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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-664

Filed: 7 August 2018

Office of Administrative Hearings, No. 16-OSP-4632

TISHA HARDY, Petitioner,

v.

NORTH CAROLINA CENTRAL UNIVERSITY, Respondent.

Appeal by Respondent from final decision entered 31 January 2017 by Judge Melissa Owens Lassiter in the Office of Administrative Hearings. Heard in the Court of Appeals 27 November 2017.

*Law Offices of Michael C. Byrne, by Michael Byrne, for petitioner-appellee.*

*Attorney General Joshua H. Stein, by Assistant Attorney General Laura H. McHenry, for respondent-appellant.*

MURPHY, Judge.

We address whether a career State employee's conduct, that her subordinates describe as bullying and divisive, rises to the level of "unacceptable personal conduct" and whether that conduct was just cause for a demotion.

North Carolina Central University ("NCCU") appeals from a final decision of an Administrative Law Judge ("ALJ") which held that NCCU lacked just cause to

demote Tisha Hardy, a lieutenant with the NCCU Police Department. NCCU maintains that Hardy was demoted for just cause. On appeal, NCCU argues that certain findings of fact made by the ALJ were not supported by substantial evidence and that Hardy's conduct fit the parameters of "unacceptable personal conduct" and "unsatisfactory job performance." As a result, NCCU argues that demotion was an appropriate level of discipline for Hardy's conduct.

After careful review, we conclude that Hardy's conduct does not fit the parameters of "unacceptable personal conduct" and demotion was not proper based on the evidence that NCCU presented at trial. Accordingly, we affirm the ALJ's order.

## BACKGROUND

Hardy started working for NCCU's Police Department in 1999. In 2011, she was promoted to lieutenant. NCCU's Interim Chief of Police, Willie Bell Jr., sent Hardy a letter dated 8 December 2015, informing her that she was being demoted from lieutenant to patrol officer for engaging in "unacceptable personal conduct" and "unsatisfactory job performance." Prior to her demotion, Hardy had received two written warnings for "unacceptable job performance." In the demotion letter, Bell accused Hardy of violating NCCU's workplace violence policy and creating a hostile work environment through her "autocratic, divisive, bullying management of [her] Patrol Team, which has steadily worsened." The letter claimed that this behavior

continued despite management's attempts to change Hardy's conduct through "performance improvement plans, counseling, patrol team reassignments, and disciplinary actions[,]" and noted a previous human resources investigation that determined there was reasonable cause that Hardy engaged in "unacceptable personal conduct."

Hardy appealed the demotion in accordance with NCCU's grievance policy. NCCU's Chancellor upheld the demotion after finding that Hardy had engaged in the "unacceptable personal conduct" of workplace violence. Hardy then filed a Petition for Contested Case Hearing with the Office of Administrative Hearings. A hearing was held on 12 and 13 October 2016, and at the close of NCCU's evidence, Hardy moved to dismiss the case, arguing that NCCU failed to carry its burden to prove that just cause existed to demote her. The ALJ granted Hardy's motion and entered a final decision reversing the demotion. Hardy was retroactively reinstated with back pay and NCCU was required to pay Hardy's attorney fees. NCCU timely appealed.

## ANALYSIS

NCCU raises four arguments on appeal: (A) that certain findings of fact made by the ALJ were not supported by substantial evidence; (B) Hardy's conduct fits the parameters of "unacceptable personal conduct;" (C) demotion was an appropriate

level of discipline for Hardy's misconduct; and, (D) Hardy was demoted for unsatisfactory job performance.[1]

**A. Whole Record Test**

Whether sufficient evidence supports an ALJ's findings of fact is reviewed under the whole record test. *Watkins v. N.C. State Bd. of Dental Exam'rs*, 358 N.C. 190, 199, 593 S.E.2d 764, 769 (2004). In applying the whole record test, we "may not substitute [our] judgment for the agency's as between two conflicting views, even though [we] could reasonably have reached a different result had [we] reviewed the matter *de novo*." *Id.* (citations omitted). Instead, we "examine all of the record evidence—that which detracts from the agency's findings and conclusions as well as that which tends to support them—to determine whether there is substantial evidence to justify the agency's decision." *Id.* (citations omitted). Substantial

