, from the document, to the Court what the panel did
15 with her appeal?

16 A. This is a panel decision that was rendered on
17 the grievance.

18 Q. What date?

19 A. Let's see. This was dated 8-21-92.

20 Q. All right. Now, this panel's -- is it the
21 last review in the grievance procedure available to State
22 employees?

23 A. That's correct.

24 Q. And is the Department of Taxation bound by the
25 decision of the panel?

1 A. Yes, we are.

2 Q. What was the decision of the panel on this
3 appeal?

4 A. The decision was to reinstate Maurie Daughtry
5 to the State to a similar position.

6 Q. And were there recommendations?

7 A. Yeah. There's a recommendations there that
8 she undergo a medical evaluation before she report to work.

9 Q. Was there any recommendation about a location
10 for her new job?

11 A. To any other office, I think, other than the
12 Peninsula district.

13 Q. Could you look at the next document before
14 you, Mr. Garton, Number 5. Explain what that document is which
15 bears the date of October 2nd of '92.

16 A. That's correct, yes.

17 Q. And what is that document, Number 5?

18 A. That's the panel decision or employee
19 grievance.

20 Q. Is this the same panel that issued the August
21 decision?

22 A. Yes, it is.

23 Q. And why was there a second decision issued?
24 Do you know?

25 A. It was ruled that the panel did not have

1 authority to recommend an evaluation or require the department
2 to have a medical evaluation for Ms. Daughtry.

3 Q. So the recommendations were taken out of the
4 second?

5 A. That's correct.

6 Q. Would you turn to the second page of this
7 document, Number 5, please, sir? Have you seen that before, the
8 panel decision?

9 A. Yes, I have.

10 Q. And it states that it orders the department to
11 reinstate her to the same or similar position?

12 A. Correct.

13 Q. Did the department reinstate Ms. Daughtry to
14 the same or similar position?

15 A. Yes, we did. Same pay grade with a different
16 title but the same type of work.

17 Q. And was Ms. Daughtry advised of this
18 reinstatement at some point?

19 A. Yes, she was.

20 Q. And was she advised by a letter of
21 Commissioner Forst?

22 A. Yes.

23 Q. And will you look at Defendant's Exhibit
24 Number 6 and tell me if that's the record in your file by which
25 Ms. Daughtry was advised?

1 A. Yes.

2 Q. Did you have a role in drafting this letter?

3 A. Yes.

4 Q. Did you draft it, in fact?

5 A. Yes.

6 Q. And Commissioner Forst signed it?

7 A. Yes, sir.

8 Q. Without reading the letter, would you just
9 tell the Court what openings were explained to Ms. Daughtry as
10 to her assignments as part of this re-instatement notice?

11 A. Ms. Daughtry was told in the letter as I
12 remember that she was temporarily assigned to State Tax
13 Collection representation at the state central office and she
14 was to report on September the 16th, provided she give us a
15 medical certification that she was fit for duty. She was also
16 given the option to request the transfer to any other district,
17 to Bristol, Peninsula or Norfolk.

18 Q. What was her status between the date of this
19 letter which was November 25th and the date that she was to
20 report to work?

21 A. She was in a leave with pay status.

22 Q. Why was she on a leave with pay status?

23 A. To give her sufficient time to report to
24 Richmond and also to obtain a medical certification and not to
25 penalize her by putting her on leave without pay.

1 Q. And did there come a time after the letter was
2 mailed that you met with Ms. Daughtry?

3 A. Yes.

4 Q. Could you explain the significance of that
5 meeting and what happened?

6 A. That was on the morning of December 16th which
7 was the day that she was required to report in Richmond, and she
8 did report to work but did not have a medical certification. We
9 reported all of her paperwork to get you all of her payroll
10 transactions completed. She stayed two hours and left that day.

11 Q. Did you meet with her?

12 A. Yes.

13 Q. Did she ask you for the medical certification?

14 A. Yes.

15 Q. Did she tell you why they didn't have it?

16 A. No, sir.

17 Q. Did you explain anything about it?

18 A. No, sir. She said that her attorney would be
19 in touch with us later that day or the next day.

20 Q. Did she ever come back to work at the Richmond
21 office following her leaving that day on the 16th?

22 A. No, she didn't.

23 Q. Now, following her leaving your office on that
24 day, did you send her or did Commissioner Forst send her a
25 letter?

1 A. Yes.

2 Q. Is that before you as Defendant's Exhibit
3 Number 7?

4 A. Yes, it is.

5 Q. Would you look at that letter very briefly,
6 Mr. Garton, as long as you need, and tell me if the statements
7 that are in that letter are true to the best of your knowledge
8 in terms of her status and her employment situation as of
9 December 18th?

10 A. That's correct.

11 Q. Now, in the letter you state that she has
12 until December 23rd to report back to work, and between December
13 16th and 23rd she was in what status?

14 A. Actually, it was unauthorized absence.

15 Q. What does that mean?

16 A. That means she failed to report to work the
17 following day after the 16th and did not notify our supervisor
18 or our office.

19 Q. And you gave her a deadline in that letter
20 until December 23rd to do what?

21 A. To obtain a medical certification and report
22 for work in Richmond.

23 Q. And did she report to duty in Richmond on
24 December 23rd?

25 A. No, she didn't.

1 Q. You received an injunction from this Court
2 prior to this time?

3 A. Yes.

4 Q. And has she kept on a status quo since that
5 situation was entered?

6 A. Until the court date last week, yes, sir.

7 Q. When was the last time she received pay for a
8 day's work?

9 A. You mean before or after the hearing last
10 week?

11 Q. Before.

12 A. For the 16th of December.

13 Q. Has she been paid annual leave?

14 A. She has now, that's right.

15 Q. Now, Mr. Garton, was there a time that Ms.
16 Daughtry was assigned to the Norfolk office of the Department of
17 Taxation?

18 A. Yes.

19 Q. Do you know what dates that includes?

20 A. I believe she was employed in 1984 until the
21 latter part of 1990.

22 Q. And do you know why she was transferred from
23 that office at that time?

24 A. She was transferred because of a panel
25 decision when she was terminated because of disciplinary action.

1 She was reinstated provided she be transferred to another
2 office.

3 Q. All right. I am going to show you a document
4 which I have just marked as Defendant's Exhibit 8.

5 MR. HORSLEY: Your Honor, this has not been
6 prefiled with the Court.

7
8 BY MR. HORSLEY:

9 Q. And I ask if you can identify that document,
10 please, sir?

11 A. Yes. That's the panel decision that resulted
12 in 30-day suspension and resulted in her transfer from the
13 Norfolk district to the Peninsula district office.

14 Q. What was the nature of the charges in that
15 document?

16 A. The written notice, I think it was for lying
17 to management and disruptive behavior and insubordination and I
18 think leaving the workplace without permission.

19 Q. And I think this is related to her behavior in
20 the Norfolk office of the Department of Taxation?

21 A. Yes.

22 Q. And what did the panel do with the charges?

23 A. The panel left the charges in place and
24 suspended her for 30 working days and recommended transfer to
25 another district office.

1 Q. But they refused to terminate her?

2 A. Did not terminate her. Reinstated her,
3 provided she be transferred.

4 Q. And was she, in fact, transferred?

5 A. Yes, she was.

6 Q. What office?

7 A. To the Peninsula district office.

8 Q. And would you pass the Court that document,
9 please, sir?

10 MR. HORSLEY: Your Honor, this is one that I
11 have not prefiled with the Court. At this point I would ask
12 that all eight of the documents be introduced as evidence on
13 behalf of the Department of Taxation. They are all documents
14 from Ms. Daughtry's personnel file the custodian has testified
15 to.

16

17 (The above-mentioned documents were marked as
18 Respondent's Exhibit Numbers 1 through 8.)

19

20 BY MR. HORSLEY:

21 Q. Mr. Garton, what is the nearest office that
22 the Department of Taxation maintains to the Peninsula office?

23 A. It would be the Richmond district office or
24 the Richmond central office.

25 Q. What about Norfolk? Isn't that near?

1 A. Norfolk is closer, yes.

2 Q. Why wasn't Ms. Daughtry considered for a
3 transfer from Peninsula to Norfolk?

4 A. Because, basically, the panel decision from
5 the earlier disciplinary action. They recommended that we
6 transfer her from that office because of the continuing
7 conflicts from the supervisor of personnel.

8 Q. And is it your testimony that the Richmond
9 office is the nearest location of your office to the Peninsula
10 office except for the Norfolk office?

11 A. That's correct.

12 Q. Has the department's position changed any
13 since our last hearing? What is Ms. Daughtry's status now?

14 A. She's in a paid leave status and -- but, you
15 know, until the outcome of the hearing is determined.

16 Q. All right.

17 A. We bridged the period of time back to December
18 the 16th so she had no loss of pay.

19 Q. Why could you not let her stay in the
20 Peninsula's office?

21 A. Well, you know, the disciplinary actions that
22 were taken resulted in the same threats being made or was the
23 basis of some threats being made to the supervisor of personnel
24 in that office.

25 Q. And how were the threats made known to the

1 office?

