**OCB AWARD NUMBER: 2140**

|  |  |
| --- | --- |
| **SUBJECT:** | **ARB SUMMARY # 2140** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **27-30-20100914-0105-02-12** |
| **DEPARTMENT:** | Rehabilitation & Correction |
| **UNION:** | SEIU |
| **ARBITRATOR:** | Robert G. Stein |
| **GRIEVANT NAME:** | Jennifer Yeoman |
| **MANAGEMENT ADVOCATE:** | Buffy Andrews |
| **2ND CHAIR:** | Jackie Milsom |
| **UNION ADVOCATE:** | Joshua Norris |
| **ARBITRATION DATE:** | June 27, 2011 |
| **DECISION DATE:** | September 7, 2011 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 3—Management Rights; Article 6.01—Non-Discrimination; Article 8.02—Progressive Discipline; Article 8.04—Investigations; Article 45.03—Disciplinary Actions |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.311—Just Cause-Concept of; 118.6485—Falsification of records DRC |
|  |  |

**HOLDING: The Grievance challenging removal for violating work rules relating to post orders and truthfulness were DENIED. The Arbitrator rejected the Union’s arguments that disparate treatment and bias were the basis for removal. The Arbitrator further concluded that the Grievant’s refusal to take responsibility for her negligence provided the Employer with just cause for removal.**

The Grievant, a registered nurse with the Department of Rehabilitation and Correction since January 2008, was removed for violating three work rules: Rule 7, failure to follow post orders, administrative regulations, policies, or directives; Rule 22, falsifying, altering, or removing any document or record; and Rule 41, unauthorized actions that could harm any individual under supervision of the Department. The rule violations were based on the Grievant’s incorrect documentation of inmate files and the changing of an inmate’s medication label. The Union argued that the Employer did not have just cause because the Employer’s investigation was incomplete and flawed, and that the Grievant was treated in a disparate and prejudicial manner. The Arbitrator concluded that the circumstantial evidence provided by the Employer, while not sufficient to prove intentional conduct as required by Rule 22, did establish that the Grievant was negligent or careless with regard to patient documentation. The Arbitrator also concluded that the evidence demonstrated that the Grievant failed to properly label medicine as a controlled substance. Because the Employer established that the Grievant violated two work rules, there was nothing other than speculation to support the Union’s contention of bias, and the Grievant had a relatively short employment history, the Arbitrator determined there was just cause for the removal. The Arbitrator did remove the Rule 22 violation from the Grievant’s record.

 The Grievant was accused of falsifying inmate documents in order to show that she had met with three chronic care inmates and provided them with the required assessments. The documentation provided by the Grievant to show that the assessments had taken place included notations about the patients meeting with Dr. Dawes. According to the dates used by the Grievant, however, Dr. Dawes was no longer employed by the Department on the date of the alleged assessments. The Grievant claimed she had mixed up two of the inmates because they had the same name; however, this mix up could have been avoided had the records been kept in chronological order as required. The Grievant also failed to correct the records when given an opportunity to do so. In addition, the Grievant re-labeled an inmate’s prescription, a duty of the pharmacist, and failed to denote that the medication was a controlled substance.

 The Employer argued that the actions of the Grievant were clear violations of work rules and that there was just cause for discipline.

 The Union argued that the Employer did not have just cause. The Union claimed that no other nurse had been removed for re-labeling an inmate’s prescription. Additionally, the Union argued that the Grievant’s supervisor was biased, as indicated by the sudden change in performance evaluations when the new supervisor took over. The Union alleged that the bias was the result of the Grievant holding the supervisor’s position for a short period and performing the job well.

 The Arbitrator determined that in order to sustain the violation of Work Rule 22 (falsification) on the circumstantial evidence provided by the employer, the evidence needed to be so conclusive as to only allow for one possible interpretation. The Arbitrator concluded that the evidence did not support such a finding with regards to the Grievant’s intent. The Arbitrator did conclude that the evidence supported a finding of negligence with respect to the maintenance of records and that such a finding was sufficient to warrant discipline under Work Rule 7 and 41. The Arbitrator also found that the Grievant had not properly labeled the prescription in question as a controlled substance, which also warranted discipline. The Arbitrator expressed some sympathy for the Union’s position that the discipline was disparate and that the Grievant had a fine work record until the change of supervisors, however he concluded that neither claim was substantiated by evidence or overrode the fact that the Grievant had violated work rules for which discipline was warranted. Further, the Arbitrator found that the Grievant did not accept responsibility for the work rule violations. Accordingly, the Arbitrator denied the grievance, but did eliminate the violation of Work Rule 22 from the Grievant’s record.