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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-60

Filed 19 November 2024

Office of Administrative Hearings, No. 23 OSP 01640

MICHAEL T. ZANCHELLI, Petitioner,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES, Respondent.

Appeal by Respondent from Final Decision entered 4 October 2023 by Administrative Law Judge Michael C. Byrne in the Office of Administrative Hearings. Heard in the Court of Appeals 28 August 2024.

*Haithcock, Barfield, Hulse, & King, P.L.L.C., by Glenn A. Barfield, for Petitioner-Appellee.*

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Daniel K. Covas and Assistant Attorney General Grace R. Linthicum, for Respondent-Appellant.*

COLLINS, Judge.

Respondent North Carolina Department of Health and Human Services appeals from a Final Decision of the Office of Administrative Hearings reversing the dismissal of Petitioner Michael Zanchelli from his employment. The Department contends that the Administrative Law Judge (“ALJ”) erred by concluding that the

Department lacked just cause to dismiss Zanchelli and by denying its motion for a directed verdict. We conclude that the ALJ did not err in either respect and affirm the Final Decision.

### **I. Background**

The Department dismissed Zanchelli from its employment on 2 December 2022 for unacceptable personal conduct (“UPC”). The parties’ stipulations and the evidence before the ALJ tended to show the following:

At the time of his dismissal, Zanchelli was employed by the Department as a senior audit manager with the Office of Internal Audit (“OIA”). Zanchelli had been a career State employee since 6 October 2014.

Zanchelli was arrested at his residence on 1 November 2022. He was briefly allowed to use his cell phone and sent his supervisor, Jeff Grimes, a text message stating, “Hey I need a personal day today. An emergency came up. I’ll be in touch in a couple days.” Grimes responded, “Thanks, Mike. No need to go into any details, but just want to make sure you are okay?” Zanchelli did not respond. Later that day, Grimes learned that the local news had contacted the Department alleging that Zanchelli had been arrested and criminally charged with five counts of statutory sexual offense with a child younger than fifteen.

The following day, on 2 November 2022, Grimes texted Zanchelli asking if he planned to work that day; Zanchelli did not have access to his cell phone, however, and did not respond. Later that same day, the Department sent Zanchelli a letter,

notifying him that he was being placed on Investigatory Leave With Pay starting 3 November 2022 “regarding pending criminal charges of statutory sex offenses.” The letter instructed Zanchelli, “[D]uring this period of investigatory leave, you are directed not to return to the job site without prior permission from [Grimes]. You are directed not to have any discussions or contact with [the Department] for any reason.” The letter stated that the “period of investigation status should last for no longer than thirty (30) calendar days” and that placing Zanchelli on leave “is not considered disciplinary.” The letter was sent by regular and certified mail to Zanchelli’s home and emailed to both his personal and work email addresses.

Grimes and his Human Resources manager, Magnolia Lugo, met with Zanchelli at the Wake County Detention Center on 10 November 2022. At this meeting, Zanchelli was hand-delivered the letter notifying him that he had been placed on leave starting 3 November. This was the first time Zanchelli read the letter.

Zanchelli remained in custody from 1 November through 27 November 2022, a total of twenty-seven days. While in custody, Zanchelli “had the opportunity to make additional phone calls while in holding, but only in the presence of other detainees and guards.” On 28 November 2022, Zanchelli emailed Grimes stating that he was available for work. On 29 November 2022, Zanchelli was notified that a pre-disciplinary video conference had been scheduled for the next day, and that his dismissal was being recommended based on UPC, specifically, “exhibiting poor judgment, unavailability to work, failure to report criminal charges and an arrest in

a timely manner, failure to report to work as scheduled, and violating policy.”

After the conference, which Zanchelli attended, he was dismissed from the Department’s employment on 2 December 2022. The Dismissal Notice stated that the basis for Zanchelli’s dismissal was his

unacceptable personal conduct as defined in Section 7 of the State Human Resources Manual. Unacceptable personal conduct is defined as: (1) conduct for which no reasonable person should expect to receive prior warning; (2) conduct unbecoming a State employee that is detrimental to State service; and (3) the willful violation of a known or written work rule [i.e., Department of Health and Human Services (DHHS) Criminal Records Check Policy].

The Dismissal Notice included a narrative of the acts and omissions upon which Zanchelli’s dismissal was based, culminating with the following:

The management investigation determined that you were unavailable to report to work, and you did not report to [Grimes] within five calendar days that you were charged with criminal offenses on November 1, 2022, and arrested. You violated the DHHS Criminal Records Check Policy, which provides: *“Covered persons are required to report any arrest, criminal charges, or criminal convictions (other than minor traffic violations), as well as any protective orders entered against them or any confirmed finding of abuse or neglect against them to their supervisor no later than (5) five calendar days after such occurrence. The supervisor shall then notify the Human Resources Director. Employment actions shall be reviewed according to this policy.”*

The Dismissal Notice concluded, “Based on the severity of your violations, the serious subject matter, the potential harm, your work history, and to maintain consistency,

dismissal is [Grimes'] recommendation for the appropriate form of discipline.”