2 A. We were notified by an employee in the
3 district office and secondly we were notified by Thrasher
4 Associates that a threat had been made.

5 Q. What was the nature of the threat that you
6 were advised of?

7 A. The nature of the threat was that if Ms.
8 Daughtry's employment was terminated that she would kill one of
9 her supervisors and herself.

10 Q. And was evidence of that threat introduced at
11 the panel hearing?

12 A. Yes, it was.

13 Q. And was it in the nature of medical records?

14 A. Yes.

15 Q. And did those medical records indicate that
16 the threat was made?

17 A. Yes. Yes, it was.

18 Q. And were you there for that hearing?

19 A. I was.

20 Q. Mr. Garton, as personnel director of the
21 Department of Taxation, do you believe you have the authority to
22 require an employee, under the circumstances that you have
23 testified to, to obtain psychiatric evaluation as a condition to
24 her returning to work?

25 A. Yes, we do.

1 Q. And what is the source of that authority?

2 A. The source of that authority rests with each
3 agency head, the manager of the department of the state
4 agencies.

5 Q. Have you ever been advised that the agency
6 didn't have such authority?

7 A. No, I have not.

8 Q. If an employee wanted to change that
9 authority, could he or she do that through the grievance
10 procedure?

11 A. Yes, they could.

12 Q. Has Ms. Daughtry ever challenged that
13 authority through the grievance procedure?

14 A. Not through the grievance procedure, no.

15 Q. Is the position that Ms. Daughtry is now
16 assigned to but hasn't reported for work the same or similar to
17 that which she occupied in the Peninsula office?

18 A. Yes, it is.

19 Q. How is it same or similar?

20 A. From the position she held on the Peninsula,
21 she was responsible for delinquent tax collection. It was
22 outside the office, face-to-face, door-to-door. The office in
23 Richmond is responsible for delinquent collections but they
24 handle all the transactions by phone or letter.

25 Q. Is she in the same pay grade she was prior to

1 termination?

2 A. Yes, she is.

3 Q. And has she been reinstated to the back pay
4 that the panel entitled her to have?

5 A. Yes.

6 Q. Do you feel that the agency complied with the
7 panel decision?

8 A. Yes, I do.

9 MR. HORSLEY: Your Honor, that's all I have at
10 this time. I would ask that those exhibits that have been
11 introduced be accepted as evidence.

12 THE COURT: All right.

13
14 (The previously marked exhibits were received
15 into evidence as Respondent's Exhibit Numbers 1
16 through 8.)

17
18 MR. SAMS: Do you have anything?

19
20 CROSS-EXAMINATION

21
22 BY MR. SAMS:

23 Q. Mr. Garton, you indicated that you felt that
24 the agency had the authority to order a mental evaluation?

25 A. That's correct.

1 Q. Is there any mitigated duty, policy,
2 requirement or rules giving express authority to do so?

3 A. There are no rules in place giving or
4 prohibiting the requirement.

5 Q. And isn't it true that State employees are
6 governed under State law and State personnel policies and
7 procedures?

8 A. As well as some federal law, yes.

9 Q. And, therefore, every right that they have as
10 employees is governed by the State; isn't that correct?

11 A. Well, State policies, procedures, laws and
12 also federal laws.

13 Q. Okay. So if the agency had said, I don't like
14 the way someone dressed, and because we have the right to run
15 our own department for our own well-being, we can order that a
16 person dress a certain way?

17 A. Only if it's related to the job that they are
18 performing.

19 Q. And would that be based on established rulings
20 and policies or would that be based upon what you feel is your
21 opinion of the right?

22 A. That would be based on the agency's authority.

23 Q. So you did not base your decision to order a
24 mental evaluation on any established policy, rules or statutes?

25 A. Well, we base it on the -- we did research on

1 that issue and we could find nothing that prohibited that, and
2 we also talked to the Attorney General's office and we talked to
3 the Department of Personnel and Training and they all told us
4 that there was nothing prohibiting the agency from doing that as
5 long as it was job related.

6 Q. Did they tell you they allowed the agency to
7 do that?

8 A. No, they didn't.

9 Q. If an employee wanted to know their rights,
10 would they refer to their handbook?

11 A. They could, but handbooks are not
12 all-inclusive.

13 Q. Wouldn't there have to be a stated policy
14 written?

15 A. Stating what?

16 Q. Their rights or what can happen or what cannot
17 happen to them.

18 A. No.

19 Q. Let me go back to the panel decision of 1990
20 that you have as Exhibit 8. One of the problems that was there
21 was that there was a disagreement which started on the playing
22 of a radio; isn't that correct?

23 A. That's correct.

24 Q. And one of the problems that the panel had
25 which they upheld, that there were no directives established for

1 the playing of the radio; is that correct?

2 A. At that point there did not.

3 Q. And there was nothing to forbid an employee
4 from doing so because there was no established procedure for it?

5 A. That's correct.

6 Q. And, therefore, that was not sufficient to be
7 utilized as one of the reasons for the grievance panel's
8 decision to uphold a pardon on the part of the Department of
9 Taxation?

10 A. That's part of the reason.

11 Q. Let me ask also, in that panel decision,
12 wasn't it Ms. Daughtry's request to be transferred as a proposed
13 resolution of the matter because of Mr. Dallas Parker who was
14 there at the time?

15 A. She requested that, that is correct.

16 Q. Now, isn't Mr. Dallas Parker in Newport News
17 now?

18 A. Yes, he is.

19 Q. So he's no longer at Norfolk?

20 A. That's correct.

21 Q. And so, therefore, the chief person which she
22 has this complaint with or this problem with is no longer at
23 Norfolk?

24 A. I don't want to say that's the chief person
25 because the two supervisors, John Carter and Jim Kater were the

1 ones that took the action against her. Dallas Parker didn't
2 have authority with that.

3 Q. But the grievance started with Dallas Parker?
4 We're not talking about who started the action.

5 A. I can't say it started with Dallas Parker. He
6 was not one of the parties with the radio.

7 Q. But we're saying that the panel ruled that the
8 radio had -- the radio issue was not one that they could say
9 that the Department of Taxation had any right to use in this
10 matter so you had to remove that?

11 A. They said there was no policy in place at that
12 time controlling that.

13 Q. Well, we're talking about the others that Mr.
14 Parker was one of the chief participants in?

15 A. Not to my knowledge, not in Norfolk.

16 Q. Now, you indicated that -- well, do you know
17 who was?

18 A. John Carter and Jim Kater were the ones that
19 actually recommended that the action be taken.

20 Q. We understand that because she didn't bring
21 the book in and the pass and working ID, but I'm saying what you
22 said as disruptive behavior, that was not involved with John
23 Carter?

24 A. He was her supervisor.

25 Q. He took the action as the supervisor, that he

1 didn't feel that she complied with the policies?

2 A. He investigated the incident and he
3 recommended the action, yes, sir.

4 Q. So there were no threats or problems with Ms.
5 Daughtry in there and any employees but with the radio?

6 A. No. I'm not going to say that there were no
7 problems with other employees, because there were.

8 Q. But we're going to say that there were none
9 used based on the panel decision?

10 A. If you read that panel decision, it was stated
11 in this personnel file which stated that they felt that there
12 was a problem.

13 Q. I understand it, but there were no threats,
14 but there was nothing to say that she threatened to harm herself
15 or someone at Norfolk?

16 A. There's reference to a conversation she had
17 with another employee.

18 Q. It says there was insubordination and leaving
19 work without permission and failure to follow radio directive
20 was not a proven basis.

21 A. That remains in the personnel file. It's in
22 the written notice.

23 Q. Going to the Newport News matter, there was
24 never a threat communicated to any supervisor by Ms. Daughtry;
25 is that correct?

1 A. Not in the -- not the directive.

2 Q. So the only thing that you relied on which
3 were shown not to be a proven basis by the grievance panel was
4 hearsay of other persons?

5 A. That's not correct.

6 Q. You --

7 A. Ms. Daughtry's counsel introduced evidence
8 during the hearing that proved that she made threats to the
9 psychiatrist.

10 Q. Did she make threats to the supervisor
11 directly?

12 A. I answered that. No, she didn't.

13 Q. And the basis that you-all tried to terminate
14 her on was based on unfounded allegations, as your own panel
15 decision said, that there was nothing. That your termination on
16 March 13th was motivated in part because of an alleged immediate
17 need to remove the employee from the premises of the Peninsula's
18 office and particularly the panel agreed that the agency had no
19 prior intent to terminate Ms. Daughtry but merely to address her
20 on-the-job problems?

21 A. What that's referring to was that the police
22 did not remove Ms. Daughtry from the premises unless she was
23 removed as an employee.

24 Q. And the only reason you terminated her was you
25 wanted her removed from the premises?

1 A. The reason we removed her was because of
2 threats made to supervisors and also for unsatisfactory
3 performance. That's in the letter we sent to her.

4 Q. That's from your view point, but Ms. Daughtry
5 didn't walk up to any supervisor and say, I'm going to do this
6 to you and that to you?

