

**STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD**

JENNY L. PHILLIPS,)
Appellant,)
AND)
STATE OF IOWA (DEPARTMENT OF)
HUMAN RESOURCES),)
Appellee.)

CASE NO. 12-MA-05

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DECISION ON REVIEW

This case is before the Public Employment Relations Board (PERB or Board) upon Appellant Jenny L. Phillips’s petition, filed pursuant to PERB rule 621—11.8(19A,20), which seeks the Board’s review of a Proposed Decision and Order issued by a PERB administrative law judge (ALJ) on May 10, 2013. In her Proposed Decision and Order, the ALJ concluded that the State of Iowa (Department of Human Resources) had established just cause for suspending Phillips for ten days without pay, and that her appeal from the prior, adverse ruling of the Iowa Department of Administrative Services, filed pursuant to Iowa Code section 8A.415(2), should be dismissed.

On August 21, 2013, the Board heard oral arguments on the matter pursuant to rules 621—9.2(20) and 11.8(19A,20). Phillips represented herself and Teddra Porteous represented the State. Prior to oral arguments, the parties submitted briefs outlining their respective positions.¹

¹ Although not stated as such, a review of Phillips’s briefs revealed that she sought to reopen the record submitted before the ALJ and introduce additional evidence. This request was confirmed at oral argument.

On review, the Board possesses all powers which it would have possessed had it elected, pursuant to PERB rule 621—2.1(20), to preside at the evidentiary hearing in the place of the ALJ. Based upon its review of the record before the ALJ, as well as the parties' briefs and oral arguments, the Board agrees with the ALJ's Proposed Decision and Order and makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The ALJ's findings of fact, as set forth in the Proposed Decision and Order attached as "Appendix A," are fully supported by the record. The Board adopts the ALJ's factual findings as its own and they are, by this reference incorporated herein and made a part of this decision as though fully set forth.

CONCLUSIONS OF LAW

The ALJ's conclusions of law, as set out in Appendix A, are correct, and the Board adopts them as its own. They are, by this reference, incorporated herein and made a part of this decision as though fully set forth.

Pursuant to rule 621—9.2(3), the Board may order that additional evidence be taken on appeal upon application of a party if it is shown that the additional evidence is material and that there were good reasons for the party's failure to present it before the ALJ. At oral argument, the Board received Phillips's additional evidence and took her request under advisement. Phillips stated she did not testify before the ALJ, and had she, she would have explained answers she gave during the course of the investigation that lead to the discipline at issue. Without providing any corroborating evidence, Phillips also claimed that the sections of the handbook she violated were not in the handbook at the time of the offense. Both parties were given a full and adequate opportunity to address whether the Board should reopen the record.

Upon further review of the record presented before the ALJ and in consideration of the parties' arguments, there are no good reasons for Phillips's failure to present the additional evidence before the ALJ. Even if the Board were to allow the additional evidence into the record, it would not affect the outcome of this decision. Phillips request to reopen the record is DENIED.

Having adopted the ALJ's findings and conclusions, it follows that the Board concurs in the result reached by the ALJ.

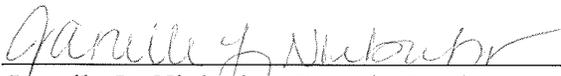
ORDER

Jenny L. Phillips's state employee disciplinary appeal is hereby DISMISSED.

Dated at Des Moines, Iowa this 5th day of September, 2013.

PUBLIC EMPLOYMENT RELATIONS BOARD

By: 
James R. Riordan, Chair


Janelle L. Niebuhr, Board Member


Jamie Van Fossen, Board Member

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STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

JENNY V. PHILLIPS, Appellant,)	CASE NO.	RECEIVED 2013 MAY 10 PM 4:07 PUBLIC EMPLOYMENT RELATIONS BOARD
and)	12-MA-05	
STATE OF IOWA (DEPARTMENT OF HUMAN SERVICES), Appellee.)		

