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January 18, 2019

Via USPS:
Attn: Appeals
Director of State Civil Service Commission
P.O. Box 94111
Capital Station
Baton Rouge, La 70804

RE: Appeal of Shelley Sebastian Termination

Dear Sir/ Madam:

Please accept the attached document as formal notice to appeal the decision to terminate Ms. Shelley Sebastian from the Louisiana State Police Retirement System (LSPRS) in compliance with the rules for the Louisiana State Civil Service. It is Ms. Sebastian's desire and hope to continue employment with LSPRS. I look forward to hearing from you.

If further information is needed, please feel free to contact me.

With kindest regards, I remain

Sincerely,

Tammeral Hills, Esquire
8550 United Plaza Blvd. Suite 702
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Phone: (225) 200-5025
Fax: (225) 627-8136

REQUEST FOR APPEAL FOR SHELLEY SEBASTIAN

Please accept this document as notice for a request for an appeal on behalf of Ms. Shelley Sebastian. Ms. Sebastian desires to continue employment with the Louisiana State Police Retirement System and effectively have the decision to terminate her employment reversed.

DATES MS. SEBASTIAN RECEIVED WRITTEN NOTICE LEADING UP TO AND INCLUDING TERMINATION

Ms. Sebastian was notified in writing of a suspension with pay pending investigation on November 14, 2018. Ms. Sebastian received a Notice of Proposed Action on December 10, 2018. Ms. Sebastian's attorney, Tammeral Hills responded to the Notice of Proposed Action on December 19, 2018. Ms. Sebastian received notice of her termination on December 28, 2018.

APPEAL DECISION TO TERMINATE SHELLEY SEBASTIAN

1) *Failure to attend to her job duties timely despite numerous requests.*

The documents do not state which job duty was not timely, only that others completed their task sooner than Ms. Sebastian. There is no mention of specific examples of what job duty assigned to Ms. Sebastian was not completed within the specified timeframe. There is no mention of the date said project was due, and/or when Ms. Sebastian allegedly finished the project. Ms. Sebastian should not be penalized for not attending to job duties within the allowed timeframe.

Ms. Sebastian should not be terminated for failure to attend to her job duties despite numerous requests, when such requests have not been made in writing. If Ms. Sebastian needed numerous requests to attend to her job duties timely, it would be proper business practices to document this conversation and have the employee sign said document after the discussion with her superiors.

2) *The insubordination that she has exhibited throughout her employment, which grew worse, despite repeated counseling.*

The alleged insubordination accusation stems from the pretense that Ms. Sebastian cannot work with Ms. Gann. These accusations that Ms. Sebastian did not complete all of her job duties are false because according to Ms. Sebastian's performance evaluations Ms. Sebastian did not receive all job duties when she was first employed. It is unclear which job duty they are alleging was not completed during this timeframe. In addition, if the accusation were true that Ms. Sebastian became angry when asked to do her job, why would she receive satisfactory evaluations and be allowed to continue employment.

LSPRS also states as an example of Ms. Sebastian's alleged insubordination is when she allegedly inquired into the health of Ms. Gann, as this was a direct violation of Ms. Gann's privacy rights. This statement means the writer was aware that digging into someone's

medical issue is not allowed. This did not stop LSPRS from inquiring into a list of medications taken by Ms. Sebastian, which would be likely to uncover undisclosed medical conditions.

Another listed example of Ms. Sebastian's alleged insubordination is when Ms. Sebastian would not allow Ms. Gann to provide the reasons for the request for the drug test. This is likely a false statement because there is no reason listed on any document. Ms. Sebastian's attorney also inquired into the reason and no specific example nor situation was ever provided. The reason for the request for the drug testing was also absent from the Notice of Proposed Action.

Ms. Sebastian should not be terminated for insubordination exhibited during her employment when the allegations of insubordination do not depict the actions of an insubordinate employee.