7 A. No. I already testified to that. No.

8 Q. Therefore, the panel decided that her
9 termination was unjust; correct?

10 A. They reversed the termination.

11 Q. And they ordered that she be reinstated?

12 A. That's correct.

13 Q. Now, did they order that she be transferred?

14 A. They don't have authority to do that.

15 Q. Did they recommend that she be transferred?

16 A. Yes, they did.

17 Q. And the Exhibit Number 5, where in that did
18 they recommend that she be transferred?

19 A. I'd have to take a look at it. I believe it
20 says to any other office other than the Peninsula.

21 Q. Now, you're referring to the August one of --
22 that was removed, wasn't it? The panel's decision of October
23 the 2nd as the ruling, is the ruling decision; isn't that
24 correct?

25 A. Exhibit 5?

1 Q. Isn't that correct? Isn't that the ruling
2 decision?

3 A. That's correct, two to one.

4 Q. Where is it in there, in this panel decision,
5 that it says that she -- that they recommend that she be
6 transferred?

7 A. Well, they don't in that decision.

8 Q. So, therefore, they did not recommend that she
9 be transferred?

10 A. That's correct.

11 Q. So, therefore, you stated that in '90 she was
12 transferred because of the recommendation?

13 A. It was in the decision, that's correct.

14 Q. So now you're saying in '92 she was not
15 transferred based on the decision but rather based on what?

16 A. It was basically the decision by the agency to
17 transfer her to another location because of problems she had
18 with supervisors and because threats had been made to the
19 supervisors of the Peninsula district office.

20 Q. Let me ask a question; there was never any
21 problems that she had with supervisors at Newport News? There
22 was not ever introduced any allegation that she had problems
23 with the supervisor?

24 A. Their written notices remain in her personnel
25 file.

1 Q. The written notices were based on her job
2 performance that had been going into whether she was in
3 Richmond, whether she was in Norfolk or whether she was in
4 Newport News?

5 MR. HORSLEY: Objection. We're getting to the
6 merits of the panel decision.

7 MR. SAMS: Your Honor --

8 THE COURT: Let me hear the objection.

9 MR. HORSLEY: The panel decision speaks for
10 itself and this line of testimony is trying to get behind the
11 panel decision and to argue with the witness as to what it says.
12 It speaks for itself. We're not here to retry it.

13 MR. SAMS: I certainly agree with that and
14 that's why I am asking him if the transfer was not based on the
15 panel's decision. Then we're getting into the motive that the
16 agency had in transferring her. This was not done in compliance
17 with the panel decision. He just testified to that. The panel
18 decision did not recommend a transfer.

19 THE COURT: All right. Go ahead.

20

21 BY MR. SAMS:

22 Q. Now, there was not evidence introduced or
23 utilized by the agency that there were, quote, problems,
24 regarding personnel and Ms. Daughtry?

25 A. Yes, there was.

1 Q. In Newport News?

2 A. Yes, there are documents that we have.

3 Q. In your written notice to Ms. Daughtry that
4 you alluded to in Exhibit Number 3 you have no --

5 THE COURT: Well, are you testifying now or
6 are you asking him a question?

7 MR. SAMS: I am asking him.

8

9 BY MR. SAMS:

10 Q. On Number 3 -- do you have that in front of
11 you?

12 THE COURT: He does now.

13

14 BY MR. SAMS:

15 Q. You testified earlier that this letter was
16 inclusive of all the reasons for which her termination was
17 based. Now, could you show in this, the letter, where you
18 indicate problems between her and the supervisor?

19 A. It says threat to kill your supervisor is
20 the -- in the third sentence, third line.

21 Q. Now, it's indicated that there was no threat
22 that she made directly to any supervisor.

23 THE COURT: Well, directly. That's the key
24 word here.

25 MR. SAMS: Right. I understand that.

1 BY MR. SAMS:

2 Q. So beyond the threat to the supervisor that
3 you said came through a third party, are there any problems that
4 you show here in the letter that she had with any supervisor or
5 any personnel?

6 A. Yes. The threat, there's unsatisfactory job
7 performance.

8 Q. How is that her relationship to personnel?

9 A. Now, what do you mean "to personnel"?

10 Q. I mean, you're saying that she couldn't go
11 back there because she had problems with personnel.

12 A. With the supervisors.

13 Q. With the supervisors. Now, if I understand,
14 the threat was that, If I am terminated - and this is how you
15 quoted the threat to be - If I am terminated, I would kill my
16 supervisor and kill myself?

17 A. That's correct.

18 Q. So if she was not terminated she would not
19 kill her supervisor and not kill herself; is that correct?

20 A. I don't know that. I can't answer that
21 question.

22 Q. But you said that threat was, "If I am
23 terminated;" correct?

24 A. That's the threat that she made.

25 Q. So she didn't say I hate this supervisor or I

1 hate that person and I am going to kill that person or I wish to
2 kill that person?

3 A. Anytime any employee makes a threat to
4 anybody, whether it's another employee or supervisor we take it
5 seriously.

6 Q. So let me ask you; if she said, if I am
7 terminated I am going to kill Mr. Forst in the Department of
8 Taxation, where would she be transferred then?

9 A. We would have done the same thing we did
10 before, terminated her employment.

11 Q. If she was terminated and if the grievance
12 panel had been what it was, what would you have done?

13 A. That would have been up to Commissioner Forst
14 to decide where he wanted to place her. That's his authority to
15 do that.

16 Q. Would you say that Ms. Daughtry got along with
17 her co-workers at Newport News?

18 A. I think she got along with some of them, yes.
19 That's not the issue. I think the issue is the action that we
20 took, was the threat made toward her supervisor, and also
21 unsatisfactory job performance that her peers would not have any
22 knowledge of.

23 Q. So the unsatisfactory job performance would
24 have been no matter where she was, Norfolk, Richmond, Newport
25 News?

1 A. You mean she would be performing
2 unsatisfactorily anywhere?

3 Q. Yes.

4 A. I'm not going to say that.

5 Q. You say you think in Richmond she would have
6 performed better than in Norfolk and Newport News?

7 A. I would hope so.

8 Q. What would be the reason for that?

9 A. Well, one reason is because she's not working
10 under the same supervisors, and, second, it's inside
11 collections.

12 Q. So you are saying that the supervisor caused
13 her unsatisfactory job performance?

14 A. No, I'm not saying that. Ms. Daughtry causes
15 her own unsatisfactory job performance which has been
16 documented.

17 Q. Now, Ms. Daughtry's had three grievance panel
18 decisions; is that correct?

19 A. I know she's had two.

20 Q. Well, there were three; two in this last case
21 and one before in 1990?

22 A. Well, that's possible, yeah.

23 Q. And in each instance, Ms. Daughtry was
24 reinstated and told to be reinstated with full pay; correct?

25 A. I know in the last two she was.

1 Q. Okay. And you indicated that on the 16th she
2 was told to -- she was supposed to report to work; is that
3 correct?

4 A. She was told on November 25th to report to
5 Richmond on December 16th.

6 Q. On November 25th to report in December?

7 A. Correct.

8 Q. Your agency knew on October the 2nd that she
9 was to be -- I mean that she would be reinstated and there would
10 not be an order for mental evaluation. What was your reason for
11 waiting?

12 A. We knew that there wouldn't be an order for
13 mental evaluation.

14 Q. It's dated October the 2nd, 1992. When you
15 were aware of that?

16 A. That's the panel decision, that's correct.

17 Q. Now, what was the reason for waiting two
18 months to inform her of a transfer and of that request?

19 A. Because we appealed the panel decision to the
20 panel first and then to the Department of Personnel and Training
21 to Phyllis Katz and to the Corps of Preparation Counselors.

22 Q. And you were told in a letter from Mrs. Katz
23 as early as the 3rd or 4th of November that there was nothing
24 that you could do, that the panel decision was binding and that
25 was it, and reinstate her at that time; isn't that correct?

1 A. To reinstate her but they have no authority to
2 tell us where to reinstate her.

3 Q. So when did you decide to move her to
4 Richmond?

5 A. It was in November before we wrote the letter,
6 obviously.

7 Q. It was in November and the basis of that
8 decision was because you felt that she had problems of
9 threatening her supervisor in Newport News?

10 A. We met with Mr. Forst and we discussed with
11 him the decision and we discussed the options that we had and he
12 felt that there's no way that we could put her in two offices in
13 the Tidewater area because of the problems that occurred and we
14 looked at the next closest which was Richmond.

15 Q. Now, let's go back to Norfolk after 1992, and
16 if she had no contact with the persons in Norfolk since 1989,
17 1990 and Mr. Parker moved, who was one if you say he wasn't?

18 A. I won't say that she had any contact with the
19 people in Norfolk.

20 Q. You didn't say she went back to Norfolk and
21 caused disruptive behavior since 1990?

22 A. No, I didn't have any knowledge of that.

23 Q. And Mr. Parker, who was one of the chief
24 participants, if not the chief - you said he's at least one of
25 them - was not in Norfolk anymore but was rather in Newport News

1 where she was; is that correct?