PROPOSED DECISION AND ORDER

Appellant Jenny V. Phillips, pursuant to Iowa Code section 8A.415(2)(b) and PERB rule 621—11.2(3), appealed from the third-step response issued by the Department of Administrative Services (DAS) denying her challenge of disciplinary action. Phillips alleges that evidence does not support DAS's finding that the State, via the Department of Human Services (DHS), had just cause for disciplining her when it suspended her without pay from March 16 to April 2, 2012. The State contends just cause supports the discipline.

A public evidentiary hearing was held February 8, 2013. Jackie Curry represented Phillips and Karen Kienast represented the State. The State submitted a post-hearing brief on March 11, 2013. Phillips did not file a post-hearing brief. After considering the evidence and arguments of the parties, I hereby enter the following:

FINDINGS OF FACT

Phillips has been employed by the State in the Department of Human Services for approximately thirty-four years and is presently a human

resources associate. Her duties include processing information relating to job applicants, new hires, payroll, and benefits. One of her job duties is to “[o]versee employee personnel files, records and documents to assure that all required information is processed timely, accurately, and confidentially.” In her position she also advises employees and supervisors who have benefit questions and she processes exit interviews for employees leaving the State’s workforce. Exit interviews are conducted within a specific bureau or department, then the exit interview form or written summary is sent to a human resources associate. The human resources associate keeps the exit interview form or summary and then sends it to the director, division administrator or the employee’s supervisor if requested. If someone outside the department requests to see exit interviews, the human resources associate must obtain authorization from superiors in human resources before sending the information. Phillips knew the process for handling exit interviews and was aware of her obligations to maintain confidentiality.

On April 8, 2010, Sherrie Colbert, Deputy Chief of DHS’s Bureau of Refugee Services, submitted a letter of resignation via email. Her letter of resignation was emailed from her work email account to John Wilken, the director of the Bureau of Refugee Services and copied to the grievant, Phillips. At some point after leaving her position, Colbert filed a lawsuit against the State relating to her employment. The record does not show when this action was filed.

Two months later, in June 2010, Tom Thorup, another employee with the Bureau of Refugee Services, was making arrangements to retire from his position. Phillips was assigned to handle Thorup's personnel matters. In preparation for retirement, Thorup and his wife met with Phillips several times to discuss their health insurance options upon retirement.

On June 24, 2010, Thorup sent an email from his work email account to Phillips's work email account that stated in part, "I will be sending you 2 more emails with my Exit Interview of sorts. One will be just in email form and the other a Word attachment. Not sure what you wanted. Thanks again Jenny for all your help!!!" Thorup then sent a separate email to Phillips with a Word document attached. The document was named Exit Interview_3 but it was not an official exit interview form. Instead, the attachment was five single spaced pages detailing Thorup's experience at the Bureau since 1975 and his opinion that the Bureau had been operated poorly under the leadership of Wilken. He also accused Wilken of exposing himself to Thorup's wife thirteen years earlier.

Thorup asked Phillips to forward the email on to Colbert and to anyone else that Phillips believed should have it. The next day, on June 25, 2010, Phillips forwarded Thorup's message from her work email account to Colbert's personal email account. Phillips also sent the attached document to the director's office. On June 30, 2010, Pat Penning, a service area manager for DHS, conducted an in person exit interview with Thorup. In the interview Thorup discussed concerns about Wilken's leadership of the Bureau but did not discuss the alleged incident of Wilken exposing himself.

In October 2010, Phillips signed a confidentiality and nondisclosure statement which set forth extensive requirements for maintaining confidentiality. One relevant acknowledgment stated, "I shall not disclose information to anyone, other than to persons and in manners specified by the Department for the purpose of performing my job duties, including but not limited to my friends, my spouse, relatives or other employees." Another stated, "I acknowledge that unauthorized viewing or disclosure of information may result in the immediate removal of access to information and records, as well as discipline up to and including discharge." The statement also explained that she must abide by federal privacy regulations and listed penalties for unauthorized willful disclosure of tax information.

