BEFORE THE PERSONNEL BOARD OF THE STATE OF ALABAMA

IN THE MATTER OF THE APPEAL OF
JENNIFER McLEOD

ORDER

June 15, 2016

This matter came before the Board upon the dismissal of the Employee from her employment with the Alabama Department of Transportation ("ALDOT"). The Employee was dismissed from her employment on January 14, 2016, based on charges contained in a letter to the Employee dated December 30, 2015. This matter was assigned to Administrative Law Judge James Jerry Wood and a hearing was held on March 28, 2016. The Administrative Law Judge's Recommended Order is now before the Board for consideration.

ALDOT charges that the Employee violated State Personnel Board Rule 670-X-19-.01(1)(a)(1) – (Absenteeism- Unexcused absence, unreported absence, a pattern of absences, or excessive absences). ALDOT further charged the Employee violated ALDOT Attendance/Punctuality Guidelines Policy #18 – (If for any reason, an employee will be late or cannot report to work, the supervisor should be notified at the start of the day or as soon as possible. ... Failure to report absences, including arriving at work late or leaving the work site early or excessive absences could result in disciplinary actions).

A review of the Employee's recent work history showed no disciplinary actions of record.

The Employee was employed with ALDOT as an Administrative Support Assistant II. In July 2015, the Employee developed chronic health issues, which included acute sinus problems. The Employee's physician preformed an examination of the Employee and determined that the Employee had toxic mold exposure. The physician concluded that the Employee should not return to work because a mold plate testing the Employee conducted showed the workplace had a high mold count. The Employee requested that she be moved to a different work location because of her medical condition and the lab report stating that mold was in the building. The Employee told her supervisor that her physician said if she returned to work in the same ALDOT location "she would die." However, the physician did determine that the Employee could perform her essential job functions if she was assigned to a "mold free environment."

The Employee's supervisor offered her a N100 OSHA-approved mask with filters that she could wear as a temporary accommodation, but the Employee's physician determined that a mask was not adequate. The Employee's supervisor arranged for her to be placed on Family and Medical Leave Act ("FMLA") leave while the ALDOT facility was evaluated by experts. On September 17, 2015, the Employee's supervisor sent a letter to the Employee stating that the recommended mold remediation on the building was

completed and that she could return to work. Later that month, ALDOT updated the Employee of her remaining leave balance and her FMLA leave balance through an email and text message. The Employee did not respond. On October 30, 2015, the Employee was notified that her FMLA was exhausted and that she should return to work on the next scheduled day or it would be considered a voluntary resignation. The Employee did not return to work and did not notify her supervisor, which is a violation of ALDOT's Attendance/Punctuality Guidelines. The supervisor needed and wanted the Employee to return to work and attempted to have the Employee to return in September and October 2015.

For the last four or five years, the Employee was working at an assisted living facility while also working for ALDOT. The Employee continued working at the assisted living facility even when she was not reporting to ALDOT. The Employee's payroll records showed that she was working at the assisted living facility full-time for the majority of 2015, including September, October, November, and December, when she could have been working at the remediated ALDOT facilities.

The Administrative Law Judge found the totality of the evidence does warrant dismissal in this cause and recommended that the Employee's dismissal be upheld. The Board hereby adopts by reference the findings of fact and conclusions of law as found by the Administrative Law Judge as a part of this Order as if fully set forth herein.

The Board has carefully considered the Administrative Law Judge's Recommended Order and is of the opinion that the decision of the appointing authority to dismiss the Employee is supported by the evidence and that the termination is warranted.

It is therefore the Order of this Board that the decision of the appointing authority to dismiss the Employee is hereby affirmed.

JACKIE GRAHAM
SECRETARY

JOE N. DICKSON
CHAIRMAN

FAYE NELSON
MEMBER

LIANE KELLY
MEMBER

MYRON PENN
MEMBER

CLINTON P. CARTER
MEMBER