2 A. Correct.

3 Q. So that removed at least one of the persons
4 that she would have any problems with?

5 A. I'm not saying her problems were with Mr.
6 Parker. The problems were with Mr. Carter and Kater.

7 Q. Mr. Kater was one of the persons alluded to
8 that she had problems with?

9 A. I wasn't at the hearing for the Norfolk panel.

10 Q. So you're testifying not by what you know but
11 rather by what you read in the panel decision?

12 A. No. I was at the panel hearing that was held
13 for the Peninsula decision. I was not at the panel for the
14 Norfolk decision.

15 Q. So you're not speaking about the disruptive
16 behavior other than what you're saying you read from the panel
17 decision?

18 A. I know what the written notice remains
19 attached in her personnel file. They have not been removed and
20 the document stated --

21 Q. And not one written notice indicated that she
22 threatened a supervisor in Norfolk?

23 A. No, not in Norfolk.

24 Q. Okay. So, therefore, you don't have any
25 reason to suspect that she would have had an altercation or

1 would have problems in Norfolk threatening supervisors?

2 A. If you look at the written notices, I think
3 there's on there that there was insubordination, which under the
4 state office -- that's a route two office, and there was a
5 written notice and the insubordination was left in her file.

6 Q. And she was given a 30-day suspension?

7 A. That was not against Mr. Parker but against
8 Jim Kater.

9 Q. And that's the things relating to the radio
10 and why she would not turn it off, and said that she had the
11 right because everybody had their radio, so, therefore, the
12 insubordination was not based on a personal grievance between
13 her and John Carter but was based on her interpretation of the
14 radio policy?

15 A. That's not correct. The insubordination was
16 because she didn't follow supervisor instruction.

17 Q. I understand it started over the radio. I am
18 trying to distinguish between saying you're nothing to me, I am
19 going to hurt you, I got problems with you. This matter was
20 based solely on her use of a radio, his telling her not to use
21 the radio?

22 A. No, that's not correct. That's what that
23 started with.

24 MR. HORSLEY: I object. Again, we're getting
25 into the grievance hearing.

1 THE COURT: Yes, we are.

2

3 BY MR. SAMS:

4 Q. Did Mr. Kater ever express to you that he
5 didn't want Ms. Daughtry?

6 A. Yes.

7 Q. He told you that specifically?

8 A. He told me that specifically.

9 Q. When did he tell you that?

10 A. He told me after the panel decision in
11 Norfolk.

12 Q. When? 1990?

13 A. Prior to whenever she was transferred. I
14 think she was transferred in December of 1990.

15 Q. Mr. Carter does not head collections in
16 Norfolk?

17 A. Yes, he does.

18 Q. The same position that he has now, now he has
19 that position?

20 A. John Carter is still the supervisor of
21 collections in Norfolk.

22 Q. What position is she in in Richmond?

23 A. She's a state tax collection representative in
24 Richmond, central office.

25 Q. Now, that is not the same position that she

1 had in Norfolk?

2 A. No, it's not.

3 Q. How many supervisors are there now in Norfolk?

4 A. I think in whole, district officers, I think
5 there's either four or five.

6 Q. And who's the head supervisor?

7 A. Jim Kater.

8 Q. So she could have worked under another
9 supervisor in Norfolk if she was placed in one of the other
10 divisions?

11 A. No, because she worked in the collections and
12 John Carter is over in corrections and Mr. Kater is John
13 Carter's supervisor.

14 Q. And you didn't indicate that it was Jim Kater.
15 You said John Carter.

16 A. I said both.

17 Q. Mr. Kater backed them?

18 THE COURT: Don't dispute what he said but let
19 him testify.

20

21 BY MR. SAMS:

22 Q. Did you say Jim Kater indicated that he had
23 problems with her?

24 A. Both of the supervisors did.

25 Q. And this is what you said was the basis of

1 this?

2 A. Actually, Jim Kater was the supervisor. He
3 was the district manager which was over all employees. Jim
4 Kater is actually the one that the insubordination took place
5 against.

6 Q. And that was when he told her that she had to
7 abide by what was told to her?

8 A. I have to look at the file. I think he
9 requested her to come to his office and discuss this decision
10 and to do a few things, and she didn't do any of them. She
11 wouldn't even come to his office when he asked her.

12 Q. So my point being, there was no personal
13 matters between the two of them, but she didn't do what he told
14 her, Come to my office and discuss the matter?

15 A. I can't talk to you about things that went on
16 between the individuals. I can testify about the documents in
17 the file between the people, and the documents in the file said
18 there were problems between the two.

19 Q. Now, the two offenses occurred in Newport News
20 and Norfolk and you are saying that Ms. Daughtry could not be
21 placed in any other position?

22 A. In either Norfolk or the Peninsula.

23 Q. And the reason is because in the Peninsula you
24 said she threatened to kill one supervisor?

25 A. At least one that I know of.

1 Q. You don't know of any other threats to anybody
2 else?

3 A. No.

4 Q. In Norfolk you are saying she was
5 insubordinate to
6 two supervisors?

7 A. Also, you know -- I mean, look at the written
8 notices. Not just insubordination. There's many problems that
9 are on that written notice. It's not just one offense.

10 Q. But the one that the panel says that they
11 found was proven was the one that they upheld, 30 days
12 suspension?

13 A. There are four offenses. Lying to management;
14 that would indicate problems. Insubordination would certainly
15 indicate problems.

16 Q. Now, why would she not have lied to management
17 in Richmond or do any of these things in Richmond's office?

18 A. I can't comment on that. She's not in
19 Richmond.

20 Q. So the moving to Richmond would not remedy the
21 bad job performance for her?

22 A. Moving to Richmond would be the exact same
23 situation we moved her to Newport News over. Give her a new
24 opportunity to move, start with new supervisors and job duties
25 and start with a clean slate and put the matter behind us.

1 Q. Travel two and-a-half hours -- I mean, get up
2 at least 4:30 in the morning just to be at your office in
3 Richmond and you think that that would place an employee in a
4 better working position than local?

5 A. We don't dictate to employees where they have
6 to live. It's up to her where she wants to live.

7 Q. But you know where she lives. We're not
8 saying a person that applies for a job right off the bat and
9 comes in fresh and you say we have a job opening in Richmond and
10 that's our only office. You know where she lives; is that
11 correct?

12 A. Where applicants live does not matter.

13 Q. But you know where she lives?

14 A. I know where she lives, yeah.

15 Q. And that was not on the basis of conferring
16 with her to see if that was agreeable?

17 A. That was based on the only position available
18 to Ms. Daughtry based on her qualifications in an office other
19 than Tidewater.

20 Q. If she said she would take a less qualified
21 position but not a less pay grade in Norfolk or Newport News,
22 would she have been allowed to?

23 A. No.

24 Q. So it was not based on the qualified position,
25 it was based on you wanting to move her to Richmond?

1 A. It's based on the supervisors in the district
2 office. It's the exact same personnel. They haven't changed.
3 Any of the positions that work in the office are going to be
4 reporting to the same supervisors.

5 Q. Now, why did you not in August indicate to Ms.
6 Daughtry between the August decision and the panel decision of
7 October the 2nd that she would be transferred to Richmond?

8 A. Because the agency has rights of appeal under
9 the grievance procedures and we exercise those rights.

10 Q. So you gave her less than 20 days notice or 20
11 days notice to find a place in Richmond or to even prepare to
12 move and to get a mental evaluation? Now, let me ask you, on
13 the requirement of mental evaluation, who was supposed to pay
14 for that?

15 A. That's up to Ms. Daughtry to pay for that.

16 Q. Wasn't it the ruling of the panel that she be
17 reinstated immediately with all of her rights and privileges
18 including the health card?

19 A. No.

20 Q. It was not?

21 A. It didn't state the health card. With all
22 rights and --

23 Q. What is the difference between rights,
24 benefits and privileges? A health card is not a right, benefit
25 or privilege?

1 A. The panel did not say anything about a health
2 card. It said pay and benefits.

3 Q. They said the term all rights and privileges
4 and benefits. Isn't this inclusive of every single right,
5 benefit and privilege?

6 A. Right.

7 Q. But you did not do that?

8 A. Yes.

9 Q. You gave her a health card?

10 A. Yes.

11 Q. When?

12 A. We gave her two applications to return and one
13 was returned to my office yesterday. It's the first one we
14 received and she has health care coverage. The only reason she
15 would not, if she didn't pay her back premium.

16 Q. When did she have that application the first
17 time?

18 A. On December the 16th.

19 Q. But you wrote a letter on the 25th telling her
20 to get a mental evaluation. What was she supposed to get that
21 with if she didn't have a card or an application?

22 A. She was informed on the 16th retroactive to
23 December 1st. We gave her the option of making it retroactive
24 to March 19th. She would not bridge the gap. So it started on
25 December 1st which was the first date that we could start her

1 under the policy.

2 Q. But if she did not have that coverage before
3 the meeting of December 16th, there was no way she could have
4 gone to any doctor even if she wanted to comply unless she said
5 I will do that at my cost?

6 A. I don't know. I don't know what her costs
7 are. We're not qualified to ask the person if they have medical
8 coverage for a mental evaluation.

