

RE: FREQUENT UNAUTHORIZED ABSENCES OF MS. NAHREN D. HERNAEZ

A.M. No. 2008-05-SC. August 06, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

MS. Nahren D. Hernaez, Utility Worker II, Maintenance and General Services Division, detailed to the Personnel Division, Office of Administrative Services (OAS), is administratively charged with habitual absenteeism.

The Antecedents

In her Report[1] dated March 26, 2008, Gloria P. Kasilag, Supervising Judicial Staff Officer, OAS, brought to the attention of the Complaint and Investigation Division, this Court, for appropriate action the matter of habitual absenteeism of the said utility worker, as follows:

Year 2007 MONTH

Number of Days Absent

Year 2007 MONTH

Number of Days Absent

January

July

February

15

August

March

8

September

April

October

May

November

5

June

2

December

17.624

On April 3, 2008, Atty. Eden Candelaria, Deputy Clerk of Court and Chief Administrative Officer, OAS, submitted a report and recommendation dated April 1, 2008:

The Civil Service Law allows only a maximum of 2.5 unauthorized absences in a month, any excess for at least three (3) months in a semester or at least three (3) consecutive months during the year has a corresponding sanction as circumscribed by the rules. Pertinent to this is Section 22(q) of the Omnibus Rules Implementing Book V of the Administrative Code of 1987, reiterated in Memorandum Circular No. 4, series of 1991, which reads as follows:

A. "HABITUAL ABSENTEEISM

- An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three (3) months in a semester or at least three (3) consecutive months during the year."

Ms. Hernaez's Leave Card shows that for the month of September 2007, out of ten (10) leave applications, three (3) days were disapproved covering the period September 17-19, 2007. For November 2007, out of six (6) leave applications, five (5) days were disapproved. For December 2007, she did not report for work, and her subsequent sick leave applications were disapproved for that month, which totaled 17.624 days.

Once the leave application is recorded in the leave card of the personnel concerned, the Leave Division, this Office is under no obligation to retain long duration leave applications that have been acted upon, this is to prevent congestion of unnecessary papers which clog office space/s. Ms. Hernaez's leave application for the month of September is no longer available as her application had already been reflected in the leave card. Among the leave applications that are still with the Office of Administrative Services are that of November, December 2007, and January 2008, and it shows the following actions taken by the concerned immediate supervisor:

Undated Sick Leave Application for absence on November 29, 2007 with the reason: she went to a doctor with her daughter because of hyperacidity. The wordings of the action taken where: "disapproved due to late filing, after thought, same reason as 11/26 - vomiting."

Sick Leave Application dated December 17, 2007 for absences on December 3-7, 190-14, 2007 (10 days) with Medical Certificate dated December 5 advising medication and rest for 8 days due to Benign Positional Persistent Vertigo. The wordings of the action taken where: "Disapproved sick leave application has been overused and abused. No actual medical intervention has happened. Habitual."

Due to her straight absences since November 29, 2007, a Memorandum dated January 7, 2008 was sent to Ms. Nahren D. Hernaez and received by the latter on January 8, 2008, directing her to return to work and undergo medical check up at the Supreme Court Clinic. She neither reported for work nor submitted herself for medical check up at the SC Clinic.

Ms. Hernaez filed a Sick Leave Application dated January 16, 2008 for absences on December 17-21, 26-28, January 7-11, 14 (14 days) with a Medical Certificate dated January 5, 2008, advising medication and rest for 9 days due to Benign Positional Persistent Vertigo. The wordings of the action taken where: "Disapproved, no medical certificate for the period 17-21; 26-28, 2007. For the period January 7-11, 14, 2008, same medical

certificate conveniently issued on December 5, 2007."

The Special Leave Application dated January 16, 2008 for absences on January 2, 3 & 4, 2008 (3 days) was belatedly filed. The wordings of the action taken where: "disapproved, application of a scheme to circumvent leave law."

Perusing the previous Memoranda to Ms. Nahren D. Hernaez shows:

- 1) On January 16, 2003, she was sent a letter by this office to explain within five (5) days why she should not be dropped from the roll for having been continuously absent from office since December 20, 2002.
- 2) A Memorandum by this Office dated March 21, 2006 to Ms. Nahren D. Hernaez also cited her act of reporting irregularly to the prejudice of her assigned task.
- 3) As a result of incurring absences more frequently than the allowable number of days per month from January to August 2006, a Memorandum dated September 7, 2006 enjoined her to report to office regularly and sternly warned that any further incursion of absences shall constrain the office to file the necessary administrative charges.

