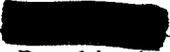


**BEFORE THE
DEPARTMENT OF PERSONNEL ADMINISTRATION
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal by

Case No. 98-B-0165


Psychiatric Social Worker
For Reinstatement After Automatic
Resignation

Represented by:
Without Representation

Respondent:
Department of Mental Health
Human Resources
1600 – 9th Street
Sacramento, CA 95814

Represented by:
Michael Johnson
Director of Human Resources
Patton State Hospital
3102 E. Highland Avenue
Patton, CA 92369

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted as the Department's Decision in the above matter.

IT IS SO ORDERED: February 11, 1999.



K. WILLIAM CURTIS
Chief Counsel
Department of Personnel Administration

**STATE OF CALIFORNIA
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PROPOSED DECISION

This matter was heard before Mary C. Bowman, Administrative Law Judge, Department of Personnel Administration (DPA) at 11:00 a.m. on January 11, 1999, at Rancho Cucamonga, California.

Appellant was present without representation.

Respondent, Department of Mental Health, was represented by Michael Johnson, Director of Human Resources, Patton State Hospital.

Evidence having been received and duly considered, the Administrative Law Judge makes the following findings of fact and Proposed Decision.

I

JURISDICTION

Appellant automatically resigned effective September 4, 1998. He filed a request (appeal) for reinstatement after automatic resignation on October 8, 1998. The appeal complies with Government Code section 19996.2.

II

WORK HISTORY

Appellant began working for the State as a Psychiatric Social Worker, Department of Mental Health and Developmental Services with the Department of Mental Health at Patton State Hospital on October 1, 1996. At the time of his automatic resignation, he continued to work in that position.

A Psychiatric Social Worker performs psychiatric social work with and on behalf of mentally, physically or developmentally disabled persons and their relatives and also does other related work. Applicants for positions in this class are required to pass a drug-screening test. Testing of current employees who are applicants in an examination or who are transferring is permitted only if the person does not have a current appointment to a class for which drug testing is a requirement.

III

CAUSE FOR APPEAL

Respondent notified appellant in writing on or about September 23, 1998, that effective September 30, 1998, appellant would be considered to have automatically resigned on September 4, 1998, (his last day of work) based on his absence without leave from September 17, through September 23, 1998. Thereafter, appellant filed his appeal with DPA claiming he had a satisfactory explanation for his absence and for his failure to obtain leave. Appellant also claims he is currently ready, able and willing to return to work.

IV

REASON FOR BEING ABSENT

Appellant was absent from work because he was completing a medically supervised treatment program for substance abuse. The program consisted of nine days of inpatient care and 30 days of outpatient care at Knollwood Psychiatric and Chemical Dependency Center. Appellant was hospitalized from September 8, through September 16, 1998, at Knollwood. He was released to participate in a 30-day "partial hospitalization" (outpatient care) sober living program. The program consisted of intense daily sessions from 6:30 a.m. to approximately 8:30 p.m. He entered that program on September 21, 1998. On Thursday and Friday, September 17-18, 1998, appellant was at home under sedation attempting to arrange transportation for the outpatient treatment program to begin. During that period, he was prescribed and taking desyrel (150 mg. daily), robaxin (750 mg. 4 times daily) and tegretol (100 mg. 4 times daily). He was not permitted to drive.

V

REASON FOR NOT OBTAINING LEAVE

Appellant entered the treatment program on Tuesday, September 8, 1998. (September 7, 1998, was a holiday.) Appellant and other family members testified that the decision to enter the facility was not formalized until September 7, 1998. Appellant considered it necessary medical treatment because he needed help for his substance abuse.

Appellant's family members were instrumental in finding the Knollwood facility and arranging for care at the facility, but appellant's decision was, according to his testimony, "spur of the moment." He did not notify his employer on the morning of September 8, 1998, when he was absent from work and prior to checking into the facility.

At the time appellant entered the facility, he was advised by his physician and counselor that they would take care of notifying his employer as to why he was absent. Appellant signed a release of information form on September 8, 1998. (A copy of the authorization for release of evidence and documentation of his stay and participation in the program were entered into the record.) Appellant relied upon the representations of the facility doctors and counselors.

Appellant was hospitalized and under heavy medication between September 8 and September 16, 1998. His father testified, "The process was to put him out so he could not walk away." On September 14, 1998, he was called into the counselor's office. He was advised his employer had not yet been contacted. Appellant was concerned but also drowsy from heavy medication. He remained with the counselor while the counselor called respondent. They advised respondent that appellant was in drug rehabilitation and would be released from the hospital portion of the treatment on September 16, 1998. It was not clear if the counselor explained that the hospitalization was to be followed by "partial hospitalization" for up to 30 days and heavy medication. After the call, appellant assumed that he did not need to contact his employer until he completed treatment.

Appellant returned to his hospital bed at the conclusion of the conversation.

Appellant's father testified that the family was very concerned about appellant's work situation. They spoke with the staff at Knollwood and were told that they were not to contact appellant's work—"it was their [Knollwood's] responsibility." The facility also advised appellant's father that appellant had signed a form to contact his work and they would do so.

After the contact was made, respondent decided not to serve a proposed notice of automatic resignation being prepared for appellant's absence commencing September 8, 1998.

Appellant was released from the hospital on September 16, 1998. He was also given three prescription medications described above which he was to take over the ensuing 30-day outpatient treatment program. He was scheduled to transition to sober living in a 30-day "partial hospitalization" program.

Appellant did not consider his treatment completed at that time since he was expected to arrange for and be transported to the program for 30 days. He testified he was disorientated and had difficulty arranging for transportation. As a result he checked back into the hospital and commenced the sober living portion of the program on Monday September 21, 1998.

Appellant credibly testified that he was under the impression that the hospital had taken care of the situation with his employer and that he did not need to call in until he completed the 30-day partial hospitalization program.

Appellant's father testified that the family participated in a parallel program on September 21 and 22, 1998. He also testified that he spoke with his son between September 16 and 18 while appellant was attempting the transition from the inpatient care to outpatient day care. He noted his son was heavily medicated and not in a condition to make rational decisions. He stated, "He was medically sick--he needed help."

Appellant was treated under the sober living program between September 21 and September 23, 1998. On September 25, 1998, he received the notice of automatic resignation mailed to him on September 23, 1998.

Appellant requested and was granted a *Coleman* hearing. He appeared at the *Coleman* hearing, but was advised respondent did not intend to reinstate him.

VI

READY, ABLE AND WILLING

Appellant testified he is ready, able and willing to return to work. He presented as evidence the discharge papers from Knollwood executed September 16, 1998 which indicated "detoxification-successfully." Appellant is not currently taking the medication, which was part of the sober living program. Appellant quit the sober living program.

Appellant did not submit any drug screening test results or medical evidence regarding his current status.

* * * * *

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

Government Code section 19996.2 provides an automatically separated employee with the right to file a request for reinstatement with the Department of Personnel Administration. Section 19996.2 also provides:

“Reinstatement may be granted only if the employee makes a satisfactory explanation to the department [DPA] as to the cause of his or her absence and his or her failure to obtain leave therefor, and the department finds that he or she is ready, able, and willing to resume the Discharge of the duties of his or her position or, if not, that he or she has obtained the consent of his or her appointing power to a leave of absence to commence upon reinstatement.”

Pursuant to *Coleman v. Department of Personnel Administration* (1991) 52 Cal.3d 1102, the Court held that an employee terminated under the automatic resignation provision of section 19996.2 has a right to a hearing to examine whether he/she is ready, able, and willing to return to work. DPA is *not* charged with examining whether the appointing power acted properly with regards to the actual termination. Further, appellant has the burden of proof in these matters and must prove by a preponderance of the evidence that he/she had a valid excuse for his/her absence and failure to obtain leave and that he/she is currently able to return to work.

In this case, appellant proved that he had a satisfactory reason for being absent from work which was that he was receiving medically supervised treatment for substance abuse. Appellant also proved that he had an acceptable reason for not requesting leave which was that he was receiving medical treatment which altered his ability to communicate successfully with his employer and led him to depend on his treatment team for communication with the employer.

Respondent argued that respondent was not required to approve an absence for a substance abuser. Respondent misperceives the reason appellant was off work which was not substance abuse but rather to obtain medical care.

Appellant is ready and willing to return to work.

Whether or not appellant is able to return to work is problematical. The specification for the position of Psychiatric Social Worker requires that applicants for the class pass a drug-screening test. Relying upon *Coleman*, the trier-of-fact should conclude that appellant request for reinstatement places him in the position of an applicant, not a current employee of the State. He is seeking prospective reinstatement to his position, pursuant to Government Code section 19996.2.

Therefore, it is concluded appellant must pass a drug-screening test consistent with

██████████ continued)

DPA Rule 599.963 prior to being found able to reinstate to his former position; and if appellant fails to timely complete the test or tests positive, he should be presumed not able to return to work.

* * * * *

WHEREFORE IT IS DETERMINED that the appeal of ██████████ for reinstatement after automatic resignation from the position of Psychiatric Social Worker with Department of Mental Health effective September 4, 1998, is granted subject to his successful completion of an appropriate drug screening test no later than thirty (30) days after the issuance of DPA's decision in the case.

* * * * *

The above constitutes my Proposed Decision in the above-entitled matter. I recommend its adoption by DPA as its decision in the case.

DATED: February 8, 1999.


MARY C. BOWMAN
Administrative Law Judge
Department of Personnel Administration