9 Q. What is that rule under?

10 A. It's under the authority of the agency to have
11 to manage the agency.

12 Q. And that agency said that they don't or do
13 provide the coverage? It's not up to them to determine how
14 mental evaluations for any certification that they demand, that
15 your department demands?

16 A. We have the inherent authority to ask for that
17 if it's job related.

18 Q. Where is that?

19 MR. HORSLEY: Objection. We've gone over this
20 time and time again. I will stipulate for the record that it's
21 not set out in any regulation. As the witness said, within the
22 inherent authority of the agency.

23 THE COURT: All right. Let's see it.

24 MR. SAMS: May I ask at least what inherent --
25 I mean, I would like to see that one statement that he keeps

1 saying that they have this inherent authority. I would like to
2 see the term "inherent authority" or his ability to at least
3 dictate where that is found.

4 THE COURT: Where do you derive that statement
5 from?

6 THE WITNESS: It's in the Virginia Code. I
7 don't have a copy of it with me. It talks about agency as
8 having the right to manage the agency, to appoint personnel. To
9 appoint personnel and to transfer personnel and select
10 personnel.

11 MR. SAMS: I have no other questions at this
12 time.

13

14 REDIRECT EXAMINATION

15

16 BY MR. HORSLEY:

17 Q. Briefly on redirect.

18 Mr. Sams asked you about the difference in the
19 positions. When she was in the Peninsula office, did she deal
20 with members of the public?

21 A. Yes, she did.

22 Q. All right. In the Richmond office, will she
23 deal with members of the public?

24 A. Very little face-to-face contact. Mostly
25 telephone and by correspondence.

1 Q. Does that difference in the job assignments
2 have any bearing upon her disciplinary record?

3 MR. SAMS: I object. He's leading the witness
4 and he's asking for something that's not in my cross-examination
5 or direct.

6 MR. HORSLEY: He's asked why she was
7 performing in the job. He opened the door. I'm just asking.

8 THE COURT: I'll allow it.

9 THE WITNESS: On the written notice on the
10 Peninsula the reason that was given to Ms. Daughtry was because
11 we received several complaints from taxpayers and there were
12 verbal complaints. We verified them. They issued written
13 complaints and that was because of actions she had taken when
14 she went to their places of business and we cannot allow that in
15 the agency.

16

17 BY MR. HORSLEY:

18 Q. Would she be doing the same kind of thing,
19 visiting taxpayers, in a new position?

20 A. No, she would not.

21 THE COURT: Let me ask you a couple of
22 questions.

23 THE WITNESS: Yes, sir.

24 THE COURT: What do you mean by "medical
25 certification"?

1 THE WITNESS: Just the simple statement saying
2 that this person is mentally able to perform the duties of this
3 position. No more, no less. We don't need any type of analysis
4 or physician's tests or any of that. It's just something that
5 says this person is okay to come to work.

6 THE COURT: Do you require that of all of your
7 employees?

8 THE WITNESS: We normally require that for any
9 employee that has an extended leave of absence based on medical
10 reasons.

11 THE COURT: Do you require it with the new,
12 incoming?

13 THE WITNESS: No, we do not.

14 THE COURT: You do not. Now, when you say
15 "extended medical leave," was she on extended medical leave?

16 THE WITNESS: Not on medical leave, no. When
17 Ms. Daughtry had worked for us we met with her several times and
18 asked that she take extended leave so that she felt comfortable
19 with her ability to perform her job and she refused to do that.

20 THE COURT: All right. All right. You may
21 step down.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24

25 THE COURT: Is that the Commonwealth's case?

1 MR. HORSLEY: That's our evidence, Your Honor.

2 THE COURT: Mr. Sams?

3 MR. SAMS: Your Honor, one moment. Let me
4 call Joyce Copeland -- Coburn, I'm sorry.

5 MR. HORSLEY: I am going to object to this
6 witness. It's a co-employee that is going to give her opinion.
7 I believe that is going to state that she was not fairly treated
8 by the agency.

9 THE COURT: I will see how she goes.

10

11

JOYCE COBURN,

12

a Witness, having been first

13

duly sworn, was examined and

14

testified as follows:

15

16

DIRECT EXAMINATION

17

18 BY MR. SAMS:

19

Q. Could you state your name for the record?

20

A. Joyce Coburn.

21

Q. Mrs. Coburn, you are employed with what

22

agency?

23

A. Department of Taxation.

24

Q. And do you know Ms. Daughtry?

25

A. Yes.

1 MAURIE L. DAUGHTRY,
2 the Petitioner, having been first
3 duly sworn, was examined and
4 testified as follows:

5
6 DIRECT EXAMINATION

7
8 BY MR. SAMS:

9 Q. Ms. Daughtry, how long have you worked for the
10 Department of Taxation?

11 A. Eight years.

12 Q. Okay. And briefly tell the Court where you
13 were during those eight years.

14 A. I started out in Norfolk 1984, the Norfolk
15 office, and I stayed there for five years, and then I was -- I
16 transferred over to the Newport News office.

17 Q. All right. So you had a working relationship
18 in Norfolk for a period of five years?

19 A. (Witness nods head.)

20 Q. Five to six years?

21 A. Yeah.

22 Q. And in 1990 that relationship deteriorated?

23 A. Yes.

24 Q. All right. Now, did you request a transfer?

25 A. Yes, I did.

1 Q. And why did you request a transfer?

2 A. Because of the grievance that I filed, I felt
3 that maybe I could get a fresh start over in Newport News.

4 Q. All right. And when you left Norfolk, did you
5 have any animosity between any personnel or supervisors in
6 Norfolk?

7 A. No.

8 Q. Did you have any altercations involving any
9 personnel or supervisors in Norfolk?

10 A. No.

11 Q. Other than this dismissal, based on the reason
12 for the panel's decision in which the panel upheld a 30-day
13 suspension, were you ever accused of threatening or going to
14 harm anybody in the Norfolk office?

15 A. No.

16 Q. All right. Now, in the Newport News office --
17 first let me go back to Norfolk. Did you work with a Dallas
18 Parker in Norfolk?

19 A. Yes.

20 Q. Before you got to Newport News was he
21 transferred over to Newport News?

22 A. I don't know for sure.

23 Q. Was he there when you got there?

24 A. Yeah, he was there.

25 Q. Well, you-all didn't go together?

1 A. No, we didn't.

2 Q. So he was there before you got there?

3 A. Yeah, he was there before.

4 Q. And you and Mr. Parker were not the best of
5 friends or the best of co-workers?

6 A. Well, we talked, you know. We weren't friends
7 but we talked.

8 Q. Now, when you got to Newport News, how long
9 did you work there?

10 A. I worked there from 1990 to March 13th, 1992.

11 Q. Okay. And who did you work under? Whose
12 supervision?

13 A. Lloyd Marks.

14 Q. Did you have any problems with Lloyd Marks?

15 A. No.

16 Q. Did you have any problems with altercations
17 involving Lloyd Marks?

18 A. No.

19 Q. Did you ever threaten or curse to him?

20 A. No.

21 Q. Who was the supervisor of him?

22 A. Above Lloyd?

23 Q. Right.

24 A. Jim Kater, actually, because our district
25 supervisor was far -- we didn't have a district supervisor but

1 Jim Kater worked in Newport News and Norfolk. I was told he
2 handled both offices.

3 Q. So you had a working relationship with him
4 through some part of '92. Did you ever meet him?

5 A. Jim Kater?

6 Q. Right.

7 A. I knew him from Norfolk.

8 Q. But in the time that you were in Newport News,
9 did you ever meet with him or talk with him?

10 A. Yeah. I talked with him when he came over.

11 Q. Did you have any problems with him?

12 A. No.

13 Q. Okay. Now, you were dismissed on March 13th
14 of last year?

15 A. Correct.

16 Q. And that was the subject of various panel
17 decisions?

18 A. Yeah.

19 Q. And you were reinstated?

20 A. Uh-huh.

21 Q. Okay. Now, what was your impression of the
22 panel's decision?

23 A. Well, when I got the decision, I thought that
24 I would be reinstated back to the Newport News office with back
25 pay and benefits.

1 Q. Were you prepared to go back to the Newport
2 News office?

3 A. Yes, I was.

4 Q. Did you think you could work at the Newport
5 News office?

6 A. Yes.

7 Q. Did you think that you would have any
8 hostilities or problems?

9 A. No.

10 Q. Okay. Now, you live where?

11 A. Chesapeake.

12 Q. What part of Chesapeake?

13 A. Western Branch.

14 Q. Okay. And could you estimate how long it
15 would take you to get to Richmond?

16 A. Takes me two hours.

17 Q. Okay. And what time are you supposed to
18 report to work?

19 A. 8:15.

20 Q. All right. And what time do you get up?

21 A. Five.

22 Q. And you work Monday through Friday?

23 A. Friday, yes.

24 Q. All right. Now, when you were given a letter
25 on November the 25th of last year --

1 A. (Witness nods head.)

2 Q. -- by Mr. Forst, apparently by Mr. Forst, at
3 least under his signature, did you contact their office?

4 A. Tom Garton called me before I got the letter
5 and he told me what the letter stated, okay, and I said -- he
6 said, We don't know where we're going to place you. Okay. And
7 he said, Well, I have to talk to Mr. Forst.