The record does not show the exact date, but nearly a year and a half later, in March 2012, the attorney general's office reported to executive officers in human resources that it was working on Colbert's case against the State. Through discovery in the Colbert case, the attorney general's office obtained the document Thorup had sent to Phillips. The attorney general's office noted that the document contained confidential information about an employee, made inflammatory statements about the DHS, and had been sent to Colbert by Phillips. An executive officer at human resources conveyed this information to Susan Hase and Jean Slaybaugh, executive officers in the department of human services.

Slaybaugh discussed the situation with the deputy director and a personnel officer at DHS. They mutually decided to put Phillips on paid leave

while they conducted an investigation. A letter to Phillips, dated March 12, 2012, advised her that she was immediately being placed on paid suspension while the department conducted an investigation into an allegation of misconduct.

Ron Bruett, an executive officer with DHS, was assigned to conduct the investigation. On March 16, 2012, Slaybaugh and Bruett conducted an interview with Phillips. Phillips was asked if she had "ever disclosed confidential information from or about a DHS employee to another DHS employee, a former DHS employee or other individual." Phillips responded, "Not to my knowledge." She was next asked if she had "ever disclosed an exit interview or exit interview information from a DHS employee to another DHS employee, or former DHS employee or other individual." Phillips replied that she had only disclosed this information to supervisors. Slaybaugh then asked whether Phillips knew Colbert, whether she was in contact with Colbert after she left the State's employment, and whether Colbert had ever informed Phillips of a plan to take legal action against DHS or the State. Phillips confirmed that she knew Colbert but stated that she was not in contact with Colbert after she stopped working for the State. In regards to whether Colbert had told Phillips of a plan to file a legal action against the State, Phillips responded,

She said she might. She had called me and left a message the day she left DHS. I was on vacation and when I came back in I got the message. She was all upset and crying and I tried to call her back and did not get through to her. She said she had been manhandled or something from the supervisor.

Slaybaugh and Bruett then presented the email showing that Phillips had forwarded Thorup's email to Colbert. Phillips stated that she forwarded it because Colbert was Thorup's supervisor. Slaybaugh replied that at the time Colbert was no longer a DHS employee and pointed out that Phillips sent the email to Colbert's home email address. Phillips then explained that Thorup and his wife came to her office shortly before Thorup retired and asked her to give the information to Colbert. She stated that she did not even read the email and may have forwarded it to others. She stated, "I would not normally send confidential information unless someone asked me to, or gave it to me to, to start with to give to somebody else. . . . I know he was upset with something Mr. Wilken did outside of DHS."

On March 19, Bruett interviewed John Wilken and Tom Thorup by phone. Wilken confirmed that he was Thorup's supervisor and had been his supervisor before Colbert left State employment. In Thorup's interview, Thorup also confirmed that Wilken was his supervisor. Thorup admitted that he sent the document to Phillips but denied that he requested her to give it to anybody. He stated that Phillips said she would "pass it on up." He stated that he wanted DHS to have it but didn't "know the politics of it - Phillips sending it up." During the phone conversation, Bruett said he was working on a project and did not tell Thorup that he was investigating Phillips for potential misconduct. He felt he did not need to disclose who he was investigating because he only sought to verify the information Phillips provided in her interview. At the hearing, Thorup testified that he felt Bruett misled him by not

disclosing that his call was to investigate alleged misconduct by Phillips. He testified that he did ask Phillips to send the document to Colbert and anyone else she thought should have it. He also stated that he did not consider the document to be a confidential communication.

Bruett also interviewed other DHS employees on March 19, 2012 to determine who else received the document. Trudy Crawford, a secretary in the DHS director's office, confirmed that the director's office had received the exit interview from Phillips and then sent it "out to the service area." Pat Penning, a service area manager, and Vern Armstrong, division administrator of field operations also received the document.