3) *Disruptive behavior she has exhibited throughout her employment, which grew worse, despite repeated counseling.*

The alleged disruptive behavior occurred years prior to the suspension and investigation. The examples of the alleged disruptive behavior included in the notice of proposed action alleges two incidents in 2014, and one incident in 2016. The only alleged incident that occurred in 2018 was an alleged statement by Ms. Sebastian that she told Ms. Gann she would be sorry after receiving a letter that she must submit a sample for drug testing. Again, we must point out that nothing in the Notice of Proposed Action states the reasons for the demand for the drug test.

Ms. Sebastian should not be terminated for disruptive behavior exhibited throughout her employment, which grew worse despite repeated counseling when there is no evidence of said behavior actually occurring, no evidence of how said behavior grew worse, and no evidence of repeated counseling or when such counseling took place.

4) *Misuse of her work email throughout her employment, in violation of the LSPRS Email Policy.*

Ms. Sebastian's use of her work email was at all times known to her employer. It is questionable why it would be stated the use of email was not discovered until the investigation began when this was included in Ms. Sebastian's 2014 performance evaluation. Ms. Sebastian also has an email dated October 11, 2016, that states Ms. Sebastian received this person's email from Kim Gann for contractor services. Ms. Gann appears to assist Ms. Sebastian with locating a contractor and tacitly allows Ms. Sebastian to use her work email to contact a contractor. This is evidenced by the fact that Ms. Gann did not state at this time nor at any time that it is absolutely against policy to use the work email for personal use and please send this email from your home and from your personal email account.

The Notice of Proposed Action also states Ms. Sebastian was on the computer on social networks and shopping during work hours in July of 2014. LSPRS provided no proof of this accusation that a conversation was had in July of 2014. This is likely because it would then have to admit that it was at all times aware that Ms. Sebastian was also using the work email during this timeframe and that she was tacitly allowed to continue the use her work email. This would directly contradict the statement that it did not become aware of Ms. Sebastian's use of her work email until it began this investigation. It is unclear as to what subject matter was being investigated, what events prompted this investigation, and why would Ms. Sebastian's emails be included in this investigation.

Ms. Sebastian should not be terminated for misuse of her work email throughout her employment, in violation of LSPRS email policy because LSPRS tacitly allowed Ms. Sebastian to use said email for personal reasons, and assisted Ms. Sebastian in using her work email for personal reasons. It must also be noted that this use of email was discovered during an investigation that Ms. Sebastian nor her attorney received an explanation in writing of what was being investigated and how this investigation related to her email.

FURTHER RESPONDING TO APPEAL DECISION TO TERMINATE

The working relationship between Ms. Sebastian, Ms. Gann and Mr. Felps seems to be a less than desirable situation. The disrespect conveyed in the letters and documents received by Ms. Sebastian authored by her superiors do not display a desired level of professionalism. Ms. Sebastian's superiors likely contributed significantly to each situation but instead it places blame on Ms. Sebastian. The documents state what Ms. Sebastian said in response to ones' action, but it does not describe in detail how each conversation began. Doing so would likely uncover bullying practices present in the office. Ms. Sebastian was placed on suspension in November 2018 pending investigation, but no event occurred in this month to justify the request for suspension and/or drug test. The drug test obviously came back negative, because each communication received thereafter makes no mention of the results as another reason to terminate employment. If the reason Ms. Sebastian was suspended and placed on investigation stemmed from events that warranted the need of a drug test, I would believe this information is vital to making its decision to terminate employment. The absence of this information is telling. Due to not being able to substantiate an alleged abuse of prescription medication, Ms. Sebastian is being terminated for things that occurred in prior years. It could be assumed that the damaging allegation of the abuse of prescription medication was merely a way to terminate and/or force Ms. Sebastian to quit her job.