8 And I said, you know, I live in Chesapeake.

9 He said, We don't care where you live and then
10 he hung up.

11 Q. Now, did he tell you that your assignment in
12 Richmond would be temporary and you would be placed anywhere
13 else or that would be permanent?

14 A. Well, he didn't say. According to the letter,
15 it was temporary. Tom Garton didn't tell me. At the time when
16 he called me, he said they were trying to find a place to put me
17 but he had to talk to Mr. Forst.

18 Q. You went up there on the 16th. Did you talk
19 to anyone?

20 A. Yes. I talked to Tom Garton and a couple more
21 people, a supervisor who was supposed to be my supervisor up
22 there.

23 Q. And did you discuss the working conditions?

24 A. Yes. I told -- I asked him if I could talk to
25 Mr. Forst and he said, He's not in and then whoever it is -- I

1 can't remember the supervisor's name. I asked him who was next
2 in line and he said, You have to talk to me, so I asked him --
3 they had made it a hardship on me to drive back and forth a
4 total of four hours a day and that I was unable to work in
5 Richmond because of that.

6 Q. Now, do you own or rent your home?

7 A. I own.

8 Q. All right. And how long have you had that
9 home?

10 A. Seven years.

11 Q. Okay. So you have a continuing mortgage of
12 about 23 more years?

13 A. Yes.

14 Q. All right. Now, were you told whether or not
15 you could report to work without the medical certificate?

16 A. Tom Garton had came back up and he told me
17 that because I didn't have the medical certificate that I
18 could -- that they were going to put me on a sick leave, or
19 something, until the first of the year and that I should come
20 back with the evaluation.

21 Q. All right. Now before that date, December
22 16th, did you ever receive any medical health card or any of
23 your benefits?

24 A. No.

25 Q. When did you receive your paycheck?

1 A. Pardon me?

2 Q. When did you have your paycheck for the back
3 pay?

4 A. That was about the 3rd of December. 3rd or
5 4th of December.

6 Q. So that was even after the letter?

7 A. Yes.

8 Q. Is that correct?

9 A. Uh-huh.

10 Q. All right. And you said that it would take
11 you two hours to go to Richmond?

12 A. Uh-huh, and back.

13 Q. Okay. Based on your pay, can you afford to
14 live in Richmond and own your home in Chesapeake?

15 A. No.

16 MR. SAMS: All right. I have no other
17 questions. Answer the questions of the Commonwealth.

18

19 CROSS-EXAMINATION

20

21 BY MR. HORSLEY:

22 Q. Ms. Daughtry, you did have a problem with Mr.
23 Marks, did you not?

24 A. No, I did not.

25 Q. I am going to show you a letter that you sent.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS
MAURIE L. DAUGHTRY,

Petitioner,

v.

Case No. 924450W

COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF TAXATION,

Respondent.

DECREE

This cause came to be heard upon the petition of Maurie L. Daughtry ("Petitioner") praying this Court to order the Respondent, The Commonwealth of Virginia, Department of Taxation, to implement that certain October 2, 1992 grievance panel decision and to enjoin the Respondent from transferring Petitioner to another office, compelling her to undergo a mental evaluation and from terminating her employment, and same was argued by counsel.

It appearing to the Court, and the Court so finds, that on October 2, 1992, pursuant to a grievance proceeding initiated by Petitioner regarding her dismissal from her employment with Respondent, a grievance panel reversed the termination action of the Respondent and ordered the reinstatement of the Petitioner to the same or similar position and that the Respondent has not implemented said grievance panel decision; it is therefore

ADJUDGED, ORDERED AND DECREED that the Respondent reinstate the Petitioner to the same or similar position in its Newport News or Norfolk Office; it is further

ADJUDGED, ORDERED AND DECREED that the Respondent reinstate the Petitioner with her full benefits and with no loss of pay, leave or retirement; and it is further

ADJUDGED, ORDERED AND DECREED that Respondent is prohibited from requiring the Petitioner to undergo a mental evaluation as a condition for reinstatement.

ENTER:

2-4-93


Judge

I ASK FOR THIS:

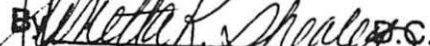

Counsel for Petitioner

SEEN and objected to:


Counsel for Respondent

I certify that the document to which this authentication is affixed is a true copy of a record in the Newport News Circuit Court, that I have custody of the record and I am the custodian of that record.

Rex A. Davis, Clerk

By  R.A.D.

bca11:\daughtry.dec

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday *the* 11th
day of October, 1994.

Virginia Department of Taxation,
against Record No. 0420-93-1
Circuit Court No. 924450W

Appellant,

Maurie L. Daughtry,

Appellee.

From the Circuit Court of the City of Newport News
Before Judges Benton, Willis and Elder

For reasons stated in writing and filed with the record,
this Court lacks jurisdiction to review the judgment of a circuit
court entered pursuant to Code § 2.1-114.5:1(F). Accordingly, this
matter is hereby transferred to the Supreme Court of Virginia pursuant
to Code § 8.01-677.1

This order shall be certified to the trial court and to the
Supreme Court of Virginia.

A Copy,

Teste:

Richard R. James, Clerk

By:

Mark K. Zieg
Deputy Clerk

RECEIVED

OCT 13 1994

THE EMPLOYMENT LAW

COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Willis and Elder
Argued at Richmond, Virginia

VIRGINIA DEPARTMENT OF TAXATION

v. Record No. 0420-93-1

MAURIE L. DAUGHTRY

OPINION BY
JUDGE JERE M.H. WILLIS, JR.
OCTOBER 11, 1994

FROM THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS
Randolph T. West, Judge

PUBLISHED

Guy W. Horsley, Jr., Senior Assistant Attorney General (Stephen D. Rosenthal, Attorney General; Milton K. Brown, Jr., Deputy Attorney General; Neil A.G. McPhie, Senior Assistant Attorney General, on brief), for appellant.

Neil C. Bonney (Neil C. Bonney & Associates, on brief), for appellee.

This Court lacks jurisdiction to review the judgment of a circuit court entered pursuant to Code § 2.1-114.5:1(F). Accordingly, we order this case transferred to the Supreme Court of Virginia pursuant to Code § 8.01-677.1.

On March 19, 1992, the Virginia Department of Taxation (the Department) dismissed Ms. Daughtry from employment because of a disciplinary violation. She lodged a grievance pursuant to Code § 2.1-114.5:1. Ultimately, the matter was heard, pursuant to Code § 2.1-114.5:1(D)(4), before a grievance panel, which ordered her reinstatement. The Department reinstated her, but conditioned her reinstatement upon her transfer from the Hampton Roads area to Richmond and upon her undergoing a mental health evaluation.

Pursuant to Code § 2.1-114.5:1(F), Ms. Daughtry petitioned the trial court to implement the panel decision. The trial court

ordered the Department to comply with the grievance panel's decision, without variation or condition, and ordered Ms. Daughtry's reinstatement without transfer or the requirement of a mental health evaluation. This appeal addresses that judgment.

This is a Court of limited jurisdiction. Code § 17-114.5 authorizes this Court to entertain appeals from:

I. Any final decision of a circuit court on appeal from a decision of an administrative agency;

The jurisdictional issue in this case turns on whether the proceeding in the trial court was "on appeal from a decision of an administrative agency." We hold that it was not.

In Dep't of Taxation v. Hogan, 11 Va. App. 306, 397 S.E.2d 902 (1990), this Court accepted and ruled on the merits of a circuit court's judgment entered pursuant to Code § 2.1-114.5:1(F). In Zicca v. City of Hampton, 240 Va. 468, 397 S.E.2d 882 (1990), the Supreme Court entertained a similar appeal. Neither case addressed the issue of appellate jurisdiction. See also Angle v. Overton, 235 Va. 103, 365 S.E.2d 758 (1988).

Code § 2.1-114.5:1(D)(4)(d) provides, in pertinent part:

The decision of the panel shall be final and binding and shall be consistent with provisions of law and written policy.

Code § 2.1-114.5:1(F) provides:

Either party may petition the circuit court having jurisdiction in the locality in which the grievant is employed for an order requiring implementation of the panel decision.

The Department relies upon Commonwealth v. Yeatts, 233 Va. 17, 353 S.E.2d 717 (1987). In Yeatts, a highway contractor claimed additional contractual compensation from the Virginia Department of Highways and Transportation. Having pursued the administrative procedures required by Code § 33.1-386 without satisfaction, the contractor filed suit in the circuit court pursuant to Code § 33.1-387. Holding that jurisdiction to review the circuit court's judgment lay in the Court of Appeals, the Supreme Court noted that the circuit court proceeding, pursuant to Code § 33.1-387, was a substantive review of the administrative procedure required by Code § 33.1-386, and, thus, was an appeal from the decision of the administrative agency. The Court said:

Here, Yeatts had no alternative but to pursue the administrative procedures authorized by Code § 33.1-386, and the submission of its claim in the time and manner prescribed by that Code section was a condition precedent to the right to file a civil action under § 33.1-387. In other words, Yeatts' right to bring a civil action was dependent upon having first invoked administrative procedures. Hence, the action permitted by § 33.1-387 is dependent and not independent.