On March 22, 2012, Bruett conducted another interview of Phillips, this time with Jeanette Wiig, bureau chief for DHS's fiscal department. Bruett explained that Colbert was never Thorup's supervisor, that Colbert had not been an employee for over two months when Phillips forwarded Thorup's email to her and that Phillips sent the email to Colbert's personal email address. He asked Phillips to explain why she did this. Phillips responded,

She was already gone. I believe she was on vacation during that time. He had called and asked me to send it to the Director's Office and to her. I asked him if he could send it himself, and he said that he had already deleted it. She called and said that she was on vacation and to have it sent to her home email so she could review it. She did say that she was her (sic) supervisor.

Phillips explained that she believed Colbert was still working for the State when she forwarded the email. Bruett stated that Thorup denied asking Phillips to send the information to anyone. Phillips responded,

Yes he did. He was very upset at the time. He also took a copy of it to Pat Penning. He had a meeting with her. He and his wife had come in and discussed it and I printed out of (sic) copy of it and he took it with him to talk to Pat Penning about it.

During the investigation, Jon Wetlaufer, another DHS bureau chief, was asked to look through Phillips's desk for other exit interviews. Wetlaufer discovered other exit interviews and turned them over to Bruett.

Slaybaugh, Wiig, the DHS director and deputy director, along with representatives from the attorney general's office and DAS decided together whether to impose discipline. In making the decision, Slaybaugh considered the interviews taken by Bruett. The fact that Phillips knew she did not follow the proper procedure for handling confidential information and lied about how she handled the document carried considerable weight in her decision. Wiig felt discipline was appropriate because the violation concerned confidential information and the sharing of confidential information outside of the department.

On March 28, 2013, Phillips was given a letter advising her that the investigation was completed and the department had concluded that Phillips violated several work rules. It stated,

You are currently a Human Resources Associate with employment experience in human resource and payroll areas with the Department of Human Services and the State of Iowa since 1979. You acknowledged that you disclosed an exit interview and exit interview information from a retiring DHS employee to a former DHS employee. You gave false information stating the retiring employee instructed you to send the exit interview information to the former employee. You gave false information stating the former employee was on vacation when you gave her the exit interview information when the former employee had not been a DHS employee for over 2 months. You gave false information when

stating you gave the exit information to the former employee because the former employee was the retiring employee's supervisor, nor was she currently employed by DHS. At one point during the investigation you indicated that the former employee told you about possibly pursuing legal action against the Department, at the time of her resignation.

The letter stated that Phillips was aware of the work rules and had violated the trust placed in her as a human resources associate. The letter stated that Phillips had violated the following provisions of the employee handbook:

Section A-2. Code of Conduct

Employees are expected to conduct themselves in a manner that creates and maintains respect for the DHS, their co-workers and the individuals served. Employees are expected to maintain high standards of behavior in both their personal and official activities. The Department prohibits any unethical or illegal conduct by an employee on or off duty that affects or has the potential to affect the Department.

Section D-1. General Standards of Conduct and Work Rules

...

10. Employees shall not make false, misleading or malicious statements concerning themselves, other employees, clients, and supervisors, or falsify forms or work documents, or intentionally enter false information into automated systems, or intentionally give false or misleading information, or omit information significant to the Department.

Section D-7.

1. Employees shall not use, misuse, disclose, gain access to, or communicate confidential information to anyone or any organization that is not authorized to have access to this information.

...

3. Employees are expected to treat all information and knowledge pertaining to clients of the Department, its employees or members

of the public as confidential and to follow all established security procedures to maintain that confidentiality.

The letter further stated that due to the infractions, DHS was imposing a ten day unpaid suspension and issuing a final warning that any further violation of policy or work rules would result in discharge. Phillips signed the letter acknowledging that she received a copy and wrote beneath her signature, "I do not believe this investigation was done fairly."