It appears from Ms. Hernaez's record that sick leave applications have been abused and overused even prior to the report of the Leave division, this Office. The approving authority of leave applications within OAS is duty bound to verify and satisfy for herself the veracity of sick leave applications. This is in accord with No. 2 of Supreme Court Administrative Circular No. 14-2002 dated March 18, 2002, to wit:

In case of claim of ill health, heads of department or agencies are encouraged to verify the validity of such claim and, if not satisfied with the reason given, should disapprove the application for sick leave. On the other hand, cases of employees who absent themselves from work before approval of their application should be disapproved outright.

The aforesaid Supreme Court Administrative Circular jibes with the CSC ruling that:

x x x when a sick leave of absence is filed by an employee, the head of office does not have any other choice but to grant the same. In which case, it becomes now a ministerial duty on the part of the agency to grant the application for sick leave, the only exception, is when the head of agency entertains doubt on the employee's claim of ill health. In such case, it is incumbent upon the head of agency to determine or verify the veracity of the employee's claim of ill health. On the other hand, leave of absence for any other reason than illness of an officer or employee is discretionary on the part of the head of agency to approve the same.

Except that, verification of Court employees' sick leave application's authenticity is lodged with heads of department of agencies and not on the head of the agency. In Ms. Hernaez' case, the Chief of Office where she is under supervision of, or his/her representative, the Assistant Chief of Office is left with this task.

Ms. Hernaez submitted a Medical Certificate showing that she has a benign postural persistent vertigo. This is actually treatable with the appropriate repositioning maneuver of the head/eyes from left to right to prevent/reduce dizziness that transpired in a given time. Benign paroxysmal positional vertigo (BPPV) is based on the patient's history and eye movements evoked during positional tests. x x x Once the involved canal is identified, BPPV may be effectively treated with a physical maneuver. The maneuvers may be performed by a clinician or by patients themselves.

Benign paroxysmal positional vertigo is the most common cause of peripheral vertigo. This type of vertigo occurs when you move the position of your head in a sudden manner. The attacks last up to a minute. This kind of vertigo results from the dislodgment of normal crystalline structures in the ear's balance detectors. Vestibular rehabilitation exercises may help in this condition. They consist of having you sit on the edge of a table and lie

down to one side until the vertigo resolves followed by sitting up and lying down on the other side, again until the vertigo ceases. This is repeated until the vertigo is no longer inducible.

The rest periods can have a maximum of three (3) days, the eight (8) and nine (9) days rest period issued to Ms. Hernaez is highly questionable and no treatment whatsoever was carried out. Moreover, her leave of absence has exceeded the advised rest periods. A special privilege leave was applied subsequent thereto, which was also disapproved.

Ms. Hernaez incurred unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three (3) months in a semester, that is, for the month of September, November and December 2007. She even subsequently incurred nine (9) days [January 2-4, 7-11, 14] unauthorized absences for January, 2008.

On the other hand, her prior unauthorized absences for the month of February [15 days], March [8 days] and June [2 days] 2007, though short of the number of days for the month of June to qualify for habitual absenteeism, can still be sanctioned pursuant to Administrative Circular No. 14-2002 dated March 18, 2002, which under the whereas clause provides:

WHEREAS, x x x "Absenteeism and Tardiness, even if such do not qualify as 'Habitual' or 'Frequent' under CSC MC No. 04, s. 1991, shall be dealt with severely x x x." (underscore supplied)

Moreover, in a Memorandum dated February 22, 2008, this Office inquired from Dr. Prudencio P. Banzon, Jr., SC Senior Chief Staff Officer of the Medical and Dental Services on whether Ms. Hernaez submitted herself for medical examination in the months of January or February, 2008 and the results thereof if such was the case. Said OAS Memorandum was received by the Medical and Dental Services on February 26, 2008 and in response, Dr. Banzon sent a Memorandum dated March 5, 2008 stating among others as follows:

Clinic records show that on the 22nd of February, 2008, Ms. Hernaez came and sought consult at the SC Clinic. On both occasions, she was attended by Dr. Consuelo Bernal, the clinic physician assigned in the treatment area.

On February 22, 2008, Ms. Hernaez was complaining of headache. Her BP was found to be elevated at 150/100, for which stat dose of anti-hypertensive medication was given her. Her BP gradually settled down to 130/90 and after several minutes of rest she left the clinic, apparently feeling better.

A week later, on February 28th 2008, Ms. Hernaez again sought consult as (sic) the SC Clinic, this time complaining of "dizziness." Her BP was 140/90. She was again given stat dose of anti-hypertensive medication and advised to rest at the SC Clinic." (emphasis supplied)

The Memorandum of this Office received by Ms. Nahren D. Hernaez on January 8, 2008 requiring her to immediately return to work was acted only when she returned to work on January 15, 2008 and without submitting herself for medical examination at the SC Clinic as per directive of the same date (January 8, 2008). This Office assess that Ms. Hernaez belated act of going to the SC Clinic only on February 22, 2008 was prompted by her having acquired knowledge for some reason or another of a Memorandum by this Office of the same date, that is February 22, 2008, was to be released, addressed to the Medical and Dental Services verifying on whether Ms. Hernaez went to the latter office for medical check up. This assessment was by reason of the fact that Ms. Hernaez's work station is in the receiving area of OAS. Clearly, from the Memorandum of Dr. Banzon, Ms. Hernaez's blood pressure (BP) on February 22, 2008 of 150/100 and later subsided (without medical intervention) to 130/90 are within the normal range of BP, considering that she is presently 49 years old where BP could possibly fluctuate and would not approximate the normal range for BP similar to young adults. Her February 28, 2008 BP of 140/90 is likewise not unusual, and no manifestation of an alleged vertigo was reported.

We are apprehensive to recommend dropping Ms. Hernaez from the rolls considering that she filed sick leave albeit questionable, and she reported for work from January 15, 2008 to present. Repercussion on dropping her from the rolls would be the effect of her coming to work and her salary from said period of reporting in addition to her sick leave application though questionable as stated. However, considering her record of absences and the previous memoranda of OAS before the inception of this Administrative Matter, we find her absences in the covered period without authority, constitutive of conduct prejudicial to the best interest of public service and also a case of habitual absenteeism. It caused demoralization among his peers who attends in lieu of her, in her workplace in the receiving area of OAS where visitors and fellow co-workers from other office submit documents to OAS. We cannot discard the possibility that employees stationed in the reception area may not be present to replace her, and absence of an employee stationed in the receiving area where incoming and outgoing documents are received and logged out, affects the very purpose for which the Office of Administrative Services was made to function, that of providing service to the public and the Court.

The penalty for Conduct prejudicial to the best interest of the service is similar to the penalty imposed for habitual absenteeism, to wit:

1[st] Offense - Suspension (6 mos. 1 day to 1 year)

2[nd] Offense - Dismissal

Considering that there are two (2) violations which we find to have been committed by Ms. Hernaez, with the same penalty for the first and second offense, by analogy we recommend the application of Sec. 55 of the Uniform Rules on Administrative Cases in the Civil Service both penalty being equal, the other violation be treated as an aggravating circumstance instead of imposing both penalties at its end. Sec. 54 par. C thereof, on Manner of Imposition of Penalties provides that the maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present. These are the first administrative offenses for Ms. Hernaez should the Court find merit to this Office's recommendation, albeit she still has another pending administrative matter.

The Court has repeatedly held that the conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with the heavy burden of responsibility and the Court can not countenance any act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.

Section 1, Canon IV of the Code of Conduct for Court Personnel also provides that:

Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.

ALL THE FOREGOING CONSIDERED, it is respectfully recommended that Ms. Nahren D. Hernaez be **SUSPENDED** for twelve (12) Months.

Our Ruling

There is no question that Ms. Hernaez committed Habitual Absenteeism and Conduct Prejudicial to the Best Interest of the Service.

Under Civil Service Commission (CSC) Memorandum Circular No. 4, Series of 1991, an officer or employee in the civil service shall be considered habitually absent, if he or she incurs unauthorized absences exceeding the allowable 2.5 monthly leave credits under the leave law for at least three (3) months in a semester or at least three

(3) consecutive months.

In the instant case, Ms. Hernaez incurred unauthorized absences exceeding the allowable 2.5 monthly leave credits for at least three (3) months in a semester particularly, the months of September, November, and December 2007. Records show that for the month of September 2007, out of her ten (10) leave applications, three (3) days were disapproved. Out of her six (6) leave applications for November of the same year, five (5) days were likewise disapproved. For December 2007, she did not report for work and incurred 17.624 days disapproved sick leave applications. She also had nine (9) unauthorized absences for the month of January 2008.

