

Matter of Parker-Skrine v Schriri

2010 NY Slip Op 31334(U)

May 25, 2010

Sup Ct, NY County

Docket Number: 101365/10

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. JUDITH J. GISCHE

PRESENT: J.S.C.
Justice

PART 10

Index Number : 101365/2010
PARKER-SKRINE, HARRIET
VS.
SCHRIRO, DR. DORA
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

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 (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.**

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

UNFILED JUDGMENT
*This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room*

Dated: 5/25/10

J.S.C.
HON. JUDITH J. GISCHE *J.S.C.*

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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

-----X

In the Matter of the Application of
Harriett Parker-Skrine,

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

Index No. 101365/10

-against-

Dr. Dora Schriri, Correction Commissioner
of the New York City Department
of Correction; THE NEW YORK CITY
DEPARTMENT OF CORRECTION; and THE CITY
OF NEW YORK,

UNFILED JUDGMENT
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obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
1-115).

Judith J. Gische, J.:

Pursuant to CPLR 2219(a) the following numbered papers were
considered by the court on this petition:

PAPERS	NUMBERED
Notice of Petition, Verified Petition, exhibits.....	1
Verified Answer, exhibits.....	2
Reply.....	3

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

In this Article 78 petition, petitioner Harriett Parker-
Skrine requests that she be reinstated to her position as a New
York City corrections officer, with back pay.

Petitioner became a corrections officer in May 1991. Due to
petitioner's excessive sick leave absences between January 2006

and January 2008, respondents filed charges against her in November 2007 and September 2008. The matter was settled by the execution by the parties of a "Negotiated Plea Agreement for Settlement of Disciplinary Matters Within the Department of Correction" (Plea Agreement) and a "Probation Agreement Form." Petition, Exs. B, C.

Under the Plea Agreement, petitioner agreed to accept a penalty of forfeiture of 30 vacation days, and to be subject to a probationary period of one year. The Plea Agreement gave respondents the right to terminate petitioner during the probationary period for violation of any New York City Department of Correction (DOC) "sick rules, regulations and directives." Under the Plea Agreement, petitioner waived the right to be afforded written charges and a due process hearing if she violated the terms of the Plea Agreement.

Petitioner was summarily terminated in a letter dated November 2, 2009. In her petition, it is clear that petitioner believed that she was terminated under DOC Directive 2258R-A, pertaining to the amount of sick-leave absences an employee may amass in a particular period of time. However, in their answer, respondents offer a different reason for terminating petitioner, one which she claims has only now been revealed to her, by way of respondents' answer.

Respondents claim that petitioner violated sick-leave rules

contained in DOC Directive 2262R, in that she failed to keep a scheduled appointment with DOC's Health Management Division (HMD) for 11:00 A.M. on January 7, 2009. In the recommendation of the Warden of the correctional facility where petitioner worked (Recommendation), he notes that:

as per the communication form from HMD it states that the member of service was called at 16:00 hours regarding her missed appointment because she is in chronic status the member of service stated that she is aware that she missed the 11:00 hours appointment and she will call the nursing unit to reschedule an appointment.

Answer, Ex. 6, at 1. However, the Recommendation also notes that, as stated in an attached hand-written report made the day of the alleged appointment, "[petitioner] stated that she is not chronic but logged out to Medical Center." *Id.* Petitioner does not dispute that this conversation took place, or that she claimed to know about the appointment at that time. By 5:35 P.M., when petitioner had failed to appear or reschedule, she was declared Absent Without Leave (AWOL). Her termination followed.

DOC Directive 2262R (Answer, Ex. 4) requires DOC members to comply with all orders of the HMD, or be subject to disciplinary action. *Id.* at 1. Failure to appear at a scheduled appointment with the HMD is an infraction of DOC Directive 2262R. *Id.* at 8; see *Matter of Tankard v Abate*, 213 AD2d 320 (1st Dept 1995) (failure to meet an HMD appointment is sick leave violation). Respondents maintain that they had the right to

terminate petitioner as a result of her failure to appear before the HMD, and the resulting AWOL determination, all in violation of the Plea Agreement.

Petitioner claims that she did not have an appointment with the HMD. She maintains that she would only have had to appear before the HMD had she had a status as "chronic" with regards to her absenteeism during her probationary period, and that she did not qualify for such a designation.

DOC Directive 2258R-A applies to chronic absenteeism. Petition, Ex. C. It defines a chronic absentee member to be one who misses 12 days in a 12-month period due to illness. *Id.* at 2. Pursuant to this Directive, "[n]o employee who has a chronic absent classification, shall be permitted to return to duty without authorization from the [HMD]." *Id.* at 6. Further, "[s]uch members scheduled to work the 8-4 tour, who report sick shall report in person to the [HMD] no later than 11:00 hours on the day the member reports sick." *Id.* Petitioner, in her petition, admits that she had incurred 12 days of sick leave in May and June 2009 (Petition, at 3), but also flatly claims that she did not qualify for a designation as a chronic absentee under DOC Directive 2258R-A. *Id.* Respondents do not address whether or not petitioner was a chronic absentee, noting only that petitioner denied that the designation applied to her.

Petitioner argues that she was not required by any Directive

to report to the HMD on January 7, 2009, and so, cannot be punished for failure to do so. Further, she believes that the attachment to the Recommendation, made in response to her communications with the HMD personnel, makes clear that the HMD knew that her status was not "chronic."

In reviewing the determinations of administrative agencies, the court looks only to whether the determination is "supported by a rational basis, and is neither arbitrary nor capricious" *Matter of Nehorayoff v Mills*, 95 NY2d 671, 675 (2001); see also *Matter of Pell v Board of Education of Union Free School District No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222 (1974).

There is no evidence presented by respondents of when someone scheduled an appointment for petitioner with the HMD. Regardless, petitioner does not deny that she admitted to the DOC representative on the day of the appointment that there was an appointment, which she agreed to reschedule, and that she did not. This is an infraction of sick leave rules under the Plea Agreement. See *Matter of Tankard v Abate*, 213 AD2d 320, *supra*. As such, respondents had a reasonable basis to find that petitioner was in dereliction of DOC's "sick rules, regulations and directives" under the Plea Agreement. Consequently, respondents' determination to terminate petitioner's employment

was not without a rational basis, and will be upheld.

Accordingly, it is

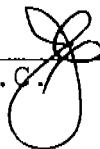
ADJUDGED that the petition is denied, and the proceeding is dismissed.

Any requested relief not expressly addressed herein is denied. This constitutes the decision and order of the court.

Dated: New York, NY
May 25, 2010

ENTER:

J.S.C.

A handwritten signature in black ink, consisting of a stylized, looped flourish, is written over a horizontal line. The signature is positioned above the text "J.S.C." and the line.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).