Id. at 24, 353 S.E.2d at 721.

The grievance panel's decision in this case was "final and binding." See Angle, 235 Va. at 106, 365 S.E.2d at 759. Only its implementation could be granted or denied by the circuit court. The panel decision was not subject to substantive review or modification. It was a final judgment. The circuit court proceeding was not dependent upon the grievance procedure. It was collateral and independent. It was analogous to a proceeding

to domesticate and enforce a foreign judgment. Therefore, it was not an appeal of the grievance panel's decision.

For the foregoing reasons, we hold that this Court lacks jurisdiction and we order this appeal transferred to the Supreme Court pursuant to Code § 8.01-677.1.

Transferred.

WRITTEN NOTICE

Information on
offense received
between 8:00 a.m.
2-28-92 and 11:30
on 3-13-92

Section I

Employee's Name Maurie L. Daughtry Date of Offense _____
 Agency Virginia Dept. of Taxation Date of Issuance 3-13-92
 Supervisor's Signature John E. Daughtry This notice will
 become inactive _____

Section II

Type of Offense: (Check one)

Group I _____ Group II _____ Group III X

Nature of Offense and Evidence: (Describe briefly the offense and give an explanation of the evidence).

Threatening supervisor: 1) Reported by a counselor associated
with Thrasher Associates to the Department of Taxation's Employee
Relations Office 2) Reported to supervisors by a Peninsula
District employee.

Section III

Disciplinary Action in addition to written notice:

Suspension from _____ to _____ Return to work _____
 Date Date Date: Time

Removal 11:30 a.m. on 3-13-92 Due to: Termination, Demotion, Transfer
 Effective Date (circle appropriate action)

Section IV

Mitigating Circumstances: Describe any mitigating circumstances that were considered when determining
the above corrective action.

Medical Condition of Employee

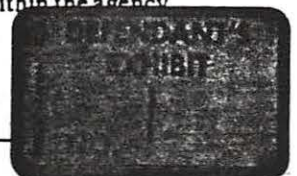
Section V Notice to Employee

It is expected that the condition noted above will be corrected immediately. In the event this condition is not corrected, or another offense occurs, you may be subject to further disciplinary action as outlined in the Standards of Conduct and Performance Policy.

Section VI Employee's Signature _____ Date _____

If you wish to appeal the corrective action noted above, you may do so under the provisions of the State Grievance Procedure provided for this purpose.

(Your signature is intended only to acknowledge receipt of the notice; it does not imply agreement or disagreement with the notice itself. If you refuse to sign, someone in a supervisory position within the agency will be asked to initial the form indicating that you received a copy of the form.)



WRITTEN NOTICE**Section I**

Employee's Name Maurie L. Daughtry Date of Offense 11-6-91 thru 3-13-
 Agency Virginia Dept. of Taxation Date of Issuance 3-13-92
 Supervisor's Signature *John E. Daughtry* This notice will
 become inactive _____

Section II

Type of Offense: (Check one)

Group I X Group II _____ Group III _____

Nature of Offense and Evidence: (Describe briefly the offense and give an explanation of the evidence).
Unsatisfactory job performance as evidenced by taxpayer
complaints and other data. (See attached)

Section III

Disciplinary Action in addition to written notice:

Suspension from _____ Date _____ to _____ Date _____ Return to work _____ Date/Time _____

Removal 11:30 a.m. on 3-13-92 Due to Termination Demotion, Transfer
 Effective Date (circle appropriate action)

Section IV

Mitigating Circumstances: Describe any mitigating circumstances that were considered when determining the above corrective action.

Medical Condition of Employee.

Section V Notice to Employee

It is expected that the condition noted above will be corrected immediately. In the event this condition is not corrected, or another offense occurs, you may be subject to further disciplinary action as outlined in the Standards of Conduct and Performance Policy.

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If you wish to appeal the corrective action noted above, you may do so under the provisions of the State Grievance Procedure provided for this purpose.

(Your signature is intended only to acknowledge receipt of the notice; it does not imply agreement or disagreement with the notice itself. If you refuse to sign, someone in a supervisory position within the agency will be asked to initial the form indicating that you received a copy of the form.)



COMMONWEALTH of VIRGINIA

Department of Taxation

March 19, 1992

Ms. Maurie L. Daughtry
2344 Meadows Landing
Chesapeake, Virginia 23321

Subject: Disciplinary action under the
Employees Standards of Conduct and Performance

Dear Ms. Daughtry:

This letter provides written notification to you that your employment with the Virginia Department of Taxation was terminated at 11:30 a.m. on March 13, 1992 for the following reasons: threat to kill your supervisor; unsatisfactory job performance as evidenced by taxpayer complaints and other data attached to the enclosed Written Notices; and an accumulation of written notices (two prior group two written notices under the Employee Standards of Conduct and Performance are active in your personnel file).

Previously you have been counseled by your supervisor, Lloyd Marks, concerning unsatisfactory job performance and taxpayer complaints. Additionally, you met with Jane E. Bailey, Acting Director of Field Services Division and Janie E. Bowen, Acting Assistant Tax Commissioner of Tax Operations, concerning your performance and your explanation of the taxpayer complaints. These complaints were investigated and the taxpayer complaints were found to be valid.

You will receive information shortly from our Agency Benefits Coordinator regarding the status of your benefits at this time.

A handwritten signature in cursive script that reads "John E. Neagle".

John E. Neagle
Assistant Director
Field Services Division

attachments

certified mail/rrr





RECEIVED 4/25/1992 FORM B

COMMONWEALTH OF VIRGINIA
EMPLOYEE GRIEVANCE PROCEDURE

PANEL DECISION

Maurie L. Daughtry
Employee

Department of Taxation
Agency

Peninsula Office
Work Facility

PLACE OF HEARING Christopher Newport University Date August 11, 1992

ISSUE(S) QUALIFIED FOR HEARING Whether the Agency was justified in terminating Maurie L. Daughtry for threatening a supervisor, unsatisfactory job performance as evidenced by taxpayer complaints and other data.

The panel may by majority vote uphold or reverse the action which is the basis for the grievance or, in appropriate circumstances, modify the action. The panel decision, however, must be consistent with written policy.

PANEL DECISION See Attached Sheet

REASON FOR PANEL DECISION (Attach additional sheets if more space is needed)

Panel felt that the termination on March 13, 1992 was motivated in part because of the alleged immediate need to remove the employee from the premises of the Peninsula Office. Particularly the panel agreed that the Agency had no prior intent to terminate Ms. Daughtry but merely to address her on the job problems.

PANEL VOTE () 3-0 () 2-1 () 2-0

SIGNATURES:

[Signature]
Employee Panel Member

[Signature]
Agency Panel Member

[Signature]
Panel Chair

87

DATE: 8/21/92

Note: Complete the reverse side of this form.



PANEL DECISION

A. Panel by unanimous vote (3-0) modifies the termination action by the agency because of mitigating circumstances and recommends reinstatement to the same or similar position. Her return to work shall not occur before Ms. Daughtry is fully evaluated by a mental health professional who certifies that the employee can return to a potentially stressful environment and can meet the daily demands of work. Further the panel recommends that Ms. Daughtry be assigned anywhere other than in the same office with Dallas Parker.

B. Panel by majority vote (2-1) further recommends no loss in service time, retirement, benefits at the same grade and level, removal of all written notices associated with these events, reimbursement of salaries loss from March 13, 1992 to date or reinstatement.



ATTACHMENT B

FORM B

COMMONWEALTH OF VIRGINIA
EMPLOYEE GRIEVANCE PROCEDUREPANEL DECISIONMaurie L. Daughtry
EmployeeDepartment of Taxation
AgencyPeninsula Office
Work FacilityPLACE OF HEARING Christopher Newport University Date August 11, 1992ISSUE(S) QUALIFIED FOR HEARING Whether the Agency was justified in terminating Maurie L. Daughtry for threatening a supervisor and/or unsatisfactory job performance as evidence by taxpayer complaints and other data

The panel may by majority vote uphold or reverse the action which is the basis for the grievance or, in appropriate circumstances, modify the action. The panel decision, however, must be consistent with written policy.

PANEL DECISION See Attached Sheet

REASON FOR PANEL DECISION (Attach additional sheets if more space is needed)

Panel felt that the termination on March 13, 1992 was motivated in part because of the alleged immediate need to remove the employee from the premises of the Peninsula Office. Particularly the panel agreed that the Agency had no prior intent to terminate Ms. Daughtry but merely to address her on the job problems.

PANEL VOTE () 3-0 (X) 2-1 () 2-0

SIGNATURES:

Employee Panel Member
Agency Panel Member
Panel Chair

89

DATE:

10/2/92

Note: Complete the reverse side of this form.



