

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

ALLISON RITCHIE, Appellant,)	CASE NO. 102655
)	
and)	PROPOSED DECISION
)	AND ORDER
)	
STATE OF IOWA (IOWA WORKFORCE DEVELOPMENT),)	
Appellee.)	

Appellant, Allison Ritchie, filed this state employee grievance appeal with the Public Employment Relations Board (PERB) pursuant to Iowa Code section 8A.415(2) following a third-step response by the Iowa Department of Administrative Services (DAS) denying her grievance. Ritchie contends the State lacked just cause, as required by DAS rule 11—60.2, to discharge her.

An evidentiary hearing was held on February 1, 2023. AFSCME Council 61 Representative Earlene Anderson represented Ritchie. Andrew Hayes represented the State, Iowa Workforce Development (IWD). The parties submitted post-hearing briefs on March 22, 2023.

Based upon the entirety of the record, and having reviewed and considered the parties' arguments, the undersigned concludes that the State had just cause to discharge Ritchie for inappropriately accessing her daughter's unemployment insurance claim.

FINDINGS OF FACT

A. Background

Ritchie has worked for the State since August 2, 2002. At all times relevant to this appeal, she was employed by IWD as a Workforce Advisor stationed in Davenport, Iowa. In this role, Ritchie assisted in-person customers with questions about filing claims for benefits and conducting fact-finding investigations for claims. (Trans. at 130).

During the fall of 2021, IWD had a high volume of unemployment claims due to the COVID-19 pandemic. Consequently, IWD required the majority of its staff, including Ritchie, to work on reviewing and processing claims for unemployment benefits. Ritchie was assigned to a temporary 4-week position where she reviewed unemployment claims with Iowa employers during overtime hours and in between in-person customers at the Davenport IWD office. (State Ex. 13-14; Trans. at 28-29).

B. Processing Unemployment Claims

IWD has a computer system that processes unemployment claims automatically. However, if a claim has issues with formatting or is missing information, the system removes the claim from the online processing batch and sets it aside for an IWD employee to review. The system that houses the claims that need reviewing is called Lotus. (Trans. at 59-64).

IWD employees are trained on how to review unprocessed claims in Lotus. First, IWD employees are to review the claimant's name followed by the claimant's address, phone number, dependents, the last employer listed, wages,

and billing information. After reviewing the information and making any changes necessary, the same employee saves the claim and resubmits the claim for processing. If the employee does not have all the information necessary to process the claim, the employee places the claim in “pending” and then comes back later to complete the processing after obtaining the necessary information. Employees are instructed that once an employee begins reviewing a claim, that same employee should handle the claim from start to finish. In other words, only one employee handles a claim in Lotus, making all the changes necessary and then resubmits the claim for online processing. (Trans. at 62-64).

In order to keep track of changes made to a claim, IWD has an audit log, called KLOG that records claims when they enter the system and any changes made to the claims. For example, if a claim is automatically processed by the system, the KLOG notes state “BATCHPRO” to indicate the claim was automatically processed. If an employee reviews a claim and does not save any changes when prompted to by the program, KLOG contains no record of the employee’s actions. However, if an employee reviews a claim, makes changes, and saves the changes, the KLOG note records the change and the employee’s credentials. Importantly for this case, if an employee reviews banking information for a claim that has direct deposit, makes no changes to the claim, but saves the claim prior to exiting out of the claim, the KLOG notes contain the time the employee reviewed the claim, the phrase “DIR DEPOSIT DATE VERIFIED,” and the employee’s credentials. If an employee makes changes or somehow interacts with the banking information field on a claim and then saves

the claim prior to exiting, the phrase “DIRECT DEPOSIT ACCOUNT,” appears in the KLOG notes along with the employee’s credentials. The phrase “DIRECT DEPOSIT ACCOUNT” does not appear in the KLOG unless the IWD employee interacts with the banking information and also presses “save” before exiting the claim. (Trans. at 63-67; Exhibits 14, 20).

C. Events giving rise to Ritchie’s Termination

On or about November 18, 2021, Ritchie informed her manager, Jeremy Ritchie, that her daughter, Frankie Gusta, had not received her unemployment payment and asked if he could assist with the matter. Jeremy Ritchie reviewed the claim and noticed that on October 27, 2021, Ritchie’s credentials, “ARITCHIE,” appeared on Gusta’s KLOG notes. Specifically, Gusta’s KLOG notes contained two entries with Ritchie’s credentials. The entries are as follows:

01011 DIR DEPOSIT DATE VERIFIED 2021
RECORDED: 2021/10/27 9:53 ARITCHIE

01005 DIRECT DEPOSIT ACCOUNT [bank account number]
RECORDED 2021/10/27 9:53 ARITCHIE

(State Ex. 20).

The fact that Ritchie’s name was associated with Gusta’s claim was a “red flag” for Jeremy Ritchie because employees are strictly forbidden from accessing or manipulating an unemployment claim filed by someone they know. The IWD prohibits employees from accessing claims of friends or family members because it is important for public agencies to provide all persons with equal treatment and it would be a breach of the public trust if IWD employees showed preferential treatment to claims filed by friends and family members. Therefore, Jeremy

Ritchie notified his Division Administrator and IWD Human Resources (“HR”) about his suspicions that Ritchie accessed her daughter’s claim against IWD work rules. (Trans. at 78, 80-81).

On November 19, 2021, Ritchie was placed on administrative leave while IWD conducted an investigation. HR Professional Cassandra Plaza conducted the investigation. The investigation included interviews with experts in IWD computer systems and information technology (IT) personnel. (State Exs. 1-3, 7-8; Trans. at 120).

In order to understand IWD records, investigators consulted Kevin Melcher, Call Center Manager. Melcher reviewed the KLOG notes associated with Gusta’s claim and concluded that Ritchie made changes to Gusta’s banking information for two reasons. First, the KLOG note for Gusta’s claim contained the words “DIRECT DEPOSIT ACCOUNT” followed by the account number. Melcher explained that the bank account number would only be displayed on the KLOG note if that information had been changed or manipulated and then saved in the system. (Trans. at 66-69). Second, Melcher concluded that Ritchie made the changes to Gusta’s banking information because Ritchie’s credentials are associated with the KLOG note and her credentials would only be displayed if Ritchie made the changes. Therefore, Melcher concluded that Ritchie “went in and updated both the bank deposit number as well as the . . . routing number on the claim [for her daughter].” (Trans at 56).

In addition, Melcher reviewed KLOG notes for 22 additional claims that Ritchie opened on the same date as Gusta’s claim. In all of the claims opened by

Ritchie, except for Gusta's claim, Ritchie reviewed the claim information and then correctly submitted the claim for online processing. The only claim that Ritchie did not review from top to bottom and submit for online processing (or place in "pending" if additional information was needed) was Gusta's claim. Instead, Ritchie only reviewed and saved changes to the claim. The record shows that another IWD employee later reviewed Gusta's claim and appropriately submitted it for processing. (Trans. at 80-81). In light of this, Melcher concluded as follows:

However, knowing that [Ritchie] did go in and update the record on her daughter's account without going ahead and processing the claim leads me to speculate she did this in an attempt to update the record and not submit the claim with the sole intention of hiding the fact that she was in and updating the record for her daughter.

Again, to go through this many claims in a day, process them all, except for the single one that happened to be her daughter's account where she updated the record, but did not then submit it, is highly suspect, at best – or just unusual. I can't imagine why she would be in updating the record without submitting it.

(Trans. at 76).

The investigators also consulted Unemployment Division Manager Scott Perkins. Similar to Melcher, Perkins concluded that Ritchie accessed and made changes to her daughter's claim. Specifically, Perkins stated that if Ritchie accidentally accessed her daughter's account and made no changes, the KLOG would indicate, "DIR DEPOSIT DATE VERIFIED" and contain her credentials if Ritchie pressed "save" before exiting the claim. However, because the KLOG notes contain "DIRECT DEPOST ACCOUNT" along with Ritchie's credentials,

Perkins concluded that Ritchie had to have changed her daughter's direct deposit bank account information. (Trans. at 103-108).

On December 1, 2021, Ritchie met with Jeremy Ritchie, Plaza, and HR Professional Kim Stoker. Ritchie's AFSCME Union Representative Anderson was also present. At the meeting, Ritchie confirmed that she was aware of IWD's 2021 work rules. Ritchie was shown the KLOG notes for Gusta's claim. Ritchie admitted that she accessed Gusta's claim but stated that it was an accident because she was verifying employer information and did not immediately recognize that the claim belonged to her daughter. However, Ritchie denied making any changes to her daughter's claim. Ritchie explained the KLOG note "DIR DEPOSIT DATE VERIFIED" by stating that her daughter changed her own banking account information on her claim and this action would also create such a note in KLOG. (State Exs. 7-8).

After completion of the investigation, IWD leadership and HR concluded that Ritchie inappropriately accessed and "modified" her daughter's claim against IWD rules requiring discharge. On December 7, 2021, a Loudermill hearing was held with Ritchie and her AFSCME representative. Ritchie continued to assert that she accidentally accessed her daughter's claim. (State Exs. 2-3).

On December 7, 2021, Ritchie was provided with a termination letter stating as follows:

The investigation into your alleged misconduct has been concluded. Effective immediately, your employment with Iowa Workforce Development is terminated

This action is being taken as a result of a recent investigation during which it was determined that you have violated multiple IWD

Work Rules. This action is being taken as a result of a recent investigation during which it was determined that you accessed a Family members Unemployment insurance claim and modified the banking account information on October 27, 2021.

(State Ex. 4).

Pursuant to IAC 11-61.2(6), Ritchie filed her grievance directly with DAS on December 10, 2021. DAS issued a response on January 10, 2022, denying the grievance. (State Exs. 5-6).

Ritchie filed the instant appeal with PERB on January 12, 2022. At the hearing, Ritchie admitted that she opened her daughter's claim. However, Ritchie claims it was an honest mistake because she was processing a large number of other claims through an automated process. Ritchie maintains that she did not make any changes to her daughter's claim. Ritchie argues that because her actions were unintentional and had no consequence on the IWD or her daughter's claim, discharge is not warranted. In addition, Ritchie also argues that there are mitigating factors that should have been considered by IWD before making its determination to discharge her, including, that she has had no previous warnings on her quality of work.

IWD argues that in order to maintain the integrity of the unemployment insurance benefits system, there is no tolerance for employees who misuse the system in any way. Therefore, violating rules governing confidentiality and conflict of interest warrant summary discharge. Further, such rules governing confidentiality and conflict of interest are clearly stated and reiterated and IWD regularly trained and reminded Ritchie of the importance of following such rules.

CONCLUSIONS OF LAW

Iowa Code chapter 8A, subchapter IV, part 2 creates a merit system for executive branch employees. Iowa Code section 8A.413(19) sets forth a number of specific causes by which an employee may be discharged, suspended, or demoted. There is a catchall cause that provides that an employee may be discharged, suspended or demoted for “any other good cause.” Iowa Code section 8A.413(a)(12).

If an employee disagrees with a disciplinary action, the employee may appeal such action through a discipline resolution grievance process set forth in Iowa Code section 8A.415(2). Pursuant to Iowa Code section 8A.415(2)(b), PERB’s inquiry is whether the disciplinary action was taken for “reasons not constituting just cause.”

The State bears the burden of establishing that just cause supports the discipline imposed. *Stein and State of Iowa (Iowa Workforce Development)*, 2020 PERB 102304 at 16. “Just cause” is not defined by statute or rule. In the absence of a definition of just cause, PERB considers the totality of circumstances and conducts an examination on a case-by-case basis. *Hunsaker and State of Iowa (Dep’t of Emp’t Servs.)*, 90-MA-13 at 40. While there is no fixed test, some factors that may be relevant include:

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 and State of Iowa (Dep't of Transp.), 93-MA-21 at 23. The Board has also considered how similarly situated employees have been treated. *Kuhn and State of Iowa (Comm'n of Veterans Affairs)*, 04-MA-04 at 42.

PERB has determined the presence or absence of just cause rests on the reasons stated in the disciplinary letter. *Eaves and State of Iowa (Dep't of Corr.)*, 03-MA-04 at 14. Here, Ritchie was terminated for violating the IWD's work rules regarding confidentiality and conflict of interest by (1) accessing a family members unemployment insurance claim; and (2) modifying the banking account information on the family member's claim. The IWD work rules regarding conflict of interest and confidentiality provide in relevant part:

Honesty and Integrity

1. An employee must perform the employee's work with the utmost integrity and highest of ethical standards.
2. Dishonesty will not be tolerated. An employee must be honest when providing information to employees and customers. This includes providing accurate and complete statements and documentation. An employee's dishonesty by omission will be treated in the same manner as an employee's express misrepresentation.

Internal Security Work Instructions

5. No employee shall participate in taking, adjudicating, processing, accessing, or be involved in the claim of a relative, friend, coworker or personal associate. Employees may assist a former coworker under the following circumstances:

C. Any employee must immediately bring to a supervisor's attention any cases, investigations or

inspections involving a close friend or relative for immediate reassignment to another staff member.

(State Ex. 4).

Both parties agree that Ritchie had notice of the applicable work rules and such rules, including rules regarding conflict of interest, are necessary to maintain IWD's integrity and public trust. Therefore, the specific aspects of just cause at issue in this appeal are whether the IWD conducted a fair and thorough investigation, whether there was sufficient evidence of Ritchie's guilt, and whether the imposed discipline was warranted or in line with the principles of equal treatment.

A. Fairness and Adequacy of Investigation.

Ritchie argues that the IWD investigation was incomplete because IWD failed to interview her daughter, Frankie Gusta. Ritchie argues that Gusta has information regarding whether Gusta's banking account information was actually changed and by whom. Ritchie's argument is unpersuasive.

In this case, the issue is whether Ritchie accessed Gusta's claim on IWD's claim system. Gusta presumably has knowledge as to whether she requested changes be made to her banking information or whether she received her claim payment in her banking account. However, contrary to Ritchie's assertions, Gusta has no information as to whether an IWD employee made changes to her account and, more specifically, whether Ritchie modified banking information on her claim. Gusta was not present when Ritchie accessed her claim on October 27, 2021 and she has no direct knowledge as to Ritchie's actions within the IWD claim system. Further, Gusta has no knowledge about the KLOG notes, which

do provide information as to who accessed Gusta's claim and whether changes were made to the claim. Therefore, it was not necessary for IWD investigators to interview Gusta in order to conduct a thorough investigation.

Rather, the record in this case demonstrates that the IWD investigation was fair, objective, and thorough. Because the KLOG notes contain information regarding who accessed Gusta's claim and what changes were made, IWD spent a great deal of time reviewing the KLOG records to determine how Ritchie handled Gusta's claim, including consulting experts regarding the KLOG and IT personnel regarding Ritchie's credentials. In addition, IWD gave Ritchie several opportunities to explain her actions and provide evidence that she did not inappropriately access her daughter's claim. Accordingly, the record establishes that IWD's investigation was fair, objective, and thorough.

B. Sufficient Evidence of Employee's Guilt.

There is sufficient evidence of Ritchie's violation of IWD work rules. Ritchie does not dispute that she accessed her daughter's claim, but instead argues that her actions were an isolated and good faith mistake and she did not have any intent to alter her daughter's claim. The record does not support Ritchie's claims.

As discussed above, there are two KLOG notes associated with Gutsta's claim that contain Ritchie's credentials. Ritchie focuses her argument on the note which states "DIR DEPOSIT DATE VERIFIED." First, Ritchie explains such note by arguing that the note was auto-generated because Gusta changed her own banking information. However, as explained by Perkins, if Gusta's claim was

auto-processed, the KLOG note would contain the term “Auto Processed,” not Ritchie’s credentials. (Trans. at 104).

Second, Ritchie argues that she accidentally opened her daughter’s claim, but did not make any changes. If Ritchie “accidentally” opened up Gusta’s claim, and hit “save” before exiting the claim, the KLOG note would state “DIR DEPOSIT DATE VERIFIED” and Ritchie’s credentials would be attached to the KLOG note. Therefore, if the “DIR DEPOSIT DATE VERIFIED” KLOG note was the only note associated with Gusta’s account, Ritchie’s argument that she accidentally opened Gusta’s claim may be plausible.

However, and importantly, there is another KLOG note associated with Gusta’s account that demonstrates that Ritchie did not “accidentally” open Gusta’s account; rather she intentionally modified Gusta’s claim. The second KLOG note contains the phrase “DIRECT DEPOST ACCOUNT,” the banking account number, and Ritchie’s credentials. Both experts on IWDs system testified that this note would only appear in KLOG if someone manipulated the banking field in the claim or otherwise made changes to the bank account number. Specifically, experts testified that the fact that the KLOG note contains Gusta’s bank account number means that Ritchie modified or manipulated the bank account field in some manner. In addition, both experts testified that because Ritchie’s credentials, “ARitchie” appeared on the KLOG note associated with the change to the bank account information, Ritchie was the employee who opened the claim, made the changes, and then saved the changes. Both testified that

Ritchie's credentials would not have appeared on KLOG if she had not saved her changes to her daughter's account. (Trans. at 69-75; 105-108).

In addition, the IWD obtained evidence that Ritchie treated her daughter's claim differently than any other claim she processed on October 27, 2021. Ritchie manually reviewed 23 claims on October 27, 2021. Pursuant to IWD rules, Ritchie reviewed, made any changes necessary, and submitted claims for online processing in 22 of the claims. The only claim that she did not submit for online processing or place in "pending," contrary to IWD rules, was her daughter's claim. The fact that Ritchie treated her daughter's claim differently than all other claims led Melcher to conclude, "[Ritchie] did this in an attempt to update the record and *not* submit the claim with the sole intention of hiding the fact that she was in and updating the record for her daughter." (Trans. at 74). (Emphasis added).

The data and technical information constitutes sufficient proof that Ritchie accessed and manipulated her daughter's claim. Such information coupled with the fact that Ritchie knew how to process claims correctly and only incorrectly processed her daughter's claim establishes that Ritchie did not accidentally access her daughter's claim but intentionally manipulated and changed her daughter's account information.

Ritchie's argument that the fact that the IWD cannot specifically state what changes she made to her daughter's account means she did not violate IWD work rules is of no avail. The technical data, specifically the KLOG note stating "DIRECT DEPOSIT ACCOUNT" with the account number, establishes

that Ritchie made a change or manipulated her daughter's banking information in her IWD claim in violation of IWD work rules. Whether Ritchie made actual changes to the numbers or merely retyped the previous account number is of no matter because under either scenario Ritchie intentionally modified and accessed her daughter's claim in violation of IWD work rules.

In light of the above, IWD has proven that Ritchie violated IWD work rules prohibiting IWD employees from accessing or processing claims of family members. In addition, IWD has proven that Ritchie did not perform her duties at IWD with honesty and integrity when she accessed her daughter's claim instead of bringing any issues with her daughter's claim to a supervisor's attention.

C. Desperate Treatment

Ritchie next argues that she was treated differently than other IWD employees because other employees were allowed to continue working after accessing their family or friends accounts. However, Ritchie has provided no evidence in support of her allegation.

On the other hand, IWD offered evidence that several other employees were terminated when they accessed friends or family's claims. For example, IWD employees were terminated for the following actions: (1) accessing a brother-in-law's claim and sharing information with him; (2) assisting a former co-worker with her UI claim by asking his team lead to unlock her claim so she could receive benefits; and (3) assisting another employee in unlocking an acquaintance's claim as well as accessing the claims of his family members. (State Ex 24). The

above actions are all similar to Ritchie's in that they involve accessing a friend or family's unemployment claim. Although Ritchie argues her actions were unintentional, the record in this case supports a finding that Ritchie intentionally accessed her daughter's claim. Therefore, Ritchie's treatment in this case was the same as other IWD employees who also intentionally accessed friends or family members' unemployment claims.

D. Penalty

The record supports a finding that Ritchie improperly accessed her daughter's unemployment claim in violation of IWD work rules. However, this conclusion does not end this Tribunal's analysis of whether the employer had just cause to discipline Ritchie for violation of work rules. IWD must also establish that the discipline was proportionate to the offense given the nature of the office, Ritchie's years of service, her employment record and other mitigating circumstances.

When determining the appropriate discipline and the use or absence of progressive discipline, PERB considers the circumstances of the case. *Hoffmann and State of Iowa (Dep't of Transp.)*, 93-MA-21, at 26. Progressive discipline is a system where measures of increasing severity are applied to repeat offenses until the employee's behavior is corrected or it becomes clear that it cannot be corrected. *Stein and State of Iowa (Iowa Workforce Dev.)*, 2020-PERB-102304, at 22 (quoting *Phillips and State of Iowa (Dep't of Corrections)*, 98-MA-09 at 14). However, progressive discipline may be inapplicable when the conduct underlying the discipline was a serious offense. *Phillips and State of Iowa (Dep't*

of Human Servs.), 12-MA-05 at App. 1, 13, 16-18. Factors considered when determining the appropriate type of discipline are: (1) severity and extent of violations; (2) position of responsibility held by the employee; (3) employee's prior work record; and (4) whether the employer has developed a lack of trust and confidence in the employee to allow the employee to continue in that position taking into account the conduct at the basis of the disciplinary action. *Phillips and State of Iowa (Dep't of Corr.)*, 98 H.O. 09 at 15; *Estate of Salier and State of Iowa (Dep't of Corr.)*, 95-HO-05 at 17.

In the instant case, Ritchie's misconduct consisting of accessing her daughter's account and changing banking information was unprofessional, lacked integrity and was in violation of IWD's work rules. In addition, Ritchie's actions were not accidental; she knew she should not access her daughter's account. When confronted with her conduct, Ritchie was not forthcoming. Instead, she attempted to convince supervisors that the claim was automatically processed and then later argued that her actions were unintentional.

Further, contrary to Ritchie's arguments, her conduct did cause harm. It harmed the agency she worked for – the IWD. Ritchie's actions of accessing her daughter's account showed preferential treatment to a family member and violated the public trust and the integrity of the IWD causing the agency harm. Given the level of unprofessional behavior and the seriousness of her offense, termination of Ritchie's employment was justified under the circumstances.

Finally, although Ritchie mentions that she filed a grievance against IWD and implies that her termination was retaliation for the filing of such grievance,

there is no evidence that Ritchie's grievance had any connection with her termination.

Ritchie has failed to demonstrate the IWD lacked just cause to terminate her employment due to her actions on October 27, 2021. Thus, Ritchie has failed to demonstrate the IWD did not substantially comply with DAS rule 11—60.2.

I consequently propose the following:

Allison Ritchie's state employee grievance appeal is DISMISSED.

The costs of reporting and of the agency-requested transcript in the amount of \$929.90 are assessed against the Appellant, Allison Ritchie, pursuant to Iowa Code section 20.6(6) and PERB rule 621—11.9. A bill of costs will be issued to the Complainant in accordance with PERB subrule 621—11.9(3).

The proposed decision and order will become PERB's final agency action on the merits of Ritchie's appeal pursuant to PERB rule 621—11.7 unless, within 20 days of the date below, a party files a petition for review with the Public Employment Relations Board or the Board determines to review the proposed decision on its own merits.

DATED at Des Moines, Iowa this 3rd day of March, 2023.

/s/ Rachel D. Morgan

Administrative Law Judge

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