

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	DOCKET NO. 01-45
RHODA WESTBROOK)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On July 16, 2001, Rhoda Westbrook (“Grievant”) filed a grievance with the Labor Relations Board contesting her dismissal from the State Department of Prevention, Assistance, Treatment and Health Access (“PATH” or “Employer”). Grievant alleges that the Employer, in dismissing her, violated the collective bargaining agreement between the State of Vermont and the Vermont State Employees’ Association for the Non-Management Unit, effective for the period July 1, 1999 – June 30, 2001 (“Contract”).

Hearings were held in the Labor Relations Board hearing room in Montpelier on July 25, August 8, and September 5, 2002, before Board Members Catherine Frank, Chairperson; Carroll Comstock and Richard Park. Grievant represented herself. Special Assistant Attorney General David Herlihy represented the Employer. The parties filed post-hearing briefs on September 19, 2002.

FINDINGS OF FACT

1. The Contract provides in pertinent part as follows:

**ARTICLE 14
DISCIPLINARY ACTION**

1. No permanent . . . employee covered by this Agreement shall be disciplined without just cause. The parties jointly recognize the deterrent value of disciplinary action. Accordingly, the State will:
 - . . .
 - (b) apply discipline . . . with a view toward uniformity and consistency;
 - (c) impose a procedure of progressive discipline . . .
 - (d) In misconduct cases, the order of progressive discipline shall be:

- (1) oral reprimand;
- (2) written reprimand;
- (3) suspension without pay;
- (4) dismissal.

...

(f) The parties agree that there are appropriate cases that may warrant the State:

- (1) bypassing progressive discipline . . .

...

2. The appointing authority or authorized representative . . . may dismiss an employee for just cause . . .

2. Grievant was employed by PATH and its predecessor, the Department of Social Welfare, for approximately 15 years in the Morrisville District Office. She was District Office Chief Clerk until 1994, at which time she became Human Services Case Aide. She remained Case Aide until her dismissal. During her employment, she consistently received satisfactory performance evaluations. Prior to being dismissed, Grievant had not been disciplined (Grievant's Exhibits 407 – 418).

3. In her Case Aide position, Grievant had clerical responsibilities such as “opening and closing the office” duties, providing a full range of clerical and secretarial support, preparing incoming and outgoing mail, providing backup for the District Office Clerk, and providing full front office coverage when the Clerk was absent. She also performed “eligibility related responsibilities” on cases handled by the District Office. Included among these duties were prescreening initial applications, scheduling clients for appointments and orientations, interviewing ongoing General Assistance applicants and authorizing them for specified limited benefits, and assisting clients with completion of forms. Grievant also performed recruitment activities and generally assisted with the Reach Up program (State's Exhibit 16).

4. On April 25, 1986, Grievant, by her signature, indicated that she had read and understood a memorandum dated February 5, 1985, from Department of Social Welfare Commissioner Veronica Celani, which provided in pertinent part:

Employees throughout the Department have the occasion to work with highly confidential information every day. This is a major responsibility and must be treated with the highest degree of respect and integrity. It is both the policy and the practice of the Department of Social Welfare that all client information be kept strictly confidential. The Department is mandated by both Federal and State laws to limit disclosure of information about either clients of or applicants for programs that we administer. Therefore, I want to impress upon all staff that any employee who

- ☐ discloses any part of a client's confidential record outside of the office, or
- ☐ divulges the identity of applicants or recipients for reasons other than proper program administration, . . . or to an individual who lacks a legal or professional right to know, or
- ☐ uses confidential material in any fashion unbecoming a professional employee

shall be subject to disciplinary action up to and including immediate dismissal from Vermont State service. . . (State's Exhibit 6, p.65).

5. On October 5, 1994, Grievant signed a document entitled "State of Vermont Agency of Human Services Affirmation of Confidentiality". The document provided in pertinent part:

I understand that as a human service provider for the Agency of Human Services I may come into contact with information about individuals and their families. I understand that all information that identifies or pertains to individuals or their families is considered confidential information and shall be released, divulged, shared or exchanged only with the express and informed consent of the individual except as set out in the Agency of Human Services Confidentiality Policies and Principles and the Agency of Human Services Confidentiality Standards of Conduct.