PANEL DECISION

A. Panel by majority vote (2-1) reverses the termination action by the agency and orders reinstatement to the same or similar position.

B. Panel by majority vote (2-1) further orders no loss in service time, retirement, benefits at the same grade and level, and reimbursement of salaries lost from March 13, 1992 to date of reinstatement.

The panel did not feel the Agency was justified in termination either for threatening a supervisor or unsatisfactory job performance.

Testimony and evidence presented during the hearing did not support terminating Maurie Daughtry.

OBJECTIONS TO PANEL DECISION

Part A: Threatening a Supervisor

It is my position that the other panel members did not consider the Agency's position during an evaluation of the evidence presented. Specifically, a health professional, required by law to warn the Agency of a possible threat, had called and this precipitated the closing of the office and the eventual firing of the Grievant.

Therefore, since reinstatement cannot be made contingent upon a mental evaluation of the Grievant, this decision could possible place the Agency at a precarious position of being negligent in regards to its duty of protecting other employees. Thus, the panel decision, at a minimum, should include a recommendation that the Grievant be evaluated by a mental health professional and advise the Agency of the outcome, and that the Grievant take leave without pay if necessary.

Part B: Unsatisfactory Job Performance

It is my position that the other panel members have totally disregarded the evidence presented on the Grievant's work performance and failed to comprehend the impact of the continuous mistakes made by the Grievant. Counseling sessions are a part of actions regarding an employees work performance or behavior. Multiple sessions took place and memorandums documenting the contents were maintained in the supervisor's file. Additionally, other factual information regarding the employees work performance was presented by the Agency and not refuted by the Grievant. Lastly, by reinstating the Grievant with full pay back to March 13, 1992, full due consideration was not given to the fact that the Agency had scheduled a meeting with the Grievant to discuss placing her on leave without pay (with understanding that her physician would let the Agency know when should was able to perform her duties) in lieu of dismissal.

Thus, at a minimum, because the Grievant's mental state could be considered a mitigating circumstance, the panel should have decided upon a suspension for up to 30 workdays or demotion to a less stressful job.



COMMONWEALTH of VIRGINIA

Department of Taxation

November 25, 1992

Ms. Maurie L. Daughtry
2344 Meadows Landing
Chesapeake, Virginia 23321

Dear Ms. Daughtry:

As a result of the recent grievance panel decision and the resolution of our final appeal of the decision, this correspondence officially notifies you of your reinstatement of employment with the Virginia Department of Taxation, effective December 1, 1992.

We are in the process of reimbursing you pay in the same salary grade and step retroactive to March 13, 1992. We expect to have your first check ready on December 1, 1992, or shortly thereafter. Your first check will be for the net amount due to you after the proper deductions have been made. Geneva Mitchell, our agency Benefits Coordinator, will be working with you to reinstate your benefits.

Although you are being reinstated, the grievance panel did not remove the written notices from your personnel record and those notices will be modified to remove the statement regarding your termination.

When you were previously reinstated in December, 1990, due to a panel decision, you were transferred to the Peninsula District Office because of conflict between you and the Norfolk District Office supervisors. For the same reason and the threats that you made toward the supervisors in the Peninsula District Office, it is my decision to transfer you to another location. On December 1, you are being temporarily placed, with no loss in pay, in a State Tax Collection Representative position (salary grade 9) in the Collections Section, Office of Compliance, in our Central Office in Richmond. You may elect to be permanently assigned to this job or I will consider placing you in a State Tax Field Representative position in any location other than Peninsula, Norfolk or Bristol district offices.

Prior to reporting to work, as suggested in the original panel decision, I am placing you in a leave with pay status for two weeks (December 1, 1992 to December 15, 1992) and am requiring you to be evaluated by a mental health physician to determine your readiness for duty. A medical certificate to this effect must be provided to our Human Resources Manager, Tom Garton, prior to December 15. If you are certified for duty, you should report to the Human Resources Office on December 16, 1992 at 8:15 a.m. At that time, you will be provided a new identification card and will be directed to the Collections Section. A parking space will be provided to you, but you may park in the visitor lot that day.



Daughtry Letter
Page 2

If you wish to discontinue your employment with our agency under these conditions, we will discuss with you the possibility of a negotiated termination settlement, provided you express to me your desire to do this prior to the December 16, 1992 report date. Any such settlement is, by law, subject to approval by the Attorney General's Office.

Should you have questions about your reemployment, please contact Tom Garton at 367-8178 or Geneva Mitchell at 367-8181.



W. H. Forst
Tax Commissioner

c. Phyllis Katz
Eileen Olds



COMMONWEALTH of VIRGINIA

Department of Taxation

December 18, 1992

Maurie L. Daughtry
2344 Meadows Landing
Chesapeake, Virginia 23321

Dear Ms. Daughtry:

In my letter to you, dated November 25, 1992, you were notified of your reinstatement to employment with the Department of Taxation and you were instructed to report to the Central Office in Richmond on December 16, 1992. As a condition of employment, you were required to provide a medical certification indicating your readiness for duty.

Although you reported to work on December 16, you did not provide the medical certification. Mr. Garton reminded you of the medical certification requirement, at which point you stated you were leaving to talk to your attorney. You requested sick leave, which was approved for that day. On December 17, you did not report to work nor did you contact the Central Office to state the reason you were absent. Ms. Hermine Douglas, Supervisor in our Human Resources Office, contacted you to determine your intent. You stated that you were not reporting to work and were going to speak to your attorney, Bruce Sams.

This correspondence is notification to you that you are in an unauthorized absence status and that you have until December 23, 1992, to obtain the medical certification indicating that you are fit for duty. If you do not report to work on or before that date with the medical certification, I will consider that as your resignation from employment with this agency.


W. H. Forst
Tax Commissioner



COMMONWEALTH OF VIRGINIA
STATE EMPLOYEE GRIEVANCE PROCEDURE
PANEL DECISION

GRIEVANCE FORM B

MS. MAURIE L. DAUGHTRY
GRIEVANT

DEPARTMENT OF TAXATION
AGENCY

NORFOLK DISTRICT OFFICE
WORK FACILITY

It has been determined by the agency head or the Circuit Court that this grievance qualifies for a panel hearing.

PANEL MEMBERS:

1. Employee Selection MS. TREGANZA GOODMAN

2. Agency Selection ROBERT B. POSTANS, JR.

3. Third Member (Chairperson) FREDERIC N. FIRESTONE

PLACE OF HEARING KOGER CENTER, NORFOLK, VIRGINIA DATE DECEMBER 4, 1990

ISSUE WERE TWO GROUP II WRITTEN NOTICES PROPERLY ISSUED AND A PROPER BASIS FOR A
10 DAY SUSPENSION AND DISMISSAL?

The panel by majority vote may uphold or reverse the action of the agency or, in appropriate circumstances, may choose a modified remedy. Panel decisions, however, must be consistent with provisions of law and written policy.

PANEL DECISION SUSTAIN SUSPENSION FROM 7/26/90 TO 8/21/90. REVERSE DISMISSAL; ORDER
FOR
SUSPENSION OF 30 WORKING DAYS FROM 8/2/90; ORDER BACK PAY /10 WORKING DAYS ONLY IMMEDIATELY
PRECEDING RETURN TO WORK; ORDER ALL WRITTEN NOTICES AND DISCIPLINARY ACTION TO REMAIN IN
GRIEVANT'S FILE; RECOMMEND TRANSFER.

REASON FOR PANEL DECISION (Please set forth in detail) 7/26/90 WRITTEN NOTICE: LYING TO MANAGEMENT
DISRUPTIVE BEHAVIOR - ARGUMENT, AND INSUBORDINATION WERE PROVEN AND A PROPER BASIS FOR A
GROUP II WRITTEN NOTICE. LEAVING WORKPLACE WITHOUT PERMISSION AND FAILURE TO FOLLOW RADIO
DIRECTIVE WERE NOT PROVEN BASES FOR DISCIPLINE.

8/2/90 WRITTEN NOTICE: FAILURE PROPERLY TO RETURN WALLET ID AND RECEIPT BOOK WERE PROVEN
AND A PROPER BASIS FOR A GROUP II WRITTEN NOTICE.

SIGNATURES:

Treganza Bryce-Goodman
Employee Panel Member

Robert B. Postans, Jr.
Agency Panel Member

Frederic N. Firestone
Panel Chairperson

PANEL TO RECORD THE VOTE ☒ 3-0
☐ 2-1

DATE DECEMBER 7, 1990

NOTE: Panel Chairperson shall transmit this decision, along with a copy of Form A, to the employee, the agency head, the Office of Employee Relations Counselors, and the Department of Personnel and Training within ten (10) work days following the conclusion of the hearing. The agency shall transmit copies of this decision to appropriate supervisors within three (3) work days of the decision. Please be sure the reverse side of Form B is completed.

ASSIGNMENT OF ERROR

This appeal raises the following question:

Did the trial court err in ruling under the grievance procedure for state employees that a panel decision reinstating an employee to "the same or similar position" prohibits the employer state agency from transferring that employee from one office to another and requiring a mental health evaluation in response to a threat by the employee to kill her supervisor?