Ms. Hernaez also incurred fifteen (15) unauthorized leaves in February 2007, eight (8) unauthorized leaves in March 2007 and two (2) unauthorized leaves in June 2007. Although her absences within said period fell short of the definition of habitual absenteeism, she still is liable for absenteeism under CSC MC No. 04, Series of 1991.

Relative to the foregoing, this Court takes note of the previous OAS memoranda/letter addressed to Ms. Hernaez, to wit:

a)

January 16, 2003 letter requiring her to explain within five (5) days why she should not be dropped from the roll for having been absent from office continuously since December 20, 2002;

b)

March 21, 2006 Memorandum citing her act of reporting irregularly to the prejudice of her assigned task;

c)

September 7, 2006 Memorandum - enjoining her to report to the office regularly and sternly warning that any further incurrance of absences shall result in the filing of necessary administrative case against her. This memorandum was caused by her unauthorized absences from January to August, 2006.

In *Layao, Jr. v. Manatad*,^[2] this Court held that a court employee's absence without leave for a prolonged period of time constitutes conduct prejudicial to the best interest of public service and warrants the penalty of dismissal. Due to the nature and functions of their office, officials and employees of the judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust.^[3]

Inherent in this mandate is the observance of prescribed office hours and efficient use of every moment for public service, if only to recompense the government, and ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees are, at all times, behooved to strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.^[4]

Section 52 of the Uniform Rules on Administrative Cases in the Civil Service penalizes habitual absenteeism and conduct prejudicial to the best interest of the service with suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal for the second offense. Considering that respondent Hernaez is found liable for two or more charges, the penalty corresponding to the most serious charge, to be meted in its maximum period, shall be imposed.^[5]

The OAS recommends a penalty of twelve (12) months suspension of respondent. The recommendation is in accord with the Uniform Rules. The Court notes, however, that respondent was recommended to be dropped from the rolls effective April 9, 2008 via a Memorandum dated June 10, 2008, by Deputy Clerk of Court Eden T. Candelaria, OAS. The memorandum was issued in connection with A.M. No. 2008-10(A)-SC entitled "Re:

Absence Without Official Leave of Ms. Nahren D. Hernaez."

On July 1, 2008, the Court En Banc approved the OAS recommendation dropping respondent from the rolls for AWOL. Since respondent has already been dropped from the rolls, the penalty of suspension is no longer practicable.

In *Reyes, Jr. v. Cristi*,^[6] the Court found Ricardo Cristi, Cash Clerk II, Office of the Clerk of Court, Regional Trial Court, San Mateo, Rizal guilty of habitual absenteeism, meriting a penalty of suspension. However, since he had already resigned, and the penalty of suspension could no longer be imposed, the Court ordered him to pay a fine equivalent to three (3) months salary.

We opt to take an analogous action here. However, records bear out that respondent has been suffering from a variety of illnesses. Under Section 53(a) of the Uniform Rules,^[7] the physical fitness or unfitness, as in this case, of respondent may be considered a mitigating circumstance in the determination of the penalties to be imposed. Thus, a fine of Five Thousand Pesos (P5,000.00) is more proper and reasonable.

WHEREFORE, the Court finds Ms. Nahren D. Hernaez GUILTY of habitual absenteeism and conduct prejudicial to the best interest of the service. Having been previously dropped from the rolls, she is hereby FINED Five Thousand Pesos (P5,000.00) to be deducted from whatever benefits may be due her.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, and Brion, JJ., concur.
Azcuna[*], and Tinga[**], JJ., concur.

[*[]] No part. Justice Azcuna is on official leave per Special Order No. 510 dated July 15, 2008.

[**] No part. Justice Tinga is on official leave per Special Order No. 512 dated July 16, 2008.

[1] Report on Habitual Absenteeism of Gloria P. Kasilag, SC Chief Judicial Staff Officer, Employee Leave Division, OAS.

[2] A.M. No. P-99-1308, May 4, 2000, 331 SCRA 324.

[3] Constitution (1987), Art. XI, Sec. 1.

[4] Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003, A.M. No. 00-06-09-SC, March 16, 2004, 425 SCRA 508.

[5] Uniform Rules on Administrative Cases in the Civil Service, Sec. 55.

[6] A.M. No. P-04-1801, April 2, 2004, 427 SCRA 8.

[7] Section 53. Extenuating, mitigating, aggravating, or alternative circumstances. - In the determination of the penalties to be imposed, mitigating, aggravating, and alternative circumstances attendant to the commission of the offense shall be considered. The following circumstances shall be appreciated.

- Physical fitness

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