

**Matter of Ayler v Queens Children's Psychiatric
Ctr.**

2008 NY Slip Op 31225(U)

April 22, 2008

Supreme Court, New York County

Docket Number: 0111396/2007

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JUDITH J. GISCHE, J.S.C.

PART 10

Index Number : 111396/2007

AYLER, SHAQUANA

vs

QUEENS CHILDREN'S PSYCHIATRIC

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.

FILED

APR 29 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: April 22 2008

JUDITH J. GISCHE, J.S.C.

J.S.C.

Check one: FINAL DISPOSITION
Check if appropriate: DO NOT POST

NON-FINAL DISPOSITION
 REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10**

-----X

In the Matter of the Application of

Shaquana Ayler,

Petitioner,

For a Judgment pursuant to
Article 78 of the CPLR

-against-

Queens Children's Psychiatric Center,
Sharon Carpinello, RN, Ph.D as
*Commissioner of NYS Office of
Mental Health,*
Keith M. Little, as *Executive Director of
Queens Children's Psychiatric Center,*
Julie Trapani as *Director of
Human Resources at Queen's
Children's Psychiatric Centre; and*
Susan McLaughlin, as *OMH Agency
Labor Relations Representative assigned to
Queen Psychiatric Center,*

Respondents.

-----X

DECISION/ORDER

Index No.: 111396-2007

Seq. No.: 001

Present:

Hon Judith J. Gische, JSC

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APR 29 2008
COUNTY CLERK'S OFFICE
NEW YORK

Recitation, as required by CPLR § 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers	Numbered
N/P and Pet, exhs	1
Verified Answer	2
Defs' opp w/JT affid, RCA affirm (sep backs) exhs	3,4

Upon the foregoing papers, the decision and order of the court is as follows:

In this petition brought pursuant to Article 78, petitioner seeks a review of the respondent's decision dated April 16, 2007 to terminate her from employment at the Queens Children's Psychiatric Center ("termination decision"). The respondents are

her the hospital, its director, the director of human resources, and a labor representative (collectively hereinafter "employer" or "respondents"). Respondents have answered the petition and seeks its dismissal.

Since the petition is timely, and seeks the review of a final determination by the respondent, the court will decide whether there are factual disputes that must be resolved at trial, or whether the petition can be decided on the record developed. CPLR § 7804 (h).

Claims Made and Arguments Presented

Petitioner, who has Multiple Sclerosis ["MS"], was hired by respondents as a cleaner on February 12, 2004. She was terminated from employment on April 16, 2007. Her termination letter states that "you have violated the terms and conditions of Time and Attendance Probation . . ." This is in reference to the October 19, 2006 decision of the Permanent Umpire in connection with a prior time and attendance disciplinary hearing against her. That decision set forth eight (8) terms of probation. Among them were that petitioner have no "instances of unauthorized absence" and that "any absence claimed [by petitioner] to be related to her MS" be supported by "medical documentation within one (1) week from the date of the absence . . ."

Petitioner contends she had bronchitis and was out of work from February 5th through February 13, 2007. She returned to work on February 14, 2007 with a note from her doctor. Petitioner states that she provided this note to the Assistant Director who accepted it, and did not ask for anything else. Thereafter, petitioner received a memo dated April 3, 2007 from Julie Trapani, the Director of Personnel, who told her she thought the note had been altered. Further, Ms. Trapani stated that it did not

contain a statement of diagnosis, or specify the dates of disability. Ms. Trapani instructed the petitioner to submit a medical certificate form completed by her doctor. Petitioner complied, supplying the form on April 18, 2007. The certificate sets forth the diagnosis ("bronchitis") and the dates of treatment which coincide with the dates on the previous note by the same doctor.

Plaintiff contends that not only did she not have an unauthorized absence, her absence was due to an ailment separate from her MS, and therefore, not subject to the more rigorous requirements imposed on her MS related absences. Thus, it is plaintiff's contention the doctor's note was sufficient to excuse her absence, and therefore it was not an unauthorized absence. Further, plaintiff contends she complied with her employer's request that she provide a completed medical certificate once they asked for it. Based upon these facts, plaintiff claims that her employer's decision to terminate her was without sound basis in reason, and therefore arbitrary and capricious.

Respondents contend that petitioner did not comply with the terms of her probation which was that 1) she not have any unauthorized absence, and 2) she submit medical documentation to support her claim that her absence was MS related. They contend petitioner was required, but failed to, provide a completed medical certificate within a week of her absence. Moreover, they contend that the note appears to have been altered, but they do not describe in what way. Ms. Trapani provides her sworn affidavit and states that she sent the doctor a fax asking him to confirm the authenticity of the note, but he did not respond. That request was made April 3, 2007, the same date she sent a memo to petitioner asking her to provide a completed medical form. Ms. Trapani states that she requested the form again on April 6th, 9th, and 13th, but

petitioner did not comply until April 18th. The termination letter was sent by the respondent's executive director, Keith Little on April 16, 2007.

Discussion

The applicable standard of review is whether the respondent's determination had a rational basis or whether it was arbitrary and capricious. CPLR § 7803; Matter of Gilman v. New York State Div of Housing and Community Renewal, 99 NY2d 144, 149 (2002). Where the determination is rationally based upon the administrative record, it should not be disturbed. Matter of Salvati v. Eimicke, 77 NY2d 784 (1988); Elgart v. DHCR, 2 AD3d 218 (1st Dep't 2003). While pure issues of law should be determined by the court, issues concerning the interpretation of a statute or regulation by the agency responsible for its administration should be upheld, if it is not irrational or unreasonable. Madison-Oneide Board of Compaartive Educational Servicesv. Mills, 4 NY3d 51 (2004); Allstate Ins. Co. V. Libow, 106 AD2d 110 (2nd dept. 1984) aff'd 65 NY2d 807 (1985).

The terms of her probation were that plaintiff provide medical documentation for any absence she claimed was attributable to her MS. Although respondents have correlated petitioner's absence to her MS, this is not something petitioner has ever claimed. Thus, petitioner provided medical documentation immediately upon returning to work. Respondents contend the note was not complete, and quite possibly doctored. This, however, was not brought to her attention until Ms. Trapani sent her memo of April 3, 2007. Petitioner complied with her request for a completed medical form. The form does not attribute petitioner's absence to her MS, but confirms petitioner had bronchitis.

Since petitioner provided medical documentation of her illness (bronchitis)

following her absence, she did not have an unauthorized absence. Moreover, she has made no claim that the absence was due to her MS. Therefore, petitioner did not violate the terms and conditions of her time and attendance probation. The respondents' decision to terminate her from employment because she violated her probation was without rational basis, and therefore arbitrary and capricious, an abuse of discretion and undertaken in bad faith.

The petition is granted and the respondents are directed to reinstate petitioner to the position of cleaner with full back pay and benefits and without any loss of seniority.

The Clerk shall enter judgment in favor of petitioner against respondents.

Conclusion

In accordance with the foregoing,

It is hereby

ORDERED that the petition is granted and the respondents are directed to reinstate petitioner to the position of cleaner with full back pay and benefits and without any loss of seniority; and it is further

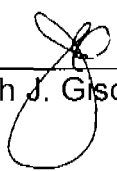
ORDERED that the Clerk shall enter judgment in favor of petitioner against respondents; and it is further

ORDERED that any relief requested that has not been addressed has nonetheless been considered and is hereby expressly denied; and it is further

ORDERED that this shall constitute the decision, order and Judgment of the court.

Dated: New York, New York
April 22, 2008

So Ordered:



Hon. Judith J. Gische, JSC

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NEW YORK