

STATE OF CALIFORNIA
BEFORE THE
DEPARTMENT OF PERSONNEL ADMINISTRATION

In the Matter of the Appeal by

Case No. 98-P-0088


Assistant Clerk (Permanent Intermittent)
For Reinstatement After Automatic Resignation
(Three Waiver) as a Permanent-Intermittent
419 13th Street
Sacramento, CA 95814

Represented by:
Pro Per

Respondent:
Board of Equalization
450 "N" Street, MIC 18
Sacramento, CA 95814

Represented by:
W. Gregory Day
Tax Counsel
Board of Equalization
P O Box 942879, MIC 82
Sacramento, CA 94279-0082

DECISION

The attached Proposed Decision of the Hearing Officer is hereby adopted as the Department's Decision in the above matter.

IT IS SO ORDERED: July 6, 1998.



K. WILLIAM CURTIS
Chief Counsel
Department of Personnel Administration

**STATE OF CALIFORNIA
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Case No. 98-P-0088


Assistant Clerk (Permanent Intermittent)
For Reinstatement After Automatic Resignation
(Three Waiver) as a Permanent-Intermittent
419 13th Street
Sacramento, CA 95814

Unrepresented

Respondent:
Board of Equalization
Labor Relations
450 "N" Street, MIC 18
Sacramento, CA 95814

Represented by:
W. Gregory Day
Tax Counsel
Board of Equalization
P O Box 942879, MIC 82
Sacramento, CA 94279-0082

PROPOSED DECISION

This matter was heard before Mary C. Bowman, Hearing Officer, Department of Personnel Administration (DPA) at 9:00 a.m. on July 2, 1998, at Sacramento, California.

Appellant was present without representation.

Respondent, Board of Equalization, was represented by W. Gregory Day, Tax Counsel, Legal Division.

Evidence having been received and duly considered, the Hearing Officer makes the following findings of fact and Proposed Decision.

I

JURISDICTION

Respondent served appellant with a notice of automatic resignation dated May 7, 1998, for her absence on June 23, 1997, April 27, 1998, and April 29, 1998. Appellant was considered to have resigned effective close of business March 26, 1998. On May 13, 1998, appellant filed a request (appeal) for reinstatement after automatic resignation. The appeal complies with the procedural requirements of Government Code section 19842.5.

II

WORK HISTORY

Appellant began working for the State as an employee of the Franchise Tax Board on March 10, 1988. On April 23, 1997, she began working at the Board of Equalization as an Assistant Clerk (Permanent-Intermittent) (hereafter PI). She has also worked for the Employment Development Department. At the time of her automatic resignation, she worked in the Cashiering Unit at the Board of Equalization in Sacramento.

III

CAUSE FOR APPEAL

Appellant was automatically resigned for waiving three requests to work and not having a good excuse. Appellant claimed that she had a good reason for waiving the requests to work.

IV

REASON FOR WAIVING WORK

Appellant worked as a PI, which meant that her employer set her work schedule, based on operational needs. She received a monthly work schedule, which was distributed on or before the middle of the month for the following month.

Shortly after reporting to work at the Board of Equalization, she was advised in writing that a PI who waives three requests to report to work may be automatically separated from employment provided that no waiver shall be counted if the employee is unable to come to work due to circumstances beyond her control with justification. She was also advised in writing that when ill, she was required to call her supervisor within the first hour of her scheduled start time and speak with the supervisor or another supervisor in the chain of command; and that failure to call within the first hour could result in her being placed upon unapproved leave without pay.

On or about May 15, 1997, appellant received a schedule of workdays for June 1997. The schedule indicated she was to work on Monday, June 23, Tuesday, June 24, and Wednesday, June 25, from 6:00 a.m. to 2:30 p.m. It also advised, "If you are unable to work on any of the scheduled times, please notify your supervisor within the next five (5) days."

Appellant did not notify her supervisor she was unable to work upon any of the three days indicated. She did not report for work on Monday, June 23, 1998. She did not call her supervisor any time during the work shift. After 2:30 p.m. she called her supervisor and stated she forgot to report to work. Appellant reported for work the following day.

On or about March 13, 1998, appellant was mailed a schedule for April 1998. The schedule indicated she was to work on Monday, April 27, Wednesday, April 29, and Thursday, April 30, 1998. It also advised, "If you are unable to work on any of the scheduled times, please notify your supervisor within the next five (5) days."

Appellant did not notify her supervisor she was unable to work upon any of the three days indicated. She did not report for work on Monday, April 27, and did not call. Appellant also did not report for work on Wednesday, April 29, or Thursday, April 30, and did not call. Appellant reported for work on Friday, May 1, the first day she was requested to work on the May schedule.

Appellant testified she missed work in April 1998, because she was under stress; she was moving out of her daughter's place; and she had misplaced her schedule. She testified she reported on May 1 because she had not lost the May schedule. Appellant acknowledged she knew it was her responsibility to keep track of her workdays. She does not believe she will make the same mistake again.

* * * * *

PURSUANT TO THE FOREGOING FINDINGS OF FACT, THE HEARING OFFICER MAKES THE FOLLOWING DETERMINATION OF ISSUES:

Title 2 of the California Code of Regulations at section 599.828 (DPA Rule 599.828) allows an employer to automatically resign a PI who waives three requests to work, unless the employee waived the work due to illness or for another good reason.

In this case appellant waived three requests and her waivers were not due to illness or any other good reason. Accordingly, her request for reinstatement must be denied.

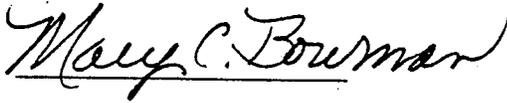
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WHEREFORE IT IS DETERMINED that the appeal of [REDACTED] for reinstatement after automatic resignation to the position of Assistant Clerk (PI) effective March 26, 1998, is denied.

* * * * *

The above constitutes my **Proposed Decision** in the above-entitled matter and I recommend its adoption by the **Department of Personnel Administration** as its decision in the case.

DATED: July 6, 1998



MARY C. BOWMAN
Hearing Officer
Department of Personnel Administration