I also agree to support the following guidelines:

1. I will regard information and data on individual persons . . . as confidential in nature and will protect and cause to be protected such data . . . against unauthorized disclosure, use or alteration.

2. I agree that I will not share confidential information or data that I receive by virtue of my position with persons who are not authorized to have access to this information.

...

4. I agree that I will only use confidential information for State-related business functions and those functions that aid in the performance of my job responsibilities, and that other use of such confidential information constitutes “unauthorized use” and is subject to all penalties prescribed by law.

. . . I agree to uphold all standards of conduct for confidentiality and I understand that I am subject to strict disciplinary actions and possible termination of my employment if I violate these standards. (State’s Exhibit 6, p.67).

6. In October 1996, the Employer revised its Conflict of Interest Policy. Grievant received training on the policy either at a staff meeting in the Fall of 1996 or at some other time around the time of its issuance. Among the provisions of the revised policy are that “an employee shall take no action in any case pertaining to a relative, ex-relative, ex-spouse, ex-domestic partner, ex-in-law, ex-step child or ex-step sibling . . . close friends . . . close neighbors, or any other situation where a close personal relationship exists” (emphasis in original). Another provision of the revised policy is that “an employee is limited to that informational flow which is directly required to do his/her job . . . perusing through the ACCESS system looking up names in another employee’s caseload is outside one’s job duties” (State’s Exhibit 14, p.385-391).

7. Janet Hubbard has been District Manager of the Morrisville District Office since January 1998. There are thirteen employees in the office. Julie Rollo has been Family Services Supervisor in the office since 1999, and was immediate supervisor of Grievant from the summer of 1999 until Grievant’s dismissal. Carol Burnor has been a supervisor in the office for eight years, and supervised Grievant prior to Rollo supervising her.

8. Between January, 2000, and January, 2001, Grievant used the ACCESS computer system used by PATH to look up PATH and Office of Child Support client records on a substantial number of persons who were not part of Grievant's assigned duties. These actions involved about 20 persons with whom Grievant had family or personal relationships. She most frequently accessed the files of her daughter, DH (about 39 times), her former boyfriend EE (about 14 times), LD, the boyfriend of her other daughter, SB (7 times), and her ex-son in law, BB (6 times). There were approximately 92 occasions that Grievant accessed files on persons who were not part of her assigned duties (State's Exhibits 3, 7).

9. General Assistance is one of the many programs administered by PATH. It provides emergency assistance to meet basic needs of clients who do not meet the eligibility criteria for other programs. General Assistance is not an ongoing entitlement program. General Assistance clients must complete an application each time they seek benefits. Many General Assistance clients have little or no income and many of them visit the Morrisville District Office each month to apply for benefits.

10. Grievant processed at least six initial applications for General Assistance between February, 2000, and December, 2000. This was contrary to a July 7, 1999, memorandum she received from Hubbard entitled "Clarification of Case Aide Duties". Among the "eligibility related responsibilities" of Grievant's position set forth in the memorandum concerning General Assistance ("GA") applicants were: "Prescreens initial applications for walk-in applicants only for accuracy, completeness and signatures", and "Interviews ongoing GA applicants and authorizes for prescriptions, PNI and rent only (does not include first-time GA walk-in's, emergency housing, other emergency medical,

back rent which are done by eligibility specialists). If a change occurs with an ongoing GA, case aide does not do independent eligibility determination but consults worker or supervisor for decision.” In addition to this memorandum, Hubbard and Rollo made clear to Grievant on several occasions that she was not to process initial General Assistance applications (State’s Exhibits 3, 8, 16).

11. The scope of Grievant’s responsibilities with respect to ongoing General Assistance cases was to process only those cases where persons receiving General Assistance had little or no income. On at least 15 occasions, Grievant exceeded these responsibilities by processing ongoing cases where the client’s income exceeded the General Assistance payment level (State’s Exhibits 3, 9).

12. On September 8, 2000, Grievant saw JT, an initial General Assistance applicant who had income over the General Assistance payment level. Grievant approved a retroactive benefit for a prescription JT had already obtained and paid for. It was not within Grievant’s responsibilities to see an applicant who had income over the General Assistance payment level. It was against policy to approve a retroactive benefit for a prescription that a client already had received. Other than Grievant, there is no evidence that any other worker in the office approved such retroactive benefits.

13. On October 6, 2000, Rollo witnessed Grievant informing client LT that she would send his landlord a rent check. Grievant did not know Rollo was present. Rollo believed that LT had not completed a General Assistance application, which was required to send a rent check to a landlord. Rollo told Grievant that a rent check cannot be sent to a landlord without a General Assistance application. Grievant said to Rollo “I am sorry – I won’t do it again”. On October 12, 2000, Grievant sent LT’s landlord a rent check. LT

had not completed the required General Assistance application for issuance of the rent check. Grievant previously had sent LT's landlord a rent check on September 15, 2000, without LT completing the required General Assistance application (State's Exhibit 10, p.313-329).

14. In November 2000, Grievant's daughter DH moved from the Barre area to the Morrisville area. In November 2000, Grievant used a computer in the office to attempt to transfer DH's case electronically from the Barre office to the Morrisville District Office. Grievant also sent a message on the ACCESS system to DH's Barre Office caseworker, and on November 16, 2000, handed DH's application to Rollo (State's Exhibit 14, p.362).

15. When Hubbard learned that Grievant had been involved in the transfer of DH's case to Morrisville, Hubbard told Grievant on November 30, 2000, that she should have no involvement in DH's case. She also sent her a memorandum that day informing Grievant that she "must not have anything to do with the application or case of DH or any other relative." She attached to the memorandum copies of PATH's confidentiality and conflict of interest policies (State's Exhibit 14, p.382-391).

16. Shortly before December 1, 2000, Grievant telephoned Michael Lague, husband of Grievant's co-worker, Morrisville District Office Clerk Bonnie Lague, and inquired into the relationship between Morrisville District Office supervisor Carol Burnor and two of Lague's relatives, SM and RM. SM and RM were clients of the Morrisville District Office. Grievant accessed the case records of SM and RM on the ACCESS computer system on November 30, 2000. Grievant called Lague in an attempt to determine whether Burnor had violated the PATH Conflict of Interest Policy through

involvement in the cases of RM and SM. Rollo had previously instructed Grievant that, if Grievant suspected that an employee was engaging in improper conduct, Grievant should not investigate on her own but should place her concerns in writing and bring it to the attention of a supervisor (State's Exhibit 7, p.189-90).

17. On December 1, 2000, Bonnie Lague wrote a letter to PATH Commissioner Ellen Elliot, complaining of Grievant's telephone call to her husband and making various other allegations of misconduct against Grievant. On December 8, 2000, the Employer assigned Laura DeForge, Personnel Administrator for the Employer, and Linda Wilson, Investigator with the PATH Fraud Division, to conduct an investigation of the allegations made by Lague as well as Grievant's involvement in DH's case. As the investigation proceeded, there were other issues that were investigated. The investigation took place between December 2000 and early June 2001 (State's Exhibits 3, 11).

18. On January 11, 2001, Grievant saw General Assistance client MP. Although MP's income exceeded General Assistance payment levels, Rollo gave Grievant specific permission for that day only to see General Assistance clients "over income". However, Rollo specifically instructed Grievant not to approve benefits for an "over income" client unless she received Rollo's approval. Grievant approved a prescription for client MP that day without the approval of Rollo or any other supervisor (State's 10, p.339-343).

19. On January 22, 2001, Morrisville District Office client DM had an appointment to meet with his regular worker, Deborah Mercy. DM came to the office and sought a General Assistance voucher to pay for a prescription. Grievant believed DM was drunk. Without consulting with Mercy or a supervisor, Grievant telephoned Kinney Drug

Pharmacist Richard McKenna, and told him that DM was applying for a voucher for a prescription but that he was drunk.

20. On January 23, 2001, James Adams, an employee of the Morrisville Social and Rehabilitation Services (“SRS”) office asked Grievant for information on a Morrisville PATH client. Without checking with or receiving the approval of a supervisor or manager, Grievant provided a “STAT D” information panel to Adams. Prior to doing so, Grievant asked Nancy Bradshaw, an Eligibility Specialist in the Morrisville District Office, if she could give Adams the requested information. Bradshaw told Grievant to check with a supervisor. At a March 22, 2000, staff meeting at which Grievant was present, staff were told that employees of other departments such as SRS no longer would have free access to case files of PATH clients but instead they would have to go to an eligibility specialist to obtain any pertinent information on a PATH client (State’s Exhibit 13, p.354).

21. Wilson and DeForge interviewed numerous persons as part of their investigation into allegations of Grievant’s misconduct. They interviewed Grievant on March 23 and April 18, 2001. In responding to allegations that she had used the ACCESS computer system to review client records on a substantial number of persons who were not part of her assigned duties, Grievant denied the allegations in the first interview. She indicated in the first interview that it would be inappropriate for her to access PATH cases outside the scope of her assigned work and that she would not do it. In responding to the specific allegations that she had accessed the computer records of her daughter DH numerous times, she denied that allegation in the first interview. She indicated she had reviewed DH’s case only to determine who the caseworker was on her case. In the second

interview, Grievant admitted that she had reviewed DH's case records beyond just seeking the identity of her caseworker. Grievant indicated she was authorized to view such records because her daughter had given permission for Grievant to be involved in her case. Grievant continued to deny accessing any of the involved client records other than those of her daughter. Grievant indicated that other workers in the office had access to her computer, and they probably had used her computer to review the involved client records. Wilson and DeForge interviewed other workers in the office, and they indicated that they had not accessed Grievant's computer except on rare occasions to get a quick answer to a telephone call at the front desk. They also indicated they did not have any reason to access the involved client records.

22. When she was interviewed by DeForge and Wilson, Grievant indicated that Rollo had told her to investigate the issue that led to the telephone call to Michael Lague. Rollo did not instruct Grievant to investigate the issue. During the interview, Grievant also denied accessing the case records of RM and SM on the ACCESS computer system. Grievant did access these records.

23. During her interviews with DeForge and Wilson, Grievant indicated that Rollo approved of the actions she took on General Assistance cases that exceeded the scope of her duties. Rollo did not approve of these actions. Grievant also indicated that she was following a common practice in the Morrisville District Office when she granted JT's September 8, 2000, request for a retroactive General Assistance benefit to reimburse him for a prescription he had already obtained. There is no evidence that any other worker in the office approved such retroactive benefits.

24. During her interviews with DeForge and Wilson, in discussing the issue concerning providing client information to SRS worker James Adams, Grievant denied speaking with any Morrisville District Office employees about the request for information. Grievant said she had approval to provide the information from the SRS District Director and indicated that other workers in the office had provided such information.

25. There were several instances in the Morrisville District Office where Grievant made disparaging and vulgar comments about her supervisors. Among the comments Grievant made about her supervisors were “fat fucking bitches”, “fucking whore”, and “fucking cunt”. At times Grievant made vulgar comments in the front of the office where they could be overheard by clients.

26. On June 7, 2001, Betsy Forrest, sent Grievant a letter which provided in pertinent part:

As a result of your behavior described below, the Department of Prevention, Assistance, Treatment, and Health Access (“PATH”) is contemplating a serious disciplinary action up to and including your dismissal from your position. You have the right to respond to the specific allegations listed below, either orally or in writing, before the final decision is made. You have the right to be represented by VSEA, if applicable, or private counsel, at your own expense, during proceedings connected with this action.

This disciplinary action is being contemplated for the following reasons:

This letter provides a short summary of misconduct charges arising out of an extensive investigation conducted by PATH. The investigation report dated June 5, 2001 (“Report”), is attached hereto and incorporated herein by reference, and should be consulted for details as to each of the listed charges.

1. Violation of PATH Conflict of Interest Policy – Accessing Records Inappropriately

It appears that between January, 2000, and January, 2001, you used the ACCESS computer system to look up PATH and/or Office of Child Support

(“OCS”) client records on a substantial number of persons who bore no relationship to your assigned duties. These actions involved about 20 persons with whom you have family or personal relationships. You most frequently accessed the files of your daughter, DH, (about 39 times) your former boyfriend EE (about 14 times), LD, the boyfriend of your other daughter, SB (7 times), and your ex-son in law, BB (6 times). It appears that there were about 92 occasions that you accessed these PATH files to which you had no legitimate access. See Report, pp. 3-6.

Your actions appear to have violated: (1) The PATH Conflict of Interest Policy . . . which states, “an employee is limited to that informational flow which is directly required to do his/her job . . . perusing through the ACCESS system looking up names in another employee’s caseload is outside one’s job duties”, and (2) the Department of Personnel Policy 5.6, which requires employees to devote their work time to their duties, limits their access to information necessary for the performance of their duties, and prohibits the use of state property for any use not required for the proper discharge of their official duties.

This appears to be an extremely serious offense. PATH workers have access to substantial amounts of confidential client information. PATH must have confidence that workers will not abuse the trust placed in them to access only client information that is needed to perform their duties.

2. Exceeding Scope of Authority in the General Assistance Program

A. Processing Applications Without Authorization: Initial Applications

By memo dated July 7, 1999, entitled “Clarification of Case Aide Duties,” the duties of your position were outlined. Among other things, that memo stated that a case aide “(p)rescreens initial (General Assistance) applications for walk-in applicants only for accuracy, completeness and signatures . . . Interviews ongoing General Assistance applicants for prescriptions, PNI and rent only (does not include first-time GA walk-in’s . . .” (emphasis added).

A sampling of your work revealed that, notwithstanding the above instructions, you processed at least six initial applications for GA between February, 2000, and December, 2000. See Report, pp. 6-7.

B. Processing Applications Without Authorization: Over-Income Applications.

You acknowledged during the investigation that the scope of your GA authority was limited to processing ongoing GA cases with little or no income. Nonetheless, a sampling of GA cases you processed showed that you exceeded your authority by processing cases where the client’s income exceeded the GA

payment level. This sample revealed that, on eight occasions, you processed subsequent GA applications filed by the same clients you had inappropriately seen as initial applicants. (See Section 2A, above). You also processed another seven over-income applications on other GA clients. See report, pp. 7-8.

You appear to have knowingly exceeded the scope of your duties and authority by processing any of such cases.

C. Other General Assistance Issues

The investigation also revealed a number of other issues of concern in your processing of GA cases. See Report, pp. 8-9. They are summarized as follows:

As to GA client LT, you issued a rent check on September 15, 2000, to LT's landlord even though it appears LT did not complete a GA application and was not interviewed on that day. On October 12, 2000, despite Ms. Rollo's specific instructions not to do so, you issued another rent check for LT. On both occasions you appear to have violated GA policy and on the latter occasion violated specific instructions from your supervisor.

On 1/11/01, you violated Ms. Rollo's specific instructions by approving a prescription for client MP without a supervisor's approval.

On 09/08/00, you exceeded your scope of duties by seeing JT, an initial GA applicant who also had income over the GA payment level. You also violated GA policy by approving a retroactive benefit for a prescription JT had already obtained and paid for.

Take as a whole, your actions related to processing of GA cases are very troubling. As a case aide you are given limited authority to act on GA cases because you do not have the training needed to make eligibility decisions. PATH must be able to trust you to act within the defined scope of your duties, and you appear to have regularly exceeded those duties. In several instances, your actions included failing to follow the specific instructions of your supervisor.

3. Violation of PATH Conflict of Interest Policy and Confidentiality Policy: Telephone Call to Michael Lague

Shortly before December 1, 2000, you telephoned Michael Lague and inquired into the relationship between VDO supervisor Carol Burnor and two of Mr. Lague's relatives, SM and RM. It was implicit in the context of the telephone conversation that you were calling on VDO business, and that SM and RM were clients of VDO. You called Mr. Lague in an attempt to determine whether Ms. Burnor had violated the PATH Conflict of Interest Policy, notwithstanding Ms.

Rollo's instructions that you should not engage in such conduct. See Report, pp. 9-11.

Your actions appear to have violated the PATH Policy on Confidentiality, which prohibits PATH employees from divulging the identity of applicants or recipients to an individual who lacks a legal or professional right to know. Your actions also appear to have violated Ms. Rollo's instructions not to investigate such matters yourself.

4. Exceeding Scope of Authority and Violation of PATH Confidentiality Policy: Telephone call to Pharmacy

On January 22, 2001, VDO client DM had an appointment to meet with his regular worker, Deborah Mercy. DM came to the VDO office and sought a GA voucher to pay for a prescription. You believed DM was drunk. Without consulting with Ms. Mercy or Ms. Rollo, you telephoned Kinney Drug Pharmacist Richard McKenna, and told him that DM was applying for a voucher for a prescription but that he was drunk. See Report, pp. 11-12.

It appears that your actions violated the PATH Policy on Confidentiality by disclosing to the pharmacist that DM was an applicant for VDO benefits. You appear to have exceeded the scope of your authority by intervening in DM's case at all since he had an appointment with his regular worker. You also exceeded your authority by calling the pharmacist to inform him you believed DM was drunk. By telling the pharmacist that DM was drunk (an assessment on which there was disagreement in your office), you may have prevented DM from obtaining a prescription to which he was entitled.

5. Exceeding Scope of Authority and Violation of Confidentiality Policy: Release of Information to SRS Worker

On January 23, 2001, a worker from the Morrisville SRS office asked you for information on a VDO client. Without checking with or receiving the approval of a VDO PATH supervisor or manager, you provided a "STAT D" information panel to the SRS worker. The investigation found that, prior to doing so, you asked Nancy Bradshaw, an ES from VDO, if it was OK to give the SRS worker the requested information and she told you to check with a supervisor. See Report, p. 12.

You appear to have knowingly violated the PATH policy. As a case aide, you do not have authority to determine whether an SRS worker is entitled to information that is requested. Requests for such information were to be routed to eligibility specialists, or a supervisor or director. At the 3/22/00 staff meeting, staff were instructed that people from other departments were to go to an ES to obtain any client information.

6. Attempted Transfer of DH's Case

In November, 2000, your daughter, DH, moved from the Barre area to the Morrisville area. The PATH investigation concluded that, on November 20, 2000, you used Morrisville #687 (a worker number used to login the vacant computer in the VDO front office) to make three entries attempting to transfer DH's case electronically from the Barre office to VDO. See Report, pp. 12-13.

Your actions appear to have violated the PATH Conflict of Interest Policy (revised 10-96), which states that "(a)n employee shall take no action in any case pertaining to a relative . . ."

7. Unprofessional Language:

The investigation revealed several instances where you made disparaging comments in the VDO and used vulgar and profane language. The comments and profane language were usually directed at the VDO supervisors or director and at times was in the front of the VDO office where clients could have overheard. See Report, p. 13.

Your actions appear to have violated the PATH expectation that employees will act professionally in the workplace, especially where they are within earshot of clients.

8. Dishonesty During the Investigation:

It appears that you were dishonest in your responses during the investigation, including but not necessarily limited to the following:

(a) Re: Accessing PATH Records outside your duties: It appears that you were dishonest when you generally denied accessing PATH records outside the scope of your duties. It also appears that you were dishonest when you claimed that other workers used your worker number to regularly access PATH files. You were dishonest in your initial denial that you ever accessed the records of your daughter, DH, and later when you claimed to have permission to do so. You were also dishonest when you denied accessing the PATH records of a long list of individuals with whom you have personal relationships.

(b) Re: Telephone Call to Michael Lague: It appears that you were dishonest when you claimed that, in making the call to Mr. Lague, you were acting consistent with instructions you received from Ms. Rollo. You also appear to have been dishonest when you denied accessing the PATH files of SM and RM.

(c) Re: Release of Information to SRS Worker: It appears that you were dishonest when you denied in both investigative interviews ever talking to any

VDO employees about the request for information by the SRS worker. It appears that you not only asked Ms. Bradshaw for advice but failed to follow the advice she gave you.

(d) Re: Exceeding Scope of Authority in the General Assistance Program: You appear to have repeatedly violated the written guidelines provided to you to define the scope of your duties relating to the General Assistance program, and to have been dishonest in your claim that Ms. Rollo knew exactly what you were doing. You also appear to have been dishonest in your claim that you followed a common VDO practice when you granted JT's 9/8/00 request for a retroactive GA benefit to reimburse him for a prescription he had already obtained.

There is hardly a more serious misconduct offense than dishonesty against your employer. It appears that you have engaged in a persistent pattern of dishonesty both in the actions you have taken and in your explanations of those actions.

In summary, therefore, it appears that you have knowingly and persistently failed to follow both the clear policies of the State of Vermont and the Department of PATH as well as the specific instructions you have received from superiors in the VDO. These include some of the most important policies governing the conduct of PATH employees. Specifically, you violated the policies on Conflict of Interest, Confidentiality, and expectations on unprofessional conduct, and issued benefits that you weren't authorized to issue. When confronted with these allegations, it appears that you consistently failed to tell the truth. Any employee who apparently would violate the rules of the Department to such a degree and then lie about her responses to questions about such misconduct is an employee the Department would no longer wish to retain. As a result of your actions the confidence that your superiors must have in your honesty, integrity, and ability to do your job in a manner that is consistent with PATH expectations has been destroyed. It appears that your conduct warrants bypassing progressive discipline and provides just cause for discipline up to and including dismissal from employment.

You must notify me within 24 hours after receiving this letter whether you wish to respond to the above allegations. . .
(State's Exhibit 1)

27. Grievant chose to not respond to the allegations set forth in the June 7 letter. On June 21, 2001, Forrest sent a letter to Grievant which provided in pertinent part:
"This is to notify you of your dismissal from the position of Case Aide, effective

immediately. . . The reasons for this action are those that are enumerated in my letter of June 7, 2001 . . . (State's Exhibit 2).

28. In deciding to dismiss Grievant, Forrest concluded that Grievant's offenses were serious. Forrest determined that the PATH system breaks down without individual clients in need having trust that their confidentiality will be protected, and that Grievant disregarded confidentiality rules numerous times by accessing client records on cases outside of her duties and committing other breaches of confidentiality. Forrest also determined there was a clear pattern of Grievant disregarding rules and instructions from her supervisors repeated times in taking actions beyond the scope of her duties. Forrest determined that Grievant's use of profane language constituted unprofessional behavior. She concluded that Grievant's repeated dishonesty was very serious in demonstrating that she was an employee who could not be trusted. Forrest concluded that Grievant violated her fiduciary role through her actions, and that she had fair notice she should not engage in the behavior leading to her dismissal. She also determined that supervisors could not have confidence in her performing job duties, rehabilitation was not a possibility and that it was clear dismissal was the appropriate action.

OPINION

Grievant contends that the Employer violated Article 14 of the Contract by dismissing her without just cause. The ultimate criterion of just cause is whether an employer acted reasonably in discharging an employee for misconduct. In re Grievance of Brooks, 135 Vt. 563, 568 (1977). There are two requisite elements which establish just cause for dismissal: 1) it is reasonable to discharge an employee because of certain

conduct, and 2) the employee had fair notice, express or fairly implied, that such conduct would be grounds for discharge. Id. In re Grievance of Yashko, 138 Vt. 364 (1980).

The burden of proof on all issues of fact required to establish just cause is on the employer, and that burden must be met by a preponderance of the evidence. Colleran and Britt, 6 VLRB 235, 265 (1983). Once the underlying facts have been proven, we must determine whether the discipline imposed by the employer is reasonable given the proven facts. Id. at 266.

The Employer made numerous charges against Grievant, as detailed in Finding of Fact No. 26. A summary of the charges are: 1) violation of the PATH Conflict of Interest Policy by using the computer outside her assigned duties on approximately 92 occasions to look up client records on persons with whom Grievant had family or personal relationships; 2) exceeding the scope of her duties in General Assistance cases by processing initial applications without authorization six times and processing ongoing General Assistance “over income” applications 15 times; 3) taking actions in three other General Assistance cases contrary to policy and instructions of supervisors; 4) violating the PATH Conflict of Interest Policy and Confidentiality Policy through a telephone call to Michael Lague; 5) exceeding the scope of her authority and violating the Confidentiality Policy through a telephone call to a pharmacist; 6) exceeding her authority and violating a PATH policy by releasing information on a client to a Social and Rehabilitation Service employee; 7) violating the Conflict of Interest Policy by attempting to transfer her daughter’s case to the Morrisville District Office; 8) using unprofessional language in the office; and 9) making several dishonest statements during the investigation of her alleged misconduct.

We conclude that the Employer has met its burden with respect to proving by a preponderance of the evidence each of these charges against Grievant. As detailed in the Findings of Fact, the Employer has established by a preponderance of the evidence the underlying facts supporting the charges. The Employer also has established that Grievant had fair notice of the pertinent policies violated, and that Grievant's actions were in contravention of those policies.

The charges against Grievant having been proven, we look to the factors articulated in Colleran and Britt, 6 VLRB at 268-69, to determine whether the proven charges justify dismissal. The pertinent factors here are: 1) the nature and seriousness of the offenses and their relation to Grievant's duties and position, 2) Grievant's fiduciary role: 3) the effect of the offenses upon supervisors' confidence in Grievant's ability to perform assigned duties, 4) the clarity with which Grievant was on notice of the prohibited conduct, 5) Grievant's past work record, 6) Grievant's past disciplinary record, 7) the potential for Grievant's rehabilitation, and the 8) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future.

Grievant's offenses were very serious. By accessing confidential client records on numerous occasions outside the scope of her duties, Grievant violated the trust placed in her to access only client information that is needed to perform her duties and acted contrary to her fiduciary role. She demonstrated a disturbing pattern of disregarding rules and instructions from her supervisors in taking actions beyond the scope of her duties on repeated occasions. Other actions demonstrated an inappropriate disregard of PATH policies, particularly those relating to conflict of interest and confidentiality. Her vulgar comments in the workplace directed against her supervisors constituted unprofessional

behavior, especially because some of these comments could have been overheard by clients. Grievant exacerbated her misconduct by repeated dishonesty during the Employer's investigation of the charges against her. Grievance of Pretty, 22 VLRB 260, 270 (1999). Grievance of Johnson, 9 VLRB 94 (1986). *Affirmed*, Sup. Ct. Docket No. 86-300 (December 20, 1989).

These actions of Grievant obviously had an adverse effect on supervisors' confidence in Grievant's ability to perform her assigned duties. She had fair notice, express or implied, that the misconduct she engaged in would result in disciplinary action. Grievant's satisfactory work record and lack of previous discipline over 15 years of employment operate in her favor, but these factors are substantially outweighed by the frequency and seriousness of her offenses.

Grievant has not demonstrated a potential for rehabilitation. She engaged in a pattern of disregard of supervisory authority, policies and the scope of her duties. She did not take responsibility for these substantial shortcomings. Instead, she has dishonestly denied her misconduct and has demonstrated a continuing unwillingness to accept the scope of her assigned duties.

We conclude that the Employer acted reasonably by bypassing progressive discipline and determining there was no alternative sanction to dismissal that would be effective. In sum, just cause existed for Grievant's dismissal.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the Grievance of Rhoda Westbrook is dismissed.

Dated this ____ day of October, 2002, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Catherine L. Frank, Chairperson

Carroll P. Comstock

Richard W. Park