On April 3, 2012, Phillips filed a step three appeal of disciplinary action pursuant to Iowa Code section 8A.415(2)(a) and DAS rule 11—61(2)(6) claiming the discipline was based on an unfair and incomplete investigation, was not based on just cause, and was too severe given Phillips's long employment record with no prior discipline. After a third step meeting, a designee of the DAS director concluded the discipline was warranted and supported by just cause. She determined that even though there was a dispute as to whether the document was actually an exit interview and whether the document was confidential information, there was clear evidence that Phillips knew she was sending the information to a former employee as it was sent to a personal email account, not a State email account. Phillips then filed the present appeal on May 10, 2012.

CONCLUSIONS OF LAW

Phillips filed this appeal pursuant to Iowa Code section 8A.415(2), which states,

(a) A merit system employee . . . who is discharged, suspended, demoted or otherwise receives a reduction in pay, except during the employee's probationary period, may bypass

steps one and two of the grievance procedure and appeal the disciplinary action to the director within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.

(b) If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The employee has the right to a hearing closed to the public, unless a public hearing is requested by the employee. The hearing shall otherwise be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies.

The following DAS rule sets forth specific discipline measures and procedures for disciplining employees.

11—60.2(8A) Disciplinary actions. Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge. . . . Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee's job performance of the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct or any other just cause.

The State bears the burden of establishing that just cause supports the discipline imposed. *Harrison & State of Iowa (Department of Human Services)*, 05-MA-04 at 9. The presence or absence of just cause must rest on the

reasons stated in the disciplinary letter. See *Eaves & State of Iowa (Department of Corrections)*, 03-MA-04 at 14.

In evaluating a disciplinary action under section 8A.415(2)(b), the Board looks to the totality of the circumstances.

[W]e believe that a [§ 8A.415(2)(b)] just cause determination requires an analysis of all the relevant circumstances concerning the conduct which precipitated the disciplinary action, and need not depend upon a mechanical, inflexible application of fixed "elements" which may or may not have any real applicability to the case under consideration.

Hunsaker & State of Iowa (Department of Employment Services), 90-MA-13 at 40.

When looking at all of the circumstances of alleged misconduct, the Board has instructed that,

[w]hile there is no fixed test to be applied, examples of some of the types of factors which may be relevant to a just cause determination, depending on the circumstances, include, but are not limited to: whether the employee has been given forewarning or has knowledge of the employer's rules and expected conduct; whether a sufficient and fair investigation was conducted by the employer; whether reasons for the discipline were adequately communicated to the employee; whether sufficient evidence or proof of the employee's guilt of the offense is established; whether progressive discipline was followed, or not applicable under the circumstances; whether the punishment imposed is proportionate to the offense; whether the employee's employment record, including years of service, performance, and disciplinary record, have been given due consideration; and whether there are other mitigating circumstances which would justify a lesser penalty.

Hoffmann v. State of Iowa (Department of Transportation), 93-MA-21 at 23 (citations omitted). Another relevant consideration is how other similarly situated employees have been treated. *Kuhn v. State of Iowa (Commission of Veterans Affairs)*, 04-MA-04 at 42 (affirmed by *Kuhn v. PERB*, Case no. CV6303

at 16 (Polk County Dist. Ct. 2006) and *Kuhn v. PERB*, Case no. 7-703/07-0096 at 3-4 (Iowa Ct. App. 2007)).

As an initial matter, I conclude the State provided sufficient proof to establish that Phillips violated the work rules cited in the disciplinary letter. Phillips violated work rules by emailing the document from Thorup to Colbert and by being deceptive when interviewed about the incident. In emailing the document to Colbert, who was no longer a State employee, Phillips did not treat information gained in her position as confidential, a requirement imposed by DHS handbook section D-7(3). Her emailing of the document to Colbert was also a disclosure of confidential information, conduct prohibited by DHS handbook section D-7(1).

Phillips contends the document was not confidential because it was not on an official exit interview form and may have been disclosed under open records law. This argument is unavailing. Regardless of the format of the document, Phillips acquired the information in her capacity as a human resources associate and therefore the document should have been treated as confidential. Furthermore, if an open records request was made, Phillips would not have the authority to respond and disclose the information. Rather, the request would be handled through the communications department.