Ms. Sebastian has been approved for FMLA by a neutral third party, therefore the mention of her condition or a request that she disclose her condition by providing a list of medications should be prohibited by her employers; however, it instead points to a non-existing policy as authority to state why this information is needed. The request for such information by an employer is prohibited by federal law. It can be assumed that Ms. Sebastian's approval for FMLA means either she or a family member has a medical condition. It is her choice alone if Ms. Sebastian decides to share the reason she receives FMLA with her superiors. Ms. Sebastian is the only person who can provide approval to disclose her medical condition to any party. It can be assumed that if Ms. Sebastian is receiving FMLA for herself, her doctor would provide specific instructions as to when

the medication should be taken and should not be taken. Even if we assume that she did not receive this information from her doctor, the pharmacist would make sure to provide this information on her medication.

At no time does the Notice of Proposed action allege Ms. Sebastian is being terminated for taking time that is not available to her. At no time does it allege that Ms. Sebastian's condition affects her job performance. At no time does it allege Ms. Sebastian's behavior is linked to her use of prescription medication, therefore a drug test is required. At no time does her superior acknowledge that Ms. Sebastian's tardiness could be linked to the medical condition. It instead takes the position that Ms. Sebastian must be terminated for events that occurred four years prior.

Mr. Felps repeatedly denies Ms. Sebastian's request to speak with him about issues she has with her direct supervisor, stating he is not obligated to speak with her. Mr. Felps offered no other alternative for Ms. Sebastian when dealing with her supervisor. This statement shows the level of respect Mr. Felps exhibits to his employee. Although he states no obligation, being in his position one would assume that his employee would be able to speak with him about issues concerning their employment. Mr. Felps should also have an interest in resolving issues that could potentially affect the office.

APPEAL OF RESPONSE TO THE NOTICE OF PROPOSED ACTION

1) *A drug test was requested after consistent erratic behavior at the office in compliance with both the LSPRS drug policy and Louisiana law.*

   A drug test was requested on November 13, 2018. During a conversation that allegedly took place November 2, 2018, during which Ms. Sebastian stated she previously taken a muscle relaxer. On a letter dated November 13, 2018, Ms. Gann stated she was concerned that Ms. Sebastian should not be driving after use of prescription medication. Ms. Gann also stated in this letter that this, coupled with recent events in the office, caused her great concern for Ms. Sebastian and for the smooth operation of the office as a whole. Ms. Sebastian was suspended on November 14, 2018. There is no documented erratic behavior. The request for a drug test is not in compliance with Louisiana Law nor LSPRS policy.

   Testing is permitted even for prescribed drugs not being used for prescribed purposes or being used by one other than the person for whom prescribed.

   It is not clear where LSPRS authority for the statement, "the test is permitted for prescribed drugs not being used for prescribed purposes or being used by one other than the person for whom prescribed." This statement is not located in the LSPRS drug policy.

   You admitted to your supervisor that you were using a prescription drug that might be impacting your behavior.

   This alleged admission is not documented other than the letter terminating Ms. Sebastian. Even if Ms. Sebastian made this alleged admission, she is not a medical professional and could not state with specificity that any behavior could be blamed on her prescription drugs. This statement is very damaging and suggestive. It is unclear as to which behaviors the

prescription drugs had an adverse impact. LSPRS should have no knowledge as to when Ms. Sebastian began taking prescription medication, despite citing a nonexistent policy in a letter terminating Ms. Sebastian.

We reminded you that LSPRS drug policy required you to produce evidence of any prescription drugs you were taking that could affect your job performance, and to provide to us a letter from your doctor assuring us that the prescription would not impact the performance of your job.

This demand violates Ms. Sebastian's right to privacy. She should not have to provide a list of her prescription medication to her employer on demand. Asking Ms. Sebastian about the prescription medications she is taking is considered a disability related inquiry under the Americans with Disabilities Act (ADA). A request for such information is generally not job related, as evidenced by Ms. Gann stated she wondered if Ms. Sebastian was ok to drive, but her job duties do not include driving. It is questionable what job aspect Ms. Gann was referring to when a drug test was demanded.

You produced no evidence of such prescriptions.