Zanchelli filed a petition for a contested case with the Office of Administrative Hearings. The case came before the ALJ on 8 August 2023. At the close of the evidence, the Department’s motion for a directed verdict was denied. The ALJ filed a Final Decision on 4 October 2023, reversing Zanchelli’s dismissal and retroactively reinstating him with back pay and other benefits from the date of his dismissal. The Department appealed.

## **II. Discussion**

### **A. Just Cause for Dismissal**

The Department first argues that the ALJ erred by concluding that the Department failed to establish just cause for Zanchelli’s dismissal. We disagree.

#### ***1. Standard of Review***

N.C. Gen. Stat. § 150B-51 (2023) governs the scope of judicial review of an ALJ’s final decision and provides:

The court reviewing a final decision may affirm the decision or remand the case for further proceedings. It may also reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency or administrative law judge;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;

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(5) Unsupported by substantial evidence admissible under [N.C.]G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or

(6) Arbitrary, capricious, or an abuse of discretion.

*Id.*

The standard of review is thus “dictated by the substantive nature of each assignment of error.” *Harris v. N.C. Dep’t of Pub. Safety*, 252 N.C. App. 94, 99, 798 S.E.2d 127, 132 (2017) (citations omitted); N.C. Gen. Stat. § 150B-51(c). Errors asserted under N.C. Gen. Stat. § 150B-51(b)(1), (2), (3), or (4) are questions of law and receive de novo review. *Id.*; see also *Hinton v. N.C. Dep’t of Pub. Safety*, 284 N.C. App. 288, 292-93, 876 S.E.2d 583, 587 (2022). Under a de novo review, the court “considers the matter anew and freely substitutes its own judgment for the agency’s.” *Overcash v. N.C. Dep’t of Env’t & Natural Res.*, 179 N.C. App. 697, 703, 635 S.E.2d 442, 446 (2006) (citation omitted) (cleaned up).

Errors asserted under N.C. Gen. Stat. § 150B-51(b)(5) and (6) receive the “whole record standard of review.” N.C. Gen. Stat. § 150B-51(c). Under the whole record standard, the reviewing court

may not substitute its judgment for the agency’s as between two conflicting views, even though it could reasonably have reached a different result had it reviewed the matter *de novo*. Rather, a court must examine all 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. Substantial evidence is relevant evidence a reasonable mind might

accept as adequate to support a conclusion.

*Harris*, 252 N.C. App. at 100, 798 S.E.2d at 133 (citation omitted). When reviewing under the whole record standard, we must give the ALJ “a high degree of deference.” *Id.*

## **2. Just Cause Framework**

“No career State employee subject to the North Carolina Human Resources Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.” N.C. Gen. Stat. § 126-35(a) (2023). The employer bears the burden of showing that a career State employee was discharged for just cause. *Id.* § 126-34.02(d) (2023).

“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.* § 126-35(a). The purpose of this provision is to ensure the employee knows the reasons for his discharge “so that the employee may effectively appeal his discharge.” *Leiphart v. N.C. Sch. of the Arts*, 80 N.C. App. 339, 350-51, 342 S.E.2d 914, 922 (1986) (citation omitted). Accordingly, any reason not specifically included in a disciplinary notice may not be made the basis for disciplinary action. *See id.*; *see also* N.C. Gen. Stat. § 126-35 (2023).

“The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the agency through the agency grievance procedure for a final agency decision.” N.C. Gen. Stat. § 126-35(a). Once a final agency decision

has been issued, if the employee is not satisfied, the employee may file a contested case by filing a petition with the Office of Administrative Hearings. *Id.* §§ 150B-23, 126-34.02 (2023). In a contested case, “[t]he burden of showing by a preponderance of the evidence that a career State employee subject to Chapter 126 of the General Statutes was discharged, suspended, or demoted for just cause rests with the agency employer.” *Id.* § 150B-25.1(c) (2023).

There are two bases for the discipline or dismissal of an employee under the “just cause” standard set out in N.C. Gen. Stat. § 126-35: (1) “unsatisfactory job performance, including grossly inefficient job performance” and (2) “unacceptable personal conduct.” 25 N.C. Admin. Code 1J.0604(b) (2024). “Unsatisfactory [j]ob [p]erformance means work-related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan, or as directed by the management of the work unit or agency.” 25 N.C. Admin. Code 1J.0614(9) (2024). The State Human Resources Manual includes “[a]bsenteeism, tardiness, or other abuses of work time” as examples of behavior that can constitute unsatisfactory job performance. *State Human Resources Manual, Disciplinary Action Policy* § 4.2(b) (2023).