Phillips was also misleading in her interviews about the incident. Although she admitted to sending the email, her explanations for doing so were not believable. She claimed that she sent Colbert the document because Colbert was Thorup's supervisor. She claimed that she sent it to Colbert's

personal email account because Colbert was on vacation at the time. But the State provided credible evidence showing that Colbert never was Thorup's supervisor and Phillips would have known this as the human resources associate assigned to handle Thorup's personnel matters. The State also established that Phillips was aware that Colbert did not work for the State at the time the email was sent because Phillips had received Colbert's letter of resignation months earlier. Providing false or misleading information violates DHS handbook section D-1(10). The State provided sufficient evidence to establish that Phillips violated the work rules it cited in its letter issuing the discipline.

In this case, many of the other relevant factors support the ten day suspension and final warning. The State established that Phillips knew the proper process for handling confidential information and was well aware of her obligation to maintain the confidentiality of personnel information in her possession. Phillips had prior experience in the exit interview process and had signed a confidentiality and nondisclosure statement in October 2010. This statement was not in general or vague terms but specifically addressed the confidential nature of Phillips's human resources position. By signing the statement, she promised not to access confidential information unless her job duties required it, and that she may only disclose information to those who are authorized to receive it. Although Phillips signed this statement after she made the disclosure, from her lengthy experience in human resources Phillips was

well aware of her responsibility to maintain confidentiality of information at the time she forwarded the email.

The State's investigation of the incident was also fair and sufficiently thorough. The investigation consisted of interviewing Phillips first, then interviewing others to verify Phillips's account, and then a final interview with Phillips. Although a more thorough investigation may have also included an interview with Colbert, her statement was not required since the State already had evidence that the document was sent from Phillips's work email account to Colbert's personal email account. Furthermore, obtaining Colbert's account may not have been possible or desirable due to Colbert's pending lawsuit against the State.

Phillips contends that the investigation was not fair. She claims that DHS and DAS "knowingly and with malicious intent falsified the investigation" At the hearing, she seemed to argue that the investigation was unfair because when Bruett called Thorup he did not disclose that he was investigating Phillips for alleged misconduct. While I agree that Bruett was not candid about the purpose of the call, I disagree that this fact made the investigation unfair. Phillips also seemed to indicate that DHS's search of her work space for other confidential information was unfair. I do not agree that it was unfair for DHS to search Phillips's work space for confidential information. By signing the confidentiality and nondisclosure statement, Phillips acknowledged that the unauthorized disclosure of information could result in the immediate loss of access to information and records. Furthermore, there is

no evidence that the search of her desk was disciplinary in nature or that the discovery of other documents in her desk was relied on in issuing the suspension and final warning.

There are other factors that, at least initially, do not seem to support a ten day unpaid suspension and final warning in this case. For example, a more lenient progressive discipline approach was not used.

Progressive discipline is a system of addressing employee behavior over time, through escalating penalties. The purpose of progressive discipline is to correct the unacceptable behavior of an employee. Employers impose some penalty less than discharge to convey the seriousness of the behavior and to afford employees an opportunity to improve.

Norman Brand, *Discipline and Discharge in Arbitration* at 57 (BNA Books 1998); see also *Phillips & State of Iowa (Department of Corrections)*, 98-MA-09 at 14 (stating that the State's disciplinary policy is one of progressive discipline "whereby measures of increasing severity are applied to repeat offenses until the behavior is corrected or it becomes clear that it cannot be corrected."). But the Board has determined that progressive discipline is not applicable to every case. Progressive discipline is generally used for less serious work rule violations and improper conduct. *Estate of Salier & State of Iowa (Department of Corrections)*, 95-MA-05 at 17. "Under some circumstances, the offense may be serious enough to justify skipping some of the steps ordinarily imposed in the application of progressive discipline, or the offense may be so serious that progressive discipline is inapplicable." *Eaves & State of Iowa (Department of Corrections)*, 03-MA-04 at 19.

