

Hon. Dennis Shepherd
Lana Rodgers

(C

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-202**

LANA G. RODGERS

APPELLANT

**V. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**DEPARTMENT OF VETERANS' AFFAIRS,
GILDA C. HILL, APPOINTING AUTHORITY**

APPELLEE

** ** *

This matter came on for an evidentiary hearing on February 17, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Kim Hunt Price, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Lana G. Rodgers, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Department of Veterans' Affairs, was present and represented by the Hon. Dennis Shepherd.

BACKGROUND

1. The Appellant was terminated from her position as a Patient Aide I at the Western Kentucky Veterans' Center effective July 26, 2013, by a letter dated July 25, 2013. At this time, she was still serving her initial probationary period pursuant to KRS 18A.111.

2. The Appellant filed a timely appeal with the Personnel Board on August 15, 2013, alleging discrimination and stating:

I had no problems at the center until I went to the Doctor and had to go on light duty then everything went down hill! After that they tried there (sic) best to write me up. Made my life hell! But I stuck it out! Once I filed a workmans comp claim she got rid of me. I've never been let go from anywhere in my life. I worked threw (sic) the pain as long as I could! They shouldn't be able to get away with treating people like crap! She let me go on 7-25 not released officially from Doctor until 8-1 go back to see Doctor again on 8-14 because he didn't wanna (sic) release me on 8-1 but I was pushing it. Because I wanted to get back to work to get them off my back!

3. The Appellant, **Lana G. Rodgers**, testified she began work on May 1, 2013, and did not have any problems or miss any work. Initially, she was paid to attend classes to become a Nurses' Aide - State Registered (NASR), which is the same thing as a CNA. There are classes during part of the time, and then other duties include following other NASRs to obtain on-the-job training. During that time she was on the floor one or two days a week, and in class the rest of the time. She believed these classes lasted about three weeks. She then took the test for the CNA/NASR and passed.

4. Appellant was unable to state the exact date she injured her arm, but during the training period while she was on the floor, she hurt her left shoulder. She estimated it to be about three weeks after she was hired. She initially had a burning sensation in her shoulder while lifting a patient, but didn't know what was wrong and kept working.

5. Appellant went to the doctor's appointment to refill her regular medicines, and mentioned the burning sensation in her shoulder to him. Before that, she had avoided using that arm as much as she could while at work. The doctor asked her to lift her arms, and she could not lift them above her head. The doctor immediately diagnosed her as having a torn rotor cuff, and placed her on light duty for two weeks, where she could not lift over 20 pounds and could not tug or pull.

6. On June 24, 2013, Appellant gave this information to the nurse on duty on the night shift at the time, and the nurse took that information to another nurse who said she couldn't be there unless she filed worker's compensation. Lisa Revelett was called and Appellant was told to meet her in the morning. Revelett explained to Appellant that if she was hurt at work she needed to tell them immediately. Appellant explained that at the time she was injured she didn't realize she had injured herself. She did not feel that Revelett allowed her to explain the circumstances.

7. On June 25, 2013, Revelett had her fill out the worker's compensation papers. When she was called by the worker's comp carrier, she was asked to give a date when the incident occurred and estimated it to be about May 28, 2013.

8. After this, Appellant felt that she was watched like a hawk.

9. In addition, at the hearing Appellant brought up that her daughter had previously worked at the facility and been terminated. Her daughter came into the facility one day while Appellant was on break to return her car keys. Another nurse, Lori Adderberry, saw this and had gone into Revelett's office and told her about this incident. Appellant's father is a patient in the facility, and she felt her daughter had every right to be at the facility. However, she was called in to Director of Nursing Paula Roberts' office concerning visitors in the building. During that meeting, another nurse came in and told Appellant that Revelett needed to see her and discuss the same matter with her.

10. Nurse Adderberry had not been working when Appellant initially began, and had problems previously with Appellant's daughter. At the hearing, Appellant stated she believed another part of the reason she was terminated was that her daughter had been terminated from the

facility and when Adderberry returned to the facility she relayed the fact of Appellant being related to her daughter to management.