Our Administrative Code’s definition of UPC, which is tracked by the State Human Resources Manual’s definition in Section 7, includes:

- (a) conduct for which no reasonable person should expect to receive prior warning;



. . . .

(d) the willful violation of known or written work rules;  
[and]

(e) conduct unbecoming a state employee that is  
detrimental to state service[.]

25 N.C. Admin. Code 1J.0614(8) (2024).

To determine whether an agency has just cause to dismiss an employee based on UPC, we proceed with the following three-part inquiry:

[The first inquiry is] whether the employee engaged in the conduct the employer alleges. The second inquiry is whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. Unacceptable personal conduct does not necessarily establish just cause for all types of discipline. If the employee's act qualifies as a type of unacceptable conduct, the tribunal proceeds to the third inquiry: whether that misconduct amounted to just cause for the disciplinary action taken.

*Warren v. N.C. Dep't of Crime Control & Pub. Safety*, 221 N.C. App. 376, 383, 726 S.E.2d 920, 925 (2012).

Here, Zanchelli was dismissed "based on [his] unacceptable personal conduct as defined in Section 7 of the State Human Resources Manual." On appeal, the Department alleges that Zanchelli's UPC stemmed from his failure to timely report his arrest and criminal charges, in violation of the Department's Criminal Records Check Policy, and his unavailability to work. We address each allegation in turn.

*a. Violation of Criminal Records Check Policy*

First, we must determine whether Zanchelli "engaged in the conduct the

[Department] alleges.” *Id.* Zanchelli’s Dismissal Notice alleges that he “did not report to [Grimes] within five calendar days that [Zanchelli was] charged with criminal offenses on November 1, 2022, and arrested.” Zanchelli stipulated that he did not personally inform Grimes of his arrest and criminal charges until their meeting at the detention center on 10 November 2022, more than five days after the arrest and charges occurred. Accordingly, the first prong of *Warren’s* three-part inquiry is satisfied.

“The second inquiry is whether the employee’s conduct falls within one of the categories of [UPC] provided by the Administrative Code.” *Id.* The Administrative Code’s non-exhaustive list of conduct constituting UPC includes “the willful violation of known or written work rules.” 25 N.C. Admin. Code 1J.0614(8). A willful violation of a known or written work rule “occurs when the employee willfully takes action which violates the rule and does not require that the employee intend [the] conduct to violate the work rule.” *Hilliard v. N.C. Dep’t of Correction*, 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005) (citation omitted).

Zanchelli stipulated that he did not inform Grimes of his arrest and charges within five days. This conduct violated the Department’s Criminal Records Check Policy. Zanchelli also stipulated that he “was trained about all employee work policies, including the Criminal Records Check Policy,” and that he “had the opportunity to make additional phone calls while in holding, but only in the presence of other detainees and guards.” Furthermore, at his grievance hearing on 30 January

2023, Zanchelli admitted to calling a family member from the detention center within the first five days after his arrest. This evidence—that Zanchelli knew of the Criminal Records Check Policy and had the ability to comply with it but failed to—supports the conclusion that he willfully violated a known work rule such that his “conduct [fell] within one of the categories of [UPC] provided by the Administrative Code.” *Warren*, 221 N.C. App. at 383, 726 S.E.2d at 925. Therefore, we conclude that Zanchelli engaged in UPC.

Finally, we must determine whether Zanchelli’s conduct “amounted to just cause for the disciplinary action taken.” *Id.* “[N]ot every instance of [UPC] as defined by the Administrative Code provides just cause for discipline.” *Brewington v. N.C. Dep’t of Pub. Safety*, 254 N.C. App. 1, 15, 802 S.E.2d 115, 125 (2017) (citation omitted). “[J]ust 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.” *Id.* at 14, 802 S.E.2d at 125 (quotation marks and citation omitted). To determine whether an employee’s UPC amounts to just cause for discipline, we must weigh five factors, to the extent there is evidence to support them. *Locklear v. N.C. Dep’t of Agric. & Consumer Servs.*, 280 N.C. App. 59, 70, 867 S.E.2d 194, 202 (2021) (citing *Wetherington v. N.C. Dep’t of Pub. Safety* (“*Wetherington II*”), 270 N.C. App. 161, 190, 840 S.E.2d 812, 832 (2020)). These “*Wetherington* Factors” include “the severity of the violation, the subject matter involved, the resulting harm, the [employee’s] work history, [and] discipline imposed in other cases involving similar

violations.” *Wetherington v. N.C. Dep’t of Pub. Safety* (“*Wetherington I*”), 368 N.C. 583, 592, 780 S.E.2d 543, 548 (2015).

The ALJ addressed all five *Wetherington* factors and the Department does not specifically challenge any of the ALJ’s findings of fact on those factors. Nonetheless, as laid out below, the ALJ’s findings are supported by the record evidence and support our conclusion that the *Wetherington* factors weigh against a finding of just cause for dismissal.