[1] NCCU's demotion letter stated that Hardy was being demoted for "unacceptable personal conduct" as well as "unsatisfactory job performance." However, the letter from NCCU's Chancellor regarding the Final University Decision only references "unacceptable personal conduct." Similarly, NCCU did not make this argument at trial, and the ALJ concluded that, "[i]n the Final Agency Decision, [NCCU] did not demote [Hardy] for unsatisfactory job performance, but demoted her for engaging in unacceptable personal conduct." Nonetheless, NCCU argues that even if Hardy's conduct is not considered "unacceptable personal conduct," we may conclude that Hardy's conduct demonstrated "unsatisfactory job performance." In making this argument, NCCU relies on *Cole v. N.C. Dep't of Pub. Safety*, ___ N.C. App. ___, 800 S.E.2d 708 (2017). However, *Cole* does not hold that an agency may switch disciplinary theories at various levels of litigation. *See id.* at ___, 800 S.E.2d at 716. NCCU is bound by the theory it argued at trial. *Amanini v. N.C. Dep't of Human Res.*,114 N.C. App. 668, 681, 443 S.E.2d 114, 122 (1994) ("Having proceeded through its supervisory personnel on the theory that the conduct furnishing the grounds for petitioner's termination fell under the category of 'personal misconduct,' DHR cannot now prevail by arguing it 'could' have proceeded against him on the basis of unsatisfactory job performance."). Thus, even though Hardy had prior written warnings for unsatisfactory job performance at the time of her demotion, we cannot reach the issue of whether Hardy's conduct fits the parameters of "unsatisfactory job performance."

evidence is "relevant evidence a reasonable mind might accept as adequate to support a conclusion." N.C.G.S. § 150B-2(8c) (2017). "If substantial evidence supports an agency's decision after the entire record has been reviewed, the decision must be upheld." *Blalock v. N.C. Dep't of Health & Human Servs.*, 143 N.C. App. 470, 473-74, 546 S.E.2d 177, 181 (2001). In addition, "we recognize the ALJ is the sole fact-finder, and the only tribunal with the ability to hear testimony, observe witnesses, and weigh credibility. As such, we defer to the ALJ's findings of fact, even if evidence was presented to support contrary findings." *Harris v. N.C. Dep't of Pub. Safety*, ___ N.C. App. ___, ___, 798 S.E.2d 127, 137, *aff'd*, 370 N.C. 386, 808 S.E.2d 142 (2017).

On appeal, NCCU argues that numerous findings of fact are unsupported by the record. Despite this, NCCU acknowledges that "[o]n the whole, the ALJ's findings of fact properly summarize the testimony and evidence presented at the contested case hearing in this matter."

After reviewing the whole record, we determine that there is substantial evidence to justify the ALJ's decision. While NCCU is correct that some of the challenged facts could support a contrary finding, we cannot substitute our judgment for the ALJ's, and we defer to her decision when it is supported by sufficient evidence due to her critical role as the fact-finder who heard testimony, observed witnesses, and weighed the credibility of evidence presented at trial. *Harris* ___ N.C. App. at ___, 798 S.E.2d at 137.

**B. *Warren* Test**

We review an ALJ's decision regarding employee discipline using the three-step test articulated in *Warren v. N.C. Department of Crime Control*:

> [1] [W]hether the employee engaged in the conduct the employer alleges.
> [2] [W]hether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code.
> [3] [W]hether that misconduct amounted to just cause for the disciplinary action taken.

*Warren v. N.C. Dep't of Crime Control,* 221 N.C. App. 376, 383, 726 S.E.2d 920, 926 (2012). "Just cause must be determined based 'upon an examination of the facts and circumstances of each individual case.'" *Id.* (quoting *N.C. Dep't of Env't & Natural Res. v. Carroll*, 358 N.C. 649, 669, 599 S.E.2d 888, 900 (2004)). Our Supreme Court recently emphasized that consideration is appropriate of "factors such as the severity of the violation, the subject matter involved, the resulting harm, the [employee's] work history, or discipline imposed in other cases involving similar violations." *Wetherington v. N.C. Dep't of Pub. Safety*, 368 N.C. 583, 592, 780 S.E.2d 543, 548 (2015). "[C]onsideration of these factors is an appropriate and necessary component of a decision to impose discipline upon a career State employee for unacceptable personal conduct." *Id.*

"No career State employee . . . shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause." N.C.G.S. § 126-35(a) (2017). "In cases of

such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights." *Id.* "[The specific acts or omissions] should be described with sufficient particularity so that the discharged employee will know precisely what acts or omissions were the basis of his discharge." *Employment Security Comm. v. Wells*, 50 N.C. App. 389, 393, 274 S.E.2d 256, 259 (1981). What constitutes sufficiently particular is a fact-specific inquiry. *Barron v. Eastpointe Human Servs. LME*, ___ N.C. App. ___, ___, 786 S.E.2d 304, 314 (2016). "[N.C.G.S. § 126-35] was designed to prevent the employer from summarily discharging an employee and then searching for justifiable reasons for the dismissal." *Leiphart v. N.C. School of the Arts*, 80 N.C. App. 339, 351, 342 S.E.2d 914, 922 (1986).

When a career State employee appeals a disciplinary action, the burden of proving just cause is on the employer that disciplined the employee. N.C.G.S. § 126-34.02(d) (2017). "Just cause is a flexible concept, embodying notions of equity and fairness, that can only be determined upon an examination of the facts and circumstances of each individual case." *Wetherington*, 368 N.C. at 591, 780 S.E.2d at 547 (internal quotation marks and citation omitted). Our fundamental inquiry is whether the action taken was "just." *Carroll*, 358 N.C. at 669, 599 S.E.2d at 900. "There are two bases for the . . . dismissal of employees under the statutory standard for 'just cause' as set out by [N.C.G.S. §] 126-35." 25 NCAC 1J.0604(b) (April 2018).

A career State employee may only be dismissed for "unacceptable personal conduct" or "unsatisfactory job performance." *Carroll*, 358 N.C. at 666, 599 S.E.2d at 899 (citing N.C.G.S. § 126-35(a)).

The 8 December 2015 demotion letter from Interim Chief Bell defined Hardy's "unacceptable personal conduct" as her "autocratic, divisive, bullying management of [her] Patrol Team." At trial, the ALJ considered whether Hardy committed the conduct alleged, to what extent that NCCU proved Hardy engaged in the conduct alleged, and whether Hardy's conduct fit the parameters of "unacceptable personal conduct." The ALJ determined "that [NCCU] failed to present sufficient proof that [Hardy] bullied, threatened, or intimidated her subordinate officers, or created a violent workplace for her subordinate employees." NCCU contends this was an error, and asks us to reverse on the grounds that Hardy's conduct fits the parameters of "unacceptable personal conduct."

Hardy's subordinates described her as difficult to work for and her management style as stressful. In response to this, Hardy's direct supervisor, Captain Carter, testified that he discussed Hardy's management style many times informally and during her twice-yearly performance reviews. This testimony contradicts Hardy's 2013-2014 performance review, where she received a "very good" rating in the leadership category and an overall rating of "good." Likewise, in 2014-2015, Hardy was given a "very good" rating for leadership and an overall rating of

"good." Captain Carter stated at trial that he completed both of Hardy's performance reviews. It was the role of the ALJ to weigh these credibility issues.

One member of Hardy's Patrol Team told the ALJ about the following situation as an example of Hardy's bullying and intimidation:

> I was told to come up or write an [Operation Plan] for a crosswalk operation that we were doing. I was given approximately two hours to do that along with assisting officers on their calls, taking calls from the Communication Center, and along with doing whatever my daily -- my daily paperwork was.

After being unable to finish the assignment on time, this employee learned that Hardy already had a draft Operation Plan, and the employee felt that this assignment was an unnecessary task. This employee also stated that he occasionally had to stay late to finish work. In addition, this employee stated that Hardy would give unclear instructions and chastise him on a monthly basis when there was a "serious incident" on campus. A different officer assigned to Hardy's Patrol Team gave the following example:[2]

> [O]ne time I was directing traffic from an accident that we had. During the accident, there were-- we were on a hill. It was a hot summer day. It was like -- for some reason, I think I had three cars backed up, and I was trying to direct traffic. [Hardy] came up, and she just sat behind the traffic and turned on her lights. She didn't get out to assist. She just sat there with her lights on. So I had to walk up and down this hill trying to direct traffic coming down the hill and trying to direct traffic coming up the hill.

[2] Cumulative testimony of a similar nature was given at trial, but we find it repetitive and set out this testimony as illustrative of the whole.

**1. Step One of the *Warren* Test**

The ALJ found that NCCU's evidence "at most, proved [Hardy] may have engaged in poor job performance in managing and supervising her subordinate employees." As a fact-based inquiry, we review whether the employee engaged in the alleged conduct using the whole record test. *Carroll*, 358 N.C. at 665, 599 S.E.2d at 898. Under the whole record test, where "substantial evidence supports an agency's decision after the entire record has been reviewed, the decision must be upheld." *Blalock,* 143 N.C. App. at 473-74, 546 S.E.2d at 181.

After reviewing the relevant testimony and other evidence, we find substantial evidence to support the ALJ's determination that Hardy's conduct is properly categorized as "poor job performance in managing and supervising her subordinate employees" and not "autocratic, divisive, bullying management." However, this does not necessarily equate to "unacceptable personal conduct."

**2. Step Two of the *Warren* Test**

The ALJ went on to conclude that "[NCCU] failed to present sufficient proof that [Hardy] bullied, threatened, or intimidated her subordinate officers, or created a violent workplace for her subordinate employees." As a question of law, we review de novo whether Hardy's conduct falls within one of the categories of "unacceptable personal conduct" provided by the North Carolina Administrative Code. *Carroll*, 358 N.C. at 666, 599 S.E.2d at 898.

After reviewing the evidence and testimony presented before the ALJ, we are convinced that Hardy's problematic management style does not fall into any of the following definitions of "unacceptable personal conduct:"

> (a) conduct for which no reasonable person should expect to receive prior warning;
> (b) job-related conduct which constitutes a violation of state or federal law;
> . . .
> (d) the willful violation of known or written work rules; [and,]
> (e) conduct unbecoming a state employee that is detrimental to state service[.]

25 NCAC 1J.0614(8) (April 2018).

NCCU argues that Hardy's management of her Patrol Team, her failure to immediately report a larceny on campus, and her violation of NCCU's Workplace Violence Policy are all examples of "unacceptable personal conduct." Further, NCCU contends that Hardy's demotion letter, in coordination with feedback on her performance reviews, was sufficient to give her notice that she was being demoted for her management of her Patrol Team. However, NCCU did not mention the failure to report a larceny before the ALJ. Additionally, any reason not specifically mentioned in the demotion letter and raised for the first time on appeal does not provide sufficient particularity of the reason for demotion and is barred by N.C.G.S. § 126-35. *Leiphart*, 80 N.C. App. at 350-51, 342 S.E.2d at 922 ("The purpose of [N.C.G.S. § 126-35] is to provide the employee with a written statement of the reasons for his

discharge so that the employee may effectively appeal his discharge."). Therefore, we decline to consider the failure to report a larceny as "conduct which constitutes a violation of state or federal law."

**i. Conduct for Which No Reasonable Person Should Expect to Receive Prior Warning**

NCCU relies on *Granger v. University of North Carolina at Chapel Hill*, 197 N.C. App. 699, 678 S.E.2d 715 (2009), and *Blackburn v. North Carolina Department of Public Safety*, 246 N.C. App. 196, 784 S.E.2d 509, *review denied sub nom.*, 786 S.E.2d 915 (2016), in support of its argument that Hardy's should not have expected to receive a warning prior to her demotion. In *Granger*, the employee was dismissed for saying a racial slur to a subordinate. *Granger*, 197 N.C. App. at 701, 678 S.E.2d at 716. In *Blackburn*, a state correctional officer was dismissed for his role in allowing an inmate in solitary confinement to remain handcuffed for five days resulting in the inmate's death. *Blackburn*, 246 N.C. App. at 199, 784 S.E.2d at 513. NCCU acknowledges that "[a]lthough their conduct may have been more severe than [Hardy's] conduct in this case, so was the discipline imposed." We are not convinced by this argument based on the evidence presented at trial.

We do not find that Hardy's conduct rises to a level that a reasonable person would know that they would be demoted without warning. In contrast to NCCU's contentions, Hardy's supervisors stated that they had discussed her supervisory issues with her and were attempting to help her become a more effective leader. As

a result, we cannot conclude that based on these same actions, a reasonable person would expect to be demoted without warning.

**ii. The Willful Violation of Known or Written Work Rules**

NCCU's demotion letter mentions a previous human resources investigation into whether a violation of the Workplace Violence Policy occurred. At trial, the ALJ questioned the investigator from NCCU's Human Resources Department and took the result of the investigation into consideration when determining whether Hardy engaged in the alleged conduct. NCCU argues that the ALJ failed to give the required amount of deference to NCCU's human resources investigation, but we disagree because we find the investigation to be inconsistent with the "regulation's plain text." *Total Renal Care of N.C., LLC v. N.C. Dep't of Health & Human Servs.*, 242 N.C. App. 666, 674, 776 S.E.2d 322, 327 (2015) ("An administrative agency's interpretation of its own regulations is entitled to deference unless it is plainly erroneous or inconsistent with the regulation's plain text.").

NCCU's Workplace Violence Policy states in part that "Workplace Violence includes, but is not limited to, intimidation, bullying, stalking, threats, physical attack, domestic violence or property damage and includes acts of violence . . . ." Intimidation is defined by the Policy as "engaging in actions that includes but is not limited to behavior intended to frighten, coerce, or induce duress." Bullying is defined as "unwanted offensive and malicious behavior which undermines an individual or

group through persistently negative attacks. There is typically an element of vindictiveness and the behavior is calculated to undermine, patronize, humiliate, intimidate or demean the recipient."

Taking all of this into consideration, the ALJ only found that Hardy's conduct was categorized as "poor job performance in managing and supervising her subordinate employees." We cannot conclude that NCCU's human resources investigation alone was enough to justify demotion, especially taking into consideration the evidence and testimony presented at trial. NCCU's other examples related to the willful violation of known or written work rules were not mentioned in the demotion letter and are therefore not considered by this Court.

**iii. Conduct Unbecoming a State Employee that is Detrimental to State Service**

This Court upheld the dismissal of a state trooper on grounds of conduct unbecoming a state employee when the trooper engaged in an extramarital affair where sexual relations occurred in the trooper's patrol vehicle and in the local highway patrol office. *Poarch v. N.C. Dep't of Crime Control & Pub. Safety*, 223 N.C. App. 125, 127, 741 S.E.2d 315, 327 (2012). The trooper was also accused of unlawfully stopping the woman he was having an affair with, which culminated in his disciplinary action. *Id.*

We do not find that Hardy's actions rise anywhere near the level of the employee in *Poarch*. Further, while we do not deny that Hardy's "poor job

performance in managing and supervising her subordinate employees" is problematic, it is difficult to believe that an employee who engaged in behavior that NCCU believed to be "conduct unbecoming to a state employee" would give that same employee overall "good" ratings on her performance reviews.

NCCU relies on one of our unpublished opinions, *Follum v. N.C. State Univ.*, 204 N.C. App. 369, 696 S.E.2d 203, 2010 WL 2163782 (2010) (unpublished), in its argument that the trial court erred in refusing to find Hardy's behavior was "unbecoming a state employee that is detrimental to state service" for the purposes of 25 NCAC 1J.0614(8)(e). However, as *Follum* is unpublished, it is not binding precedent. N.C. R. App. P. 30(e)(3). Further, we defer to the ALJ's findings of fact that were supported by competent evidence, even if there was evidence that could have supported alternative findings. *Terry's Floor Fashions, Inc. v. Crown Gen. Contr'rs*, 184 N.C. App. 1, 10, 645 S.E.2d 810, 816 (2007) (citation omitted). Finally, even if *Follum* had precedential value, we do not find that Hardy's conduct, as established at the October 2016 hearing, rose to the level of the conduct at issue in *Follum*.

The trial court, after considering all the evidence of Hardy's behavior, made the following unchallenged findings of fact:[3]

[3] While 15(a), 15(b), and 21 are listed under "Conclusions of Law" in the ALJ's Final Decision, their factual elements are included here for determination of whether Hardy's conduct constitutes "unacceptable personal conduct."

37. The allegations by [NCCU]'s witnesses at hearing, that [Hardy] had bullied, threatened, and/or intimidated them at work, raised serious concerns about [Hardy]'s conduct towards her subordinate employees. Most of these employees clearly held some level of grievance against [Hardy], and disliked being under her supervision. These employees' complaints may have established that [Hardy] was unhelpful by failing to assist officers on calls, that [Hardy] used a harsh tone when speaking with her patrol officers, and that [Hardy] distracted officers by calling them during their shifts. However, most of these complaints appeared to center around a personal dissatisfaction with the manner in which [Hardy] performed her job and her supervisory duties.

. . . .

39. Although several witnesses spoke of fears of "retaliation" and "disciplinary action" from [Hardy], the preponderance of the evidence showed that [Hardy] neither disciplined nor attempted to initiate disciplinary action against any of the employees involved. Likewise, there was no evidence presented at hearing that [Hardy] took adverse action against any of the employees on their performance reviews. Instead, the undisputed evidence at hearing demonstrated that [Hardy] gave all the persons involved good performance reviews.

. . . .

15(a). [Hardy] received "Very Good" ratings on her most recent performance review in some of the same areas, such as "Employee Supervision," for which she was subsequently demoted.

15(b). [NCCU]'s evidence at hearing, at most, proved [Hardy] may have engaged in poor job performance in managing and supervising her subordinate employees.

. . . .

> 21. Failing to help with a traffic stop, asking employees to do work employees felt was unnecessary, and/or criticizing subordinate employees' work performance, may raise issues regarding [Hardy]'s job performance as a supervisor.

However, based on Hardy's conduct, as established under the first step of the *Warren* test, and the above findings, the ALJ concluded that "[NCCU] has failed to prove any incidence of unacceptable personal conduct" pursuant to 25 NCAC 1J.0614(8)(e). The ALJ reversed NCCU's decision to demote Hardy based on its ruling that NCCU had failed to prove the second step of the *Warren* test, "whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code." *Warren*, 221 N.C. App. at 383, 726 S.E.2d at 925.

Since the disciplinary action was reversed, the ALJ did not consider "whether that conduct constitute[d] just cause for [the disciplinary action taken][,]" which "inquiry is a question of law" and "is reviewed *de novo*." *Carroll*, 358 N.C. at 665-66, 599 S.E.2d at 898 (second set of brackets in original) (citations omitted). However, like the ultimate determination of "just cause," "unacceptable personal conduct" "is a 'flexible concept, embodying notions of equity and fairness,' that can only be determined upon an examination of the facts and circumstances of each individual case." *Wetherington*, 368 N.C. at 591, 780 S.E.2d at 547 (citation omitted).

After review of prior opinions considering whether conduct rises to the level of unacceptable personal conduct, we find no error in the trial court's determination that Hardy's conduct failed to rise to the necessary threshold. *See, e.g.*, *Carroll*, 358 N.C. at 675-76, 599 S.E.2d at 904 (and cases cited therein). Because we hold that the trial court did not err in its determination that Hardy's conduct did not rise to the level of "unacceptable personal conduct" we, like the trial court, need not proceed to the third and final "just cause" step of the *Warren* test.

**3. Step Three of the *Warren* Test**

The third step of the *Warren* test is "whether that misconduct amounted to just cause for the disciplinary action taken." *Warren*, 221 N.C. App. at 383, 726 S.E.2d at 925. This question of law is also reviewed de novo. *Carroll*, 358 N.C. at 666, 599 S.E.2d at 898. Because NCCU failed to prove that Hardy's conduct was "unacceptable personal conduct," Hardy's demotion was improper.

## CONCLUSION

The conduct that NCCU described in Hardy's demotion letter specified that Hardy was being demoted for "unacceptable personal conduct." Despite NCCU's claim that Hardy's conduct meets multiple definitions of "unacceptable personal conduct," based on the record and transcripts before us, we cannot conclude that NCCU proved that Hardy's conduct meets any of the definitions of "unacceptable personal conduct" contained in the North Carolina Administrative Code. As the

employer, NCCU had the burden of proving that just cause existed to demote Hardy. Because NCCU failed to meet this burden, we affirm the ALJ's conclusion that Hardy's demotion was not warranted and uphold her reinstatement.

AFFIRMED.

Chief Judge McGEE and Judge ELMORE concur.

Report per Rule 30(e).