When considering what type of discipline is appropriate under the circumstances it is necessary to examine the severity and extent of the violations and also the position of responsibility held by the employee and whether the employer has developed a lack of trust and confidence in the employee to allow that employee to continue in that position, taking in to (sic) account the conduct which formed the basis for the disciplinary action.

Salier, 95-MA-05 at 17. Progressive discipline does not require “that first time offenders need be disciplined at the lowest point on the disciplinary range.”

Phillips, 98-MA-09 at 14. Suspensions are generally imposed after oral or written warnings are issued in progressive discipline but “[i]n some instances, a disciplinary suspension is appropriate for the first occurrence of misconduct that is serious but not flagrant enough to warrant immediate discharge.”

Brand, *Discipline and Discharge in Arbitration* at 65.

Phillips’s breach of confidentiality was a severe work rule violation. She not only failed to treat information pertaining to DHS employees as confidential, but she also knowingly disclosed this confidential information to someone who was not authorized to have it. Phillips also had some knowledge that Colbert might be filing an action against the State. These actions are even more serious considering Phillips’s position. Maintaining confidentiality of personnel information is of the utmost importance in a human resources position and given the serious allegations in the document, Phillips’s obligation to maintain confidentiality was critical. In this case, the disclosure may have made the State vulnerable in litigation. Taking into account Phillips’s conduct and position, I conclude that a lesser form of discipline was not required under progressive discipline principles.

I also conclude the discipline was proportionate to the offense. A ten day unpaid suspension and final warning is a severe form of discipline. But the aggravating circumstances of Phillips's violations justify it in this case. Phillips intentionally disclosed confidential information that contained allegations of sexual harassment that could be damaging to the Department. Furthermore, she sent it to a former employee considering filing suit against the State. When confronted with the incident, Phillips did not accept responsibility or seem to acknowledge the seriousness of her actions. Slaybaugh noted that a severe discipline was chosen because Phillips was dishonest during the investigation. In prior cases, the failure to acknowledge wrongdoing and the failure to accept responsibility are factors that support a finding of just cause for discipline. *See, e.g., Williams & State of Iowa (Department of Corrections)*, 10-MA-01 at 5; *Frost & State of Iowa (Department of Administrative Services)*, 07-MA-01 at 41; *Kuhn*, 04/MA-04 at 45-46; *Wiarda & State of Iowa (Department of Human Services)*, 01-MA-03 at 18.

There are factors that weigh against the State's discipline. First, there is little evidence showing whether the State gave due consideration to Phillips's employment record. Phillips has been working in human resource capacities for the State since 1979. There was no evidence submitted showing her prior performance evaluations or whether she has ever had any prior discipline. The State did acknowledge the length of Phillips's employment in its discipline letter. At the hearing, the State argued that her length of service demonstrates that Phillips was fully aware of the confidentiality policies. While a less severe

form of discipline may have been appropriate given Phillips's years of service, I do not believe this factor outweighs the others that support the discipline imposed.

Second, Phillips emailed the document because Thorup asked her to send it to Colbert.¹ While this is a mitigating circumstance that could have justified a lesser penalty, it is also evidence that Phillips did not have a full appreciation of her role in maintaining confidentiality for the Department. I conclude this also does not outweigh those factors that support the disciplinary action.

Having considered the entirety of the record and all of the arguments raised by the parties, I conclude the State established just cause within the meaning of section 8A.415(2)(b) for issuing Phillips a ten day unpaid suspension and final warning.

Consequently, the following is proposed:

ORDER

Jenny V. Phillips's state employee disciplinary appeal is hereby DISMISSED.

DATED at Des Moines, Iowa, this 10th day of May, 2013.

¹ Although the disciplinary letter accuses Phillips of falsely stating that Thorup asked her to send the document to Colbert, I conclude that Thorup did in fact ask Phillips to send the document to Colbert.

PUBLIC EMPLOYMENT RELATIONS BOARD

By: 
Ann M. Smisek
Administrative Law Judge

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