Ms. Sebastian does not have to produce evidence of prescription to her employer on demand. This violates her right to privacy and the Americans with Disabilities Act.

We conducted the drug test in full compliance with your attorney's instructions.

Attorney Hills at no time provided instruction to any person concerning this drug test. This statement is a complete fabrication. It is unclear as to the reason LSPRS felt the need to include this false statement in an attempt to imply the request for this test was legal according to Ms. Sebastian's attorney. I, Tammeral J. Hills can say with complete confidence and as an officer of the Court this never happened.

According to the Notice of Proposed Action, Ms. Sebastian received a letter to an onsite and offsite testing location. Ms. Sebastian expressed her concerns and was given a second location to remedy these concerns. At no point during this exchange did LSPRS alleged they consulted with Ms. Sebastian's attorney. Likely because this allegation is false.

Further Responding to Decision to Terminate

It must be noted that the Notice of Proposed Action does not mention nor describe the recent events that took place prior to November 2, 2018. It must also be noted that the situations surrounding the demand for the drug test is sketchy at best. It must also be noted that the information provided seems to be complete fabrications as evidenced by the changes in the story and situations surrounding the circumstances surrounding the events that prompted the drug test, or the complete lack thereof.

Whether the ADA permits an employer to test employees for prescription medications hinges on whether the test is a "medical examination." If the test is a "medical examination," then the ADA only permits it during employment if the test is "job-related

and consistent with business necessity." The request for a job test was not job-related, as evidenced by the fact that Ms. Gann stated in her letter she was concerned whether Ms. Sebastian should be driving after taking such medication. The test was not consistent with business necessity as evidenced by the fact that Ms. Sebastian's general job duties.

It is unclear as to why Ms. Gann and Mr. Felps stated that Ms. Sebastian must provide information to her employer to support her use of a control dangerous substance. This statement shows that Ms. Sebastian was being singled out. All medications are not considered controlled dangerous substances, despite the representations of Ms. Sebastian's superiors. It is unclear of the knowledge of Ms. Gann and Mr. Felps to determine what is and what is not a controlled dangerous substance, as I am not aware of any medical training of either party. Ms. Gann and/or Mr. Felps should not be able to state without medical certainty that someone is using or abusing a controlled dangerous substance.

2) *Your use of your work email for personal use and your husband's business was only discovered after we suspended you with pay and began our investigation. Your use violates LSPRS policy.*

This is a false statement. Use of personal email was stated in Ms. Sebastian's 2014 performance evaluation. It is unclear as to the reason Ms. Sebastian's email would be a part of this investigation for alleged abuse of prescription drugs and/or erratic behaviors. LSPRS also never stated in writing the reasons for the alleged suspension and/or investigation and/or request for drug test.

3) *The chain of command in our work environment is very important. You blatantly violated that chain of command by failure to follow instructions from the Assistant Director of this organization, Ms. Kim Gann. In her position as Assistant Director, she is empowered with full authority and supervision over you.*

A chain of command suggests there is a link that consists of more than one person. However, it seems as though LSPRS takes the position that Ms. Sebastian is only allowed to speak with Ms. Gann. At no time was Ms. Sebastian provided the opportunity to address her concerns to the person above her direct supervisor, Ms. Gann. If there is a chain of command, please provide the names of the persons with higher authority than Ms. Gann that Ms. Sebastian should have been allowed to address her concerns.

Despite your comment that I refused you an open-door policy (which I am not legally obligated to do), I did often listen to your complaints and attempt to redirect you in the hope that you would become a valuable member of our staff.

This statement directly contradicts the information provided in the Notice of Proposed Action. Mr. Irwin Felps specifically stated that Ms. Sebastian was only to have communications with her direct supervisor, Ms. Gann. If Mr. Felps was not the proper person, he should have instead provided Ms. Sebastian with the chain of command to address her concerns instead of re-directing issues with Ms. Gann to Ms. Gann.

You ignored my advice. The very text you attached in your response to me is another example of your insubordinate attitude towards Ms. Gann.

This sounds like a personal problem and/or personal issues that Ms. Sebastian ignored anyone's advice. The text attached shows that the information used in the Notice of Proposed Action placed blame directly with Ms. Sebastian wherever LSPRS could be found. LSPRS ignores that it was not Ms. Sebastian that caused Ms. Gann to write the minutes but instead says this is an example of Ms. Sebastian's insubordinate attitude. This is another example of an attempt to gather as much negative evidence as possible to state Ms. Sebastian is not a good employee.

4) *Your performance reviews were generally good. As stated in my Notice, Ms. Gann and I took extraordinary efforts to attempt to move you onto the proper tract as an employee.*

This statement does not make it clear to the reader what extraordinary efforts Ms. Gann and Mr. Felps took to move Ms. Sebastian onto the proper tract as an employee. Please clarify in writing.

We could give you raises only if you received good performance reviews. These reviews assessed your performance of job skills, not your behavior in the office.

This statement seems as though Ms. Felps is alleging that he lied on Ms. Sebastian's performance reviews in order to provide her with a raise each year. The addition to the 2018 performance review made after Ms. Sebastian was suspended addressed her behavior in the office, so it is not clear as to why other performance reviews would not include such information.

You were very capable and intelligent and able to learn and perform well when you wanted to do so. This past year in particular, however, evidence even more your unwillingness to perform well consistently.

This statement contradicts the previous statement that Ms. Gann and Mr. Felps took extraordinary measures. As a very capable, intelligent, able to learn and perform well employee, she should have received satisfactory performance reviews. There is no evidence of Ms. Sebastian's unwillingness to perform well consistently. There is no evidence that Ms. Sebastian's work ethic changed in the year 2018. All evidence provided occurred in 2014 and was corrected soon thereafter.

More important, your behavior has become intolerable. While you have the job skills necessary for this position, you only exercise those skills erratically, and cause much commotion in the office which has taken valuable time away from the job duties of the rest of us in dealing with your unacceptable behavior.

The alleged intolerable behavior allegedly took place after the July 2016 meeting. The details of what transpired after this meeting are sketchy but only state that Ms. Sebastian admitted she was wrong. It is questionable whether Mr. Felps and Ms. Gann caused upset

to Ms. Sebastian, which resulted in her crying. The details of this event are not noted except for a bias opinion by the persons who insist on the termination of Ms. Sebastian.

Another example of poor performance just discovered during our investigation is the discovery of the documents attached as Exhibit A, which were all found under your printer. These should have been properly filed long ago.

This statement alleges Ms. Sebastian lifted her printer and places the documents underneath in an attempt to hide them, which is a complete mischaracterization. Ms. Sebastian needed the documents on hand for different reasons. The placing of the document in a folder does not state the work was not completed as the writer would like one to believe.

5) *If the personnel file pages are out of order, it is because we had problems with our copier at the time your attorney requested a complete copy of your file. Note that it is over 500 pages. We did ensure that all pages were copied.*

This is a false statement. A copy was ready for Ms. Sebastian to pick-up days prior to Attorney Hills request for the personnel file. Mr. Felps communicated with Ms. Sebastian and stated that the a copy was ready for her in the office to retrieve. Ms. Sebastian did not retrieve the file on the agreed upon date. Attorney Hills thereafter requested the file from Attorney Akers, who stated they needed time to put the file together. Attorney Hills replied that if the file was together for Ms. Sebastian, they should not need additional time to put the file together and demanded the file the next day. Please advise if the problems you had with the copier at any time prevented Ms. Sebastian from completing her work in a timely manner.

6) *Your personal items are pictures in boxes because both Ms. Gann and Mr. Felps, together boxed up all of your personal items left around your desk area. Please contact our attorney to arrange to get your items now.*

This statement shows the writers dislike for Ms. Sebastian. This type of communication most likely was present in the office and Ms. Sebastian was ordered to accept the disrespectful communication between her and her superiors.

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