

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

JENNIFER LEAVY-WESTPHAL,)	
Appellant,)	
)	
and)	CASE NO. 102387
)	
STATE OF IOWA (IOWA VETERANS HOME),)	
Appellee.)	
)	

RULING AND ORDER

Following the Public Employment Relations Board’s (PERB or Board) issuance of its Decision on Review in the above-referenced proceeding, Leavy-Westphal timely filed an Application for Rehearing pursuant to Iowa Code section 17A.16(2) and PERB rule 621—9.6(17A,20). In her application, Leavy-Westphal challenges the State’s application of the Board-ordered remedy, specifically the effective date of the five-day suspension in lieu of termination. The State resisted Leavy-Westphal’s application on the merits asserting it applied the correct date of the suspension—at the time of her reinstatement.

Pursuant to order, the parties presented oral arguments on the merits to the Board on April 20, 2022. Attorney Mark Hedberg presented argument on Leavy-Westphal’s behalf and for the State, attorney Nathan Reckman presented argument. By proceeding to the merits, we effectively granted Leavy-Westphal’s application for rehearing.

The issue before the Board is the effective date of Leavy-Westphal's five-day suspension in lieu of termination. PERB's Decision and Order provides in relevant part:

The State of Iowa, Iowa Veterans Home shall reinstate Jennifer Leavy-Westphal to her former position (if the position still exists, and if not, to a substantially equivalent position), with back pay and benefits, less interim earnings; restore her benefits accounts to reflect accumulation she would have received but for the discharge; make appropriate adjustments to her personnel records and take all other actions necessary to restore her to the position she would have been in had she been given a five-day suspension rather than having her employment terminated on August 9, 2019.

In accordance with the Board's order, the State reinstated Leavy-Westphal and she returned to work on March 14, 2022. The State suspended Leavy-Westphal for five days beginning March 14. The State asserts this is the appropriate date for her suspension. The State maintains that the suspension effective date of August 9, 2019, would make the discipline stale and affect the State's application of progressive discipline for future discipline.

Leavy-Westphal argues that the order requires her suspension effective date of August 9, 2019, which is consistent with precedent. Leavy-Westphal asserts the later date would unfairly affect any future disciplinary action that she may receive.

Our order declares that the State take all "actions necessary to restore her to the position she would have been in had she been given a five-day suspension rather than having her employment terminated on

August 9, 2019.” The State should have suspended Leavy-Westphal for five days effective August 9, 2019, rather than terminate her employment on that date. As established in our previous order, the appropriate effective date of the suspension is August 9, 2019.

Accordingly, we enter the following:

ORDER

The State shall follow our previous order issued in our Decision on Review dated March 4, 2022:

The State of Iowa, Iowa Veterans Home shall reinstate Jennifer Leavy-Westphal to her former position (if the position still exists, and if not, to a substantially equivalent position), with back pay and benefits, less interim earnings; restore her benefits accounts to reflect accumulation she would have received but for the discharge; make appropriate adjustments to her personnel records and take all other actions necessary to restore her to the position she would have been in had she been given a five-day suspension rather than having her employment terminated on August 9, 2019.

The cost of reporting and of the agency-requested transcripts in the amount of \$1,405.65 are assessed against the appellee, the State of Iowa, Iowa Veterans Home, pursuant to Iowa Code section 20.6(6) and PERB rule 621—11.9(20). PERB will issue a bill of costs to the State in accordance with PERB subrule 11.9(3).

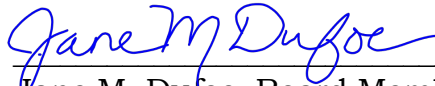
This decision constitutes final agency action.

DATED at Des Moines, Iowa, this 19th day of July, 2022.

PUBLIC EMPLOYMENT RELATIONS BOARD



Erik M. Helland, Chair



Jane M. Dufoe, Board Member

Original filed EDMS.