The first factor is the severity of Zanchelli’s conduct. *Id.* In its Dismissal Notice, the Department included two dense paragraphs characterizing the severity of Zanchelli’s violation and concluding that his actions were “contrary to the mission and values of this organization and cannot be tolerated.” The Department’s characterization, however, focuses on the underlying basis for Zanchelli’s charges and his inability to work, and not his failure to report.

The ALJ found Zanchelli’s conduct was not severe:

Failing to report an arrest [that the Department] was well aware of some days prior to the reporting deadline, when the last instruction [Zanchelli] received from his supervisor prior to the end of the five-day period was “no need to give details,” or words to that effect, is not severe. The policy [Zanchelli] allegedly violated was neither referenced in [Zanchelli’s] investigatory leave letter nor raised by Grimes and Lugo when they visited [Zanchelli] at the jail. Grimes himself, when asked, was unable to identify additional action [the Department] would have taken had [Zanchelli] formally reported his charges on the fifth day.

The record evidence supports this finding. The evidence shows that Grimes was made

aware of Zanchelli's arrest on the same day it occurred and immediately commenced an investigation, and that Zanchelli acknowledged his arrest to Grimes when they met in person just five days after the reporting window had closed. There is no evidence that Zanchelli attempted to conceal his arrest or acted with any malintent when he failed to report the arrest or charges.

The Department posits that Zanchelli's arrest and ensuing unavailability to work are evidence that Zanchelli's conduct was severe. We reject this argument; neither of these considerations is relevant to Zanchelli's failure to report. We conclude that Zanchelli's violation of the Criminal Records Check Policy was not severe and thus weighs against a finding of just cause.

The second factor is the subject matter involved. *Id.* The Department noted in Zanchelli's Dismissal Notice that "[t]he subject matter involved includes exhibiting poor judgment, unavailability to work, failure to report criminal charges and an arrest in a timely manner, failure to report to work as scheduled, and violating policy." Contrary to several assertions made by the Department, the subject matter involved is not the arrest itself or the basis of Zanchelli's criminal charges. At the time of his dismissal and the contested case hearing, Zanchelli had been charged with crimes—he had not been convicted of them. *See State v. Grappo*, 271 N.C. App. 487, 493, n.2 845 S.E.2d 437, 441, n.2 (2020) ("[T]he principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.")

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(citation omitted). Therefore, the subject matter involved—Zanchelli's failure to timely report his arrest and criminal charges—weighs against a finding of just cause.

The third factor is the resulting harm. *Wetherington I*, 368 N.C. at 592, 780 S.E.2d at 548. The Department described the following "potential harm" in the Dismissal Notice:

The potential harm. There was no evidence of physical harm to staff or customers. However, there was evidence of adverse impact on the delivery of services and business operations. You were not available to supervise your direct reports or provide oversight for the programs assigned to you, which jeopardizes compliance and integrity and workload distribution.

None of this "potential harm" could have been caused by Zanchelli's failure to report. The ALJ found that Zanchelli's conduct resulted in "very little, if any" harm to the Department. This finding is supported. Grimes became aware of Zanchelli's arrest and incarceration on the day the arrest occurred. Grimes almost immediately placed Zanchelli on leave and commenced the investigatory process, before the five-day window required by the Criminal Records Check Policy expired. Accordingly, as Zanchelli's failure to report his arrest and charges within five calendar days resulted in no harm, this factor weighs against a finding of just cause.

The next factor is the employee's prior work history. *Id.* Under this factor, the Department noted solely that Zanchelli's "work history is otherwise positive." The ALJ found that Zanchelli "had a multi-year work history with nothing but positive performance reviews and no disciplinary action of any kind." The record evidence

suggests that Zanchelli had been a career State employee with the Department with a positive work history for over eight years when he was dismissed. His work history mitigates against a finding that just cause existed to dismiss him from employment. *See Whitehurst*, 257 N.C. App. at 948, 811 S.E.2d at 634 (“Whitehurst had worked for ECU for twelve years, with no disciplinary action. This factor also mitigates against a finding that just cause existed to dismiss Whitehurst from employment[.]”).

The final factor is the “discipline imposed in other cases involving similar violations.” *Wetherington I*, 368 N.C. at 592, 780 S.E.2d at 548. Grimes considered two prior cases in deciding to dismiss Zanchelli. The ALJ found that both prior cases involved “conduct substantially more severe than the conduct—failure to timely report an arrest of which management was aware the same day it happened—at issue in this case.” The record evidence supports this finding. The first case involved an employee failing to report several criminal charges, of which the Department was unaware, for four months. In the second case, the employee was dismissed primarily for operating a state vehicle while severely under the influence of illegal drugs and using that vehicle to transