VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 17-47
PETER BECKER	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On November 3, 2017, Peter Becker ("Grievant") filed a grievance, contending that the State of Vermont Department for Children and Families ("Employer") violated Article 14 of the collective bargaining agreement between the State of Vermont and the Vermont State Employees' Association for the Non-Management Bargaining Unit effective July 1, 2016 to June 30, 2018 ("Contract") by unjustly dismissing him.

A hearing was held in the Labor Relations Board hearing room in Montpelier on May 24, 2018, before Board Members Robert Greemore, Acting Chairperson; James Kiehle and Alan Willard. Assistant Attorney General Jacob Humbert represented the Employer. Grievant represented himself. The Employer and Grievant filed post-hearing briefs on June 8 and 12, respectively.

FINDINGS OF FACT

1. The Contract provides in pertinent part:

. . .

ARTICLE 14
DISCIPLINARY ACTION

1. No permanent or limited status 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:
    a. act promptly to impose discipline . . . within a reasonable time of the offense;
    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 designated representative . . . may dismiss an employee with just cause with two (2) weeks' notice or two (2) weeks' pay in lieu of notice. . .
3. Notwithstanding the provisions of paragraph 2 above, the appointing authority or authorized representative . . . may dismiss an employee immediately without two (2) weeks' notice or two weeks' pay in lieu of notice for any of the following reasons:

. . .

(b) gross misconduct;

. . .

8. The appointing authority or authorized designee may suspend an employee without pay for reasons for a period not to exceed thirty (30) workdays. . .

. . .

10. In any misconduct case involving a suspension or dismissal, should the Vermont Labor Relations Board find just cause for discipline, but determine that the penalty was unreasonable, the Vermont Labor Relations Board shall have the authority to impose a lesser form of discipline.

. . .

2. State Personnel Policies and Procedures provide in pertinent part as follows:

. . .

Number 3.1 – SEXUAL HARASSMENT

PURPOSE AND POLICY STATEMENT

The State of Vermont prohibits sexual harassment. Sexual harassment violates an individual's basic civil rights, undermines the integrity of the workplace, and adversely affects workers and clients whether or not they are direct subjects of harassment. Sexual harassment is a form of discrimination on the basis of sex and/or gender identity and is, therefore, prohibited in the work place, or at any employer-sponsored event or activity during or after business hours . . .

All employees . . . are expected to comply with this policy and take appropriate measures to ensure that sexual harassment does not occur, and are encouraged to report it when it does. Disciplinary action, up to and including dismissal, will be taken against any employee who engages in sexual harassment or who otherwise violates this policy.

. . .

DEFINITION OF SEXUAL HARASSMENT

. . . Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:
. . .
(c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive work environment.

Sexual harassment can be verbal, physical, auditory, and/or visual. It can be either subtle or overt. Sexual harassment refers to behavior that is not only unwelcome, but which can also be personally offensive, fails to respect the rights of others, lowers morale and interferes with work effectiveness, or violates a person's sense of well-being.
. . .

Number 5.6 – EMPLOYEE CONDUCT
. . .
<u>REQUIRED CONDUCT</u>
1. It shall be the duty of employees to fulfill to the best of their ability the duties and responsibilities of their position. Employees shall pursue the common good in their official activities, and shall uphold the public interest, as opposed to personal or group interests.
. . .
3. Employees shall conduct themselves in a manner that will not bring discredit or embarrassment to the State of Vermont . . .
. . .
<u>PROHIBITED CONDUCT</u>
1. Employees shall not use, or attempt to use, their positions to obtain special privileges or exemptions for themselves or others.
2. Employees shall not use, or attempt to use, State personnel, property, or equipment for their private use or for any use not required for the proper discharge of their official duties.
. . .
6. Employees shall not disclose, directly or indirectly, information which they receive or have access to by virtue of their official duties, either for the private gain or benefit of themselves or others, except as authorized by their superiors or by law.
. . .
Number 9.1 – IMMEDIATE DISMISSAL
. . .
Following are some examples of gross misconduct that **<u>may</u>** warrant immediate dismissal of a State employee: *(emphasis in original)*
. . .
- Failure to meet reasonable standards of conduct . . .

. . .
- . . . unauthorized use of property, records, or information.

. . .
- . . . mistreatment of those charged to the care of the employee.

. . .

Number 17.0 – EMPLOYMENT RELATED INVESTIGATIONS

. . .

Employees shall . . . (c)ooperate with investigations, and provide truthful and complete information in accordance with State Personnel Policies and local Work Rules. Refusing to answer, answering incompletely, or answering untruthfully, questions relating to work is considered misconduct for which an employee may be disciplined up to and including dismissal from their employment with the State.

. . .

3. Grievant began employment with the Department for Children and Families as a Benefits Program Specialist in in the Rutland office of the Economic Services Division ("ESD") on November 12, 2013.

4. On June 11, 2014, Grievant received a copy of, and signed, the Department for Children and Families Economic Services Division Conflict of Interest Policy. The Policy provides in pertinent part:

. . .

It shall be the duty of employees to fulfill to the best of their ability the duties and responsibilities of their position. Employees shall pursue the common good in their official activities, and shall uphold the public interest, as opposed to personal or group interests.

. . .

(T)he general principle is that a public employee owes an individual duty to the public and is not permitted to place himself/herself in a position that will subject him or her to conflicting duties, result in personal gain, or cause him or her to act or appear to act other than in the best interest of the public.

The Economic Services Division (ESD) has a substantial compelling interest in restricting unethical practices of its employees not only to protect the internal integrity of the Department but also for the purpose of maintain public confidence in state government. Any action which tends to weaken public confidence should be avoided.

. . .

There are two things that must be stated and understood by employees regarding the Conflict of Interest issue:

1) It is the policy of the State of Vermont and the Economic Services Division that employees must be sensitive to and remove themselves, in every respect, from allegations or circumstances which constitute an actual conflict of interest or the appearance of one.

AND

2) It is your responsibility as a member of this department to inform your supervisor of potential conflict of interest situations, and any situation where the appearance of a conflict of interest might exist both those that relate to you personally and those that relate to other department employees.

. . .

As additional guidance for Department employees, portions of **EMPLOYEE CONDUCT FROM THE STATE OF VERMONT PERSONNEL POLICIES AND PROCEDURES, SECTION 5.6** are reprinted here below:

5.6, SUBSECTION ON PROHIBITED CONDUCT – Number 1: Employees shall not use, or attempt to use, their positions to obtain special privileges or exemptions for themselves or others.

. . .

5.6, SUBSECTION ON PROHIBITED CONDUCT – Number 6: Employees should not disclose, directly or indirectly, information which they receive or have access to by virtue of their official duties, either for the private gain or benefit of themselves or others, except as authorized by their superiors or by law.

. . .

(State Exhibit 6)

5. As a Benefits Program Specialist, Grievant was responsible for determining eligibility of Vermonters for food, housing and fuel benefits.

6. Grievant's supervisors rated Grievant's overall performance as "satisfactory" in a performance evaluation report for the period June 15, 2015, to June 15, 2016. His immediate supervisor, Howard Berlin, made written comments that "during this past year, you have done a very satisfactory job as a BPS", and that Grievant's service "to our clients has been exemplary". He stated as well that Grievant's "case actions are for the most part accurate and complete", Grievant had "learned the ESD programs very well", he used supervision "very well", and he worked "very well with . . . fellow BPSs and other staff in the Rutland office" (Grievant Exhibit A).

7. Grievant had not received any discipline during his work tenure prior to his dismissal.

8. The Economic Services Division office in Rutland where Grievant worked consists of a waiting room, front desk reception area with a window into the waiting room, and

offices beyond the reception area. Clients check in at the front desk window and then remain in the waiting room until the next available Benefits Program Specialist is available to see them on a first come-first serve basis.

9. Benefits Program Specialists do not maintain a caseload of individually assigned clients. Instead, in-person services are provided consistent with the Economic Services Division Tracker system. The Tracker system is managed by staff at the front desk. When a client checks in, his or her information is logged into the system, which places them in a queue of clients waiting to meet with a Benefits Program Specialist. All Benefits Program Specialists are on a rotation. When a Benefits Programs Specialist is done meeting with a client and completes the necessary paperwork on the client, the Benefits Program Specialist electronically logs out with respect to that client on the Tracker system and then is available under the Tracker system to meet with another client. The Tracker system assigns the next client to the next available Benefits Program Specialist.

10. Ann Masse, a Human Services Case Aid II in the Rutland ESD office at all times relevant, was primarily responsible for staffing the front desk and managing the intake of clients through the Tracker system. On three or four occasions in the approximate 15 month period prior to December 22, 2016, Masse personally observed Becker scan the waiting area, make comments about female clients' physical appearance and then cross reference the Tracker system to identify the client. She understood this conduct to be an attempt by Grievant to handpick seeing this client. On one occasion, Becker asked Masse at the front desk "who's that hot blonde out there?", or words to that effect. After making the comment, Grievant referred to the Tracker system monitor to identify the client's name and place in the queue.

11. Bridget Sheldrick at all times relevant was a Benefits Program Specialist in the Rutland ESD office. At times, she was assigned to the front desk to handle client intake. While at the front desk, Sheldrick observed Grievant on multiple occasions scanning the waiting room and attempting to hand-pick young female candidates he found attractive. On three or four occasions in the six months prior to December 22, 2016, Sheldrick confronted Grievant on such behavior. On one occasion, she told Grievant he was a "creeper". Grievant laughingly dismissed Sheldrick's concerns. Sheldrick was not joking with Grievant when she expressed her concerns.

12. There were occasions when Grievant manipulated the Tracker system process by scanning the lobby to pick out female clients of interest to him, figuring out the client's place in the queue, and then manipulating his own schedule, such as delaying lunch or otherwise timing his logging out of a case so that he was assigned by the Tracker system to meet with the client he had identified.

13. On or about December 22, 2016, Sheldrick was experiencing computer problems at her office desk. Her supervisor directed her to use the computer in Grievant's office. Grievant was absent from his office during this time. While making handwritten notes, Sheldrick made an error. She opened Grievant's desk drawer looking for whiteout. She saw a list, which she recognized as a list of female ESD clients. Grievant had made handwritten notations on the list, including descriptions of physical appearance, medical condition, age and other references to the client. Fifteen clients had an "H" next to their name. Nineteen clients had ages noted. Other notations included: "$", "needs coat", "blond, likes posters", "Petite", "Hep A&C", "? Has Kids", "**Hot!", "OK", "Hot", "married". Sheldrick immediately delivered the list to her supervisor (State Exhibit 1).

14. The Employer placed Grievant on relief from duty with pay status and assigned Peter Canales, Investigator with the Agency of Human Services Investigations Unit, to investigate Grievant's conduct.

15. Canales interviewed Grievant during the investigation. Grievant denied manipulating the Tracker system to handpick clients. Grievant informed Canales that he developed the list discovered by Sheldrick because he believed the clients on the list could benefit from motivational and inspirational materials provided to persons in crisis by a non-profit organization for which he volunteered. Grievant indicated that he had not contacted any of the women on the list concerning the materials provided by the non-profit organization. When questioned by Canales about the reports made by Masse and Sheldrick, Grievant denied asking staff to assign him to a specific female client and denied delaying or timing his availability so as to be assigned a specific female client. When confronted by Canales of contrary reports from Masse and Sheldrick, Grievant admitted that he had asked ESD reception window staff about specific female clients, but claimed he was "joking" because he is a "joker." Additionally, he indicated that Masse was oversensitive regarding some of the things he said or did (State Exhibit 2).

16. Canales visited Grievant's office during his investigation. He observed on the wall of the office a listing of telephone numbers next to a list of five women's names. Above the names on the list was the word "Answer". When Canales asked Grievant about this list during his interview of hm, Grievant indicated he created the list of vulnerable ESD clients with telephone numbers to remind him to answer his telephone should the women on the list call him directly. When Canales asked Grievant why the clients would call him since he did not maintain a caseload of clients, Grievant did not provide a plausible explanation (State Exhibit 2).

17. Sean Brown, Deputy Commissioner of the Economic Services Division, sent a letter to Grievant dated July 6, 2017, providing in pertinent part:

> As a result of your behavior described below, the Department for Children and Families is contemplating imposing serious disciplinary action up to and including dismissal . . You have the right to respond to the specific allegations listed below, either orally or in writing, before the final decision is made. . .
> . . .
> **A. Relevant Provisions of the Non-Management Unit Collective Bargaining Agreement ("CBA"), State Personnel Policies ("PP') and DCF Policies**
> - CBA Article 14, Disciplinary Action
> - PP 3.1 Sexual Harassment
> - PP 5.6 Employee Conduct
> - PP 9.1 Immediate Dismissal
> - PP 17.0 Employment Related Investigations
> - DCF-Economic Services Division ("ESD") Conflict of Interest Policy . . .
>
> **B. Potential Violations of Contractual Agreement, and DCF and State Personnel Policies**
> . . . The State became aware that you might be treating female ESD clients differently than male clients, and that you kept various lists in your office containing the names and sometimes personal information of approximately 55 former or current female ESD clients for no apparent business reason. In your desk drawer was a list of female ESD client names, and you also had post-it notes on your bulletin board with female ESD client names – some with phone numbers. All these lists also contained notes next to some of the females' names, such as their age, "Hot!", "Kill.", "married", "petite", "blond, likes posters", "Hep A & C", and "ok". Many of the names listed had asterisks and/or the letter "H" beside them.
>
> When questioned, you did not have any plausible work-related explanation for maintaining these lists of female ESD client names, other than to suggest that they would all benefit from the services offered by a non-profit organization you volunteer for called Make a Better Me. When asked why you only targeted female ESD clients as benefitting from these non-profit services, you stated that Make a Better Me was "not really a guy thing." You also claimed you included the phone numbers of some of these females in order to be able to contact them if you need to, and that the list of five specific female clients with their phone numbers on your bulletin board was to ensure that you would answer your phone if they called because these women were particularly "fragile and needy." When questioned about the notes and descriptors you included next to some of the women's names, you were either unable to recall your notation system or using these notes to indicate the attractiveness of the female. You also claimed to utilize a couple different descriptors to indicate the homeless status of the woman.
>
> Overall, your explanations for your actions are inconsistent and seem to lack credibility. While the role of a Benefits Program Specialist does indeed include the expectation that

staff evaluate clients' social service needs and make appropriate referrals, you admitted that you have not made any efforts to date to help any of these women besides the services they received during their visits to the Rutland ESD office. Therefore, it does not seem credible that you maintained a list of female clients with various descriptions about their appearance, marital status or health status in order to provide them with additional resources or motivational materials.

Your credibility regarding treatment of females is particularly questioned because of your apparent lack of good judgment in presenting yourself to clients and your observed behaviors toward client selection in the ESD reception area. Specifically, you display a photograph in your office of a woman on a motorcycle with her shirt mostly unbuttoned and her breasts partially showing; this woman is an ESD client with whom you had a personal relationship. The inappropriate photograph is visible to all clients who come to your office for assistance, and your decision to display the image seems to demonstrate poor judgment and insensitivity, as well as a disregard for maintaining a professional work environment. It was also reported that you appear to deliberately target young, attractive female clients from the ESD reception area to meet with. The process for seeing clients in a district office is to take the next client who is in the queue when you are available. It appears that you manipulated this process by scanning the lobby to pick out clients of interest to you – always female – and then making efforts to figure out the client's place in the queue and sometimes manipulate your own schedule to ensure you are the representative assigned to meet with the client. When questioned about this conduct, you initially denied asking staff to assign you a specific female client and denied delaying or timing your availability so as to be assigned a specific female client. However, when confronted with contrary reports from your colleagues, you admitted that you have asked ESD reception window staff about specific female clients, but claimed you were "joking" because you are a "joker."

Additionally, it was reported that you make inappropriate, unprofessional comments about some ESD female clients, such as "she's a looker" and "she's hot." You have been confronted about this seemingly inappropriate behavior by colleagues, but have not taken their concerns seriously. In fact, you described these interactions as "joking with each other," and suggested one co-worker is "oversensitive" regarding some of the things you say and do.

The Vermont Personnel Policies provide employees direction on how to conduct themselves in order to fulfill their duties as public servants. Specifically, it is the duty of all employees to fulfill to the best of your ability the duties and responsibilities of your position, to conduct yourself in a manner that will not bring discredit or embarrassment to DCF and/or the State of Vermont, and maintain a work environment in which everyone is treated with respect and dignity. You are also required to be honest in all dealings with your employer, but it appears that your answers during the investigative process may have been not entirely truthful, in violation of Policy 17.0. Additionally, it is against the ESD Conflict of Interest Policy to take any action that could result in personal gain or cause you to act or appear to act other than in the best interest of the public. Overall, your actions discredit and undermine the reputation of the State of Vermont and DCF-ESD,

> and raise significant questions about your ability to satisfactorily carry out the responsibilities of your position, and to be a respectable and trustworthy employee. Your apparent conduct appears to constitute misconduct and/or gross misconduct and violates all of the above policies and provisions. Accordingly, it appears your conduct provides just cause for disciplinary action up to and including termination of your position with DCF.
> . . .
> (State's Exhibit 3)

18. Deputy Commissioner Brown met with Grievant and VSEA Field Representative Nikolas Stein on August 25, 2017, to allow Grievant to respond to the specific allegations against him. During this meeting, Grievant indicated that he started the list approximately nine months before it was discovered by Sheldrick. When Brown asked Grievant why the list only included women, Grievant indicated that the non-profit organization for which he volunteered – Make a Better Me – primarily served women.

19. Following this meeting, Brown discovered that some of the clients on the list had not received ESD services since 2014 and 2015, and that one of the clients had died in 2014. Brown concluded as a result that Grievant was not truthful when he told him he started the list in 2016. Brown also did a Google search of the non-profit organization, Make a Better Me, and discovered that it did not primarily serve women. Brown concluded that Grievant had been dishonest in this regard as well during the meeting.

20. Deputy Commissioner Brown sent Grievant a letter dated October 4, 2017, which provided in pertinent part:

> I am notifying you of my decision to dismiss you from your position as a Benefits Program Specialist . . . effective at the close of business October 4, 2017. As explained in the July 6, 2017, letter and attachments you received, DCF was contemplating your dismissal for misconduct, and you were provided an opportunity to respond before I made a final decision. A meeting was held on August 25, 2017 to hear a response to those charges. During the meeting, you were represented by Nikolas Stein, VSEA Field Representative.

> In making my final decision, I considered all of the information and arguments you and your representative raised on your behalf, but I did not find that information to overcome the seriousness of your misconduct. I am terminating you because I find that you committed misconduct and gross misconduct, as described in the above-referenced July 6 letter. Specifically, you intentionally violated the State's Sexual Harassment and Employee Conduct policies as well as DCF-ESD's Conflict of Interest policy when you made statements about female clients to female colleagues that were unprofessional and exploitative, maintained lists of names and contact information about numerous female clients to include descriptors about their appearance, personal health information and marital status, for no legitimate business reason, and deliberately manipulated the system in place for seeing clients so as to specifically meet with young, attractive female clients. Additionally, you violated Personnel Policy 17.0 in that you did not answer truthfully the work-related inquiries of the State during the investigative process.
>
> Your conduct was dishonest, disruptive, repeated, severe, and pervasive, and created a negative climate in the workplace. Your actions also demonstrated poor judgment and insensitivity as well as a disregard for maintaining a professional work environment. My trust in you and your ability to perform as a State employee has been destroyed and cannot be repaired. Therefore, I find that no lesser penalty than dismissal is sufficient to address your misconduct.
>
> Because I found that you committed gross misconduct, you will not receive two weeks' notice or two weeks' pay in lieu of notice.
> . . .
> (State's Exhibit 5)

21. In deciding to dismiss Grievant, Deputy Commissioner Brown viewed Grievant's misconduct as serious due to the highly unprofessional conduct of list keeping for personal gain with no legitimate business reasons, repeated inappropriate and unprofessional comments and actions, and subsequent dishonesty. Brown concluded that Grievant inappropriately put his own interests above those of the State and the clients served by the State. Brown determined that Grievant's willful actions abusing his position and dishonest explanations destroyed any confidence the Employer might have in his ability to perform his assigned duties in a professional manner. He concluded as well that the Employer's reputation was at risk if Grievant was allowed to return to work and prey on the vulnerable women who are ESD's clients. Brown further determined that Grievant was on notice he could be disciplined for his misconduct, and

that Grievant did not have any rehabilitative potential given his failure to take responsibility for his actions and his disregard for consumer privacy, basic decency, Vermont Personnel Policies and the safety of others. Brown ultimately concluded that no disciplinary action other than dismissal was adequate to deter such conduct in the future (State Exhibit 4).

OPINION

Grievant contends that the Employer violated Article 14 of the Contract by unjustly dismissing him. Just cause for dismissal is some substantial shortcoming detrimental to the employer's interests which the law and a sound public opinion recognize as a good cause for dismissal. In re Grievance of Brooks, 135 Vt. 563, 568 (1977). The ultimate criterion of just cause is whether an employer acted reasonably in discharging an employee for misconduct. Id. 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 just cause analysis centers upon the nature of the employee's misconduct. In re Morrissey, 149 Vt. 1, 13 (1987). Grievance of Merrill, 151 Vt. 270, 273 (1989). In determining whether there is just cause for dismissal, it is appropriate to determine the substantiality of the detriment to the employer's interests. Merrill, 151 Vt. at 273-274.

Fair notice exists when the employee knew or should have known the conduct was prohibited. Grievance of Towle, 164 Vt. 145, 150 (1995). Brooks, supra, 135 Vt. at 568. This is an objective standard. Grievance of Towle, 164 Vt. at 150. Grievance of Hurlburt, 175 Vt. 40, 50 (2003).

The burden of proof on all issues of fact required to establish just cause is on the employer, and this burden must be met by a preponderance of the evidence. Grievance of Colleran and Britt, 6 VLRB 235, 265 (1983).

The Employer charged Grievant with intentionally violating the State's Sexual Harassment and Employee Conduct policies as well as DCF-ESD's Conflict of Interest policy when he: 1) made statements about female clients to female colleagues that were unprofessional and exploitative, 2) maintained lists of names and contact information about numerous female clients to include descriptors about their appearance, personal health information and marital status, for no legitimate business reason, and 3) deliberately manipulated the system in place for seeing clients so as to specifically meet with young, attractive female clients. Additionally, the Employer contends that Grievant violated Personnel Policy 17.0 in that he did not answer truthfully the work-related inquiries of the State during the investigative process.

The Employer has established the charge that Grievant made statements about female clients to female colleagues that were unprofessional and exploitative to the extent that the evidence established that he made statements to a female colleague, Ann Masse, on three or four occasions about female clients' physical appearance and then cross-referenced the Tracker system to identify, and ultimately handpick, the client. On one occasion, Becker asked Masse at the front desk "who's that hot blonde out there?", or words to that effect. After making the comment, Grievant referred to the Tracker system monitor to identify the client's name and place in the queue.

These unprofessional comments and actions exploiting vulnerable female clients violated the State Sexual Harassment policy prohibiting verbal conduct of a sexual nature which had the effect of creating an offensive work environment and interfering with work effectiveness. He

also violated the State Employee Conduct policy by conducting himself in a manner that brought discredit and embarrassment to the State, and by using his position to further his own personal interests rather than the public interest. He violated the ESD Conflict of Interest policy as well by failing to uphold the public interest and instead pursuing his personal interests of exploiting female clients.

The Employer has established the related charge of deliberately manipulating the system in place for seeing clients so as to specifically meet with young, attractive female clients. Two female colleagues observed him on multiple occasions scanning the waiting room and attempting to handpick female clients he found attractive. He manipulated the Tracker system process by so acting, then figuring out the client's place in the queue, and manipulating his own schedule, such as delaying lunch or otherwise timing his logging out of a case, so that he was assigned by the Tracker system to meet with the client he had identified.

This violated the State Sexual Harassment policy prohibiting conduct of a sexual nature which had the effect of creating an offensive work environment and interfering with work effectiveness. This also violated the State Employee Conduct policy by bringing discredit to the State, and by using his position to further his own personal interests rather than the public interest. He violated the ESD Conflict of Interest policy as well by failing to uphold the public interest and instead pursuing his personal interests of exploiting female clients.

The Employer has established the further charge that Grievant maintained lists of names and contact information about numerous female clients to include descriptors about their appearance, personal health information and marital status, for no legitimate business reason. Grievant presented no plausible work-related explanation for maintaining these lists which were discovered in his desk drawer and on the wall of his office. His keeping of these lists was

offensive towards women clients and violated their privacy rights. He inappropriately used his government position to further his own personal interests in opposition to the public interest; he thereby discredited the State. His actions violated the provisions of the Sexual Harassment, Employee Conduct and Conflict of Interest policies cited above.

The Employer has established the final charge that Grievant violated Personnel Policy 17.0 in that he did not answer truthfully the work-related inquiries of the State during the investigative process. We conclude by a preponderance of the evidence that Grievant was dishonest with the State Investigator when he: 1) denied manipulating the Tracker system to handpick clients, 2) told the investigator that he developed the list discovered by a colleague because he believed the clients on the list could benefit from motivational and inspirational materials provided to persons in crisis by a non-profit organization for which he volunteered, and 3) denied delaying or timing his availability so as to be assigned a specific female client.

We further conclude that Grievant was dishonest during the meeting with Deputy Commissioner Brown prior to his dismissal when he indicated that he started the list of female clients found in his desk drawer approximately nine months before it was discovered, and when he told Brown that the non-profit organization for which he volunteered primarily served women. Instead, the evidence indicates that the list would have been started by Grievant much sooner than nine months before it was discovered. The evidence shows as well that the non-profit organization did not primarily serve women. This repeated dishonesty by Grievant violated Personnel Policy 17.0 provisions requiring employees to cooperate with investigations and provide truthful information.

The underlying charges having substantially been proven, we must determine whether the discipline imposed by the employer is reasonable given the proven charges. Colleran and Britt, 6

VLRB at 266. Grievance of Simpson, 12 VLRB 279, 295 (1989). If the employer establishes that management responsibly balanced the relevant factors in a particular case and struck a reasonable balance, its penalty decision will be upheld. Colleran and Britt, 6 VLRB at 235.

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, 2) Grievant's job level and type of employment, 3) the clarity with which Grievant was on notice of any rules that were violated in committing the offenses, 4) Grievant's past disciplinary record, 5) Grievant's past work record, 6) the effect of the offenses upon supervisors' confidence in Grievant's ability to perform assigned duties, 7) the impact of the offenses upon the reputation of the Employer; 8) the potential for Grievant's rehabilitation, and 9) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future.

Grievant's offenses were very serious in relation to his job duties. His comments and actions towards female clients were unprofessional, offensive, exploitative, manipulative of the system in place for seeing clients, and demonstrated poor judgment. His misconduct in this regard was repeated, severe, and in disregard of the privacy rights of the female clients. Grievant was employed in a sensitive government position working with vulnerable persons, and he violated the trust placed in him by abusing his position and exploiting these clients. His repeated dishonesty during the investigative process exacerbated the seriousness of his misconduct.

Grievant had fair notice that the conduct he engaged in was prohibited. He had explicit notice when he received the ESD Conflict of Interest Policy in June 2014 that he "shall pursue the common good in . . official activities, and shall uphold the public interest, as opposed to . . personal interests", and that he was not "permitted to place himself . . in a position that will . . .

result in personal gain". He had clear notice under this policy that his unprofessional comments and actions exploiting vulnerable female clients, and putting his own personal interests above those of the State and the clients served by the State, were prohibited. He also had implied notice that his unprofessional, offensive, exploitative, and manipulative actions did not belong in a workplace serving vulnerable clients.

He had fair notice as well that his dishonesty during the investigative process could be grounds for discharge. Honesty is an implicit duty of every employee and, at a minimum, an employee should know that dishonest conduct is prohibited. Grievance of Carlson, 140 Vt. 555, 560 (1982). Dishonesty by employees is grounds for serious punishment, and the Board and the Vermont Supreme Court have upheld dismissals for dishonesty in several cases. Id. Grievance of Alexander, 34 VLRB 33, 52-53 ((2017). Grievance of Turcotte, 30 VLRB 24 (2008). Grievance of Cray, 25 VLRB 194 (2002). Grievance of Newton, 23 VLRB 172 (2000). Grievance of Coffin, 20 VLRB 143 (1997). Grievance of Johnson, 9 VLRB 94 (1986); *Affirmed*, Sup.Ct. Docket No. 86-30 (1989. Grievance of Graves, 7 VLRB 193 (1984); *Affirmed*, 147 Vt. 519 (1986). Grievance of Cruz, 6 VLRB 295 (1983). Grievance of Barre, 5 VLRB 10 (1982).

Grievant's past disciplinary record and work record are the only factors which do not weigh against him in determining whether just cause existed for his dismissal. He had no previous disciplinary action during his relatively brief tenure of employment. Grievant's supervisors provided him with an overall rating of satisfactory in the only annual performance evaluation entered into evidence.

Grievant's offenses understandably had a detrimental effect on the Employer's confidence in Grievant's ability to perform assigned duties. The Employer reasonably

determined that Grievant's actions abusing his position and dishonest explanations destroyed any confidence the Employer might have in his ability to perform his duties in a professional manner.

The reputation of the Employer would be at risk if Grievant was allowed to return to work and provide services to the vulnerable female clients whom he had exploited. There would be a significant adverse effect on public confidence in the proper functioning of the Economic Services Division. Grievant's potential for rehabilitation was weak given his failure to take responsibility for his actions, his repeated exploitative behavior towards vulnerable female clients, and his disregard of the privacy rights of clients.

We conclude in consideration of all these factors that the Employer acted reasonably in bypassing progressive discipline and concluding that alternative sanctions less than dismissal would not be effective. The Employer reasonably determined that the totality of Grievant's misconduct constituted gross misconduct. In sum, Grievant's actions were substantial shortcomings detrimental to the Employer's interests and just cause existed for his immediate dismissal.

ORDER

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

Dated this 11th day of July, 2018, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Robert Greemore

Robert Greemore, Acting Chairperson

/s/ James C. Kiehle

James C. Kiehle

/s/ Alan Willard

Alan Willard