11. On July 19, 2013, Paula Roberts gave Appellant a verbal counseling report concerning her supervising residents in the smoking room. She was told she had stood outside the smoking room with her back to the room, and then set down and talked briefly with a security guard. She was also told she had not looked at the daily staff assignments. After Roberts gave this counseling, Roberts immediately came back to Appellant and said she had messed up and needed to do a written write-up, but Appellant refused to sign it. Appellant explained the door to the smoking room has a window, and there is also a window next to that to view residents. One of the residents chews tobacco instead of smoking, and is not in the smoking room, but in front of the door. Most of the NASRs sit on the couch and watch through the window, but Appellant watched through the door so that she can also see the gentleman who is chewing tobacco. This is the same way she had always conducted that observation prior to filing the worker's comp claim. Appellant acknowledged she had not looked at daily staff assignments.

12. Appellant denied she was disrespectful to supervisors or had ever said anything negative about her job duties. When asked what relief she was seeking, she stated her retirement, her cancer policy, life insurance, health insurance and back pay. She said she would have to take her job back to get those, but never directly stated she wanted her job back, and her demeanor was such that it appeared to the Hearing Officer that she did not want to work at the facility.

13. Appellant worked ten years previously in the state retirement system, and had always had a good job through the school systems.

14. **Gilda Hill**, is the Executive Director of the Veterans' Nursing Homes and has the authority to terminate employees. She reviewed the file in this matter, and there was nothing in the file concerning the Appellant's daughter or a worker's compensation claim. Hill had no idea Appellant's daughter had worked at the facility, although she does do the terminations. Therefore, the termination of Appellant's daughter would have gone through Hill, but she did not know of any family relationship.

15. The file stated that Appellant's supervisor cited her performance and behavior as reasons for terminating her during the probationary period. Specifically, Lisa Revelett stated that Appellant used profanity at the nurses' station by stating it was a "hell hole" place to work. Revelett further stated that Appellant left in the middle of a dinner meal with a resident unfed, and Appellant had not supervised residents in the smoking area.

16. Also, Appellant's daughter being at the facility was not an issue. Visitation Policy 20.40 states that visitors are limited to common areas, not the restricted areas. The issue was where her daughter had been in the facility, not that she was at the facility.

17. Hill stated she was aware of numerous employees who had filed worker's compensation claims and not been fired.

18. On cross-examination, Hill acknowledged that no written complaints had been made about these issues. She stated there was a Facebook entry (introduced as Appellee's Exhibit 1), which was printed off on July 22, 2013, where Appellant stated, "I need a job that I love again!!! Mine sucks!!!"

FINDINGS OF FACT

1. Based upon Appellant Lana G. Rodger's demeanor during the hearing, it is clear she did not like her previous position at the Veterans' Center and did not get along with the individuals there, therefore the Hearing Officer finds the allegations concerning Appellant's negative comments regarding her employment (stating the job was a "hell hole" and stating on Facebook that the job "sucked") were credible.

2. Appellant acknowledged she did not review the daily staffing assignments.

3. Pursuant to KRS 18A.111, an employee may be terminated during their probationary period without the agency being required to show cause for the termination.

4. The Hearing Officer finds that no evidence was presented that Appellee terminated Appellant due to Appellant having filed a worker's compensation claim or any other form of discrimination.

CONCLUSIONS OF LAW

1. In this matter, the Appellant had the burden of proof to prove discrimination. She did not introduce any evidence which showed she was discriminated against due to filing a worker's compensation claim, or for issues regarding her daughter.

2. Even though not required to by law due to the fact that Appellant did not present a prima facie case of discrimination, the Appellee produced sufficient evidence to show cause for terminating the Appellant in terms of her statements concerning the work and failure to check daily staff assignments.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **LANA G. RODGERS V. DEPARTMENT OF VETERANS' AFFAIRS, (APPEAL NO. 2013-202)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Kim Hunt Price** this 24th day of March, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Dennis Shepherd
Ms. Lana G. Rodgers