

**SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT**

**EILEEN HECHT,
Grievant,**

HF No. 2 G, 2006/07

v.

**FINAL DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

**MOODY COUNTY,
Respondent.**

This matter comes before the Department of Labor based on Grievant Eileen Hecht's Petition for Hearing on Grievance filed pursuant to SDCL 3-18-15.2. Eileen Hecht appeared on her own behalf. William J. Ellingson represented Respondent Moody County. The Department of Labor conducted a hearing on February 7, 2007, in Flandreau, South Dakota. Upon consideration of the live testimony given at hearing and the evidence presented at hearing, Grievant's Petition for Hearing and request for relief is hereby denied.

Issue

Whether Respondent violated, misinterpreted, or inequitably applied the Moody County Personnel Manual when it terminated the employment of Grievant.

FINDINGS OF FACT:

Present at the hearing were Grievant Eileen Hecht, Allen Hecht, Moody County Auditor Jean M. Larson, Moody County Commissioner Martin May, Moody County State's Attorney William J. Ellingson, Moody County Commissioner Robert Hemmer and court reporter Nancy McClanahan. Eileen Hecht and Moody County Auditor Jean M. Larson testified live at hearing. Exhibits 1-11 were received into evidence.

Based upon the evidence received and the live testimony at hearing, the following facts are found by a preponderance of the evidence:

1. Eileen Hecht (Grievant) began working for Moody County in March of 1991.
2. Grievant had been warned that playing games on County computers on County time was not permitted.
3. On May 10, 2001, Grievant signed an acknowledgment that she had received a copy of the Moody County Acceptable Use Policy for Electronic Mail and Internet Utilization.
4. Thereafter, on June 20, 2006, computer games were removed from Grievant's computer at Auditor Larson's request.
5. On July 13, 2006, Auditor Larson notified Grievant of her intent to terminate Grievant's employment with Moody County "effective immediately" for violating county policy regarding internet usage, unsatisfactory performance of duties, time

- clock policies, and “unwillingness to communicate and work well with office co-worker.”
6. On July 14, 2006, Auditor Larson sent Grievant a letter explaining the steps involved in the proposed disciplinary action under County policies.
 7. On July 18, 2006, Auditor Larson conducted a disciplinary interview with Grievant. Auditor Larson thereafter sent Grievant a letter notifying Grievant of her final decision to terminate Grievant effective July 18, 2006.
 8. The July 18, 2006, letter notified Grievant that an exit interview would be held on July 25, 2006. In the July 18, 2006, letter Auditor Larson notified Grievant of her right to appeal the decision and explained the steps involved in the appeal process. This letter contained all information required by the Moody County Personnel Manual (MCPM), Section IX, Part H.
 9. On July 21, 2006, Grievant responded in writing to Auditor Larson’s July 18, 2006, letter and appealed Auditor Larson’s decision to the Chairman of the Moody County Commissioners.
 10. On July 25, 2006, Grievant, Auditor Larson, Commission Chairman May, and Commissioner Hemmer conducted an exit interview pursuant to the MCPM, Section VIII, Part C.
 11. On August 1, 2006, the County Commission conducted an appeal hearing during its regular meeting as required by the MCPM, Section IX, Part H.
 12. On August 9, 2006, Commission Chairman May provided written notification to Grievant that the decision of July 18, 2006, terminating her employment was upheld by the County Commissioner. Chairman May also notified Grievant that an error regarding lump sum termination pay would be corrected.
 13. On August 21, 2006, Grievant filed her Petition for Hearing on Grievance with the South Dakota Department of Labor.
 14. At hearing with the Department of Labor, Grievant acknowledged that Respondent followed all County policies in processing her grievance. Grievant acknowledged that her actions constituted grounds for termination, but she raised issues regarding the date of her termination and her salary and benefits. Grievant specifically asked the Department to award her salary for July 19, 2006 to August 1, 2006, with benefits and that her health insurance be paid for the month of August or that she be reimbursed \$218.36 for what she and her husband had to pay to maintain her health insurance. Grievant acknowledged that she is not asking for any other damages and does not want to be reinstated to her old position.
 15. Grievant voiced several other complaints against the County. The Department explained to Grievant that it is without jurisdiction to investigate or make determinations on those matters. Grievant acknowledged that she understood.

Analysis

SDCL 3-18-1.1 defines a grievance:

The term “grievance” as used in this chapter means a complaint by a public employee or group of public employees based upon an alleged violation,

misinterpretation, or inequitable application of any existing agreements, contracts, ordinances, policies or rules of the government of the state of South Dakota or the government of any one or more of the political subdivisions thereof, or of the public schools, or any authority, commission, or board, or any other branch of the public service, as they apply to the conditions of employment. Negotiations for, or a disagreement over, a nonexisting agreement, contract, ordinance, policy or rule is not a "grievance" and is not subject to this section.

The Department's role in resolving a grievance is defined by SDCL 3-18-15.2. SDCL 3-18-15.2 reads, in part:

If, after following the grievance procedure enacted by the governing body, the grievance remains unresolved . . . it may be appealed to the department of labor . . . The department of labor shall conduct an investigation and hearing and shall issue an order covering the points raised, which order is binding on the employees and the governmental agency.

The burden of proof is on Grievant. Rininger v. Bennett County Sch. Dist., 468 N.W.2d 423 (S.D. 1991).

The MCPM provides in Section IX, Part F that "[t]he department head, with the approval of the county commission, may terminate an employee from county employment for disciplinary purposes." The MCPM provides in Section IX Part H that before disciplinary actions are taken certain steps must be followed, including a disciplinary interview and a written notice to the employee that must include the "final decision, effective date of the disciplinary action, and [Grievant's] right to appeal such a decision to the county commission." Auditor Larson provided this written notice on July 18, 2006, and notified Grievant that the termination was effective at midnight on July 18, 2006. Auditor Larson's notice of July 18, 2006, contained the required information.

Grievant acknowledged that Respondent followed the MCPM, but she argues that her termination date should be the date upon which the County Commission voted to uphold Auditor Larson's decision. In support of her argument, Grievant testified that in 2002 a county employee was suspended with pay for the period between the notice of discipline and the County Commission's decision to uphold the department head's decision. The County Personnel Manual Section IX provides for suspension with pay, but only under certain circumstances:

D. Suspension Without Pay

The department head, with approval of the county commission, may temporarily suspend an employee without pay for disciplinary purposes. Suspension shall be for no more than 10 working days. Notice of such action shall be in writing to the employee with a copy to the County Auditor for payroll and personnel file purposes. **In certain instances, i.e., when legal cases are pending, the employee may be suspended with pay.**

(emphasis added). Section IX also provides that the County is not required to apply the disciplinary actions progressively. Respondent correctly followed its procedures as outlined in the MCPM. Grievant's employment was effectively terminated on July 18, 2006. Grievant received proper notice of the effective date of her termination. She was entitled to receive her regular salary through July 18, 2006, and not through the date the County Commission issued its decision on her appeal. Respondent did not violate, misinterpret, or inequitably apply its personnel manual. Grievant's request for relief must be denied.

Conclusions

1. Grievant did not demonstrate by a preponderance of the evidence that Respondent violated, misinterpreted, or inequitably applied the Moody County Personnel Manual in terminating her employment with Moody County.
2. Respondent did not violate, misinterpret, or inequitably apply the Moody County Personnel Manual in terminating the employment of Grievant.
3. Grievant's request for relief is denied.
4. Grievant's Petition for Hearing is dismissed.
5. The Department is without jurisdiction to address all other issues raised by Grievant.

Order

Grievant's Petition for Hearing is hereby dismissed with prejudice.

Dated this 14th day of March, 2007, at Pierre, South Dakota.

SOUTH DAKOTA DEPARTMENT OF LABOR

Heather E. Covey
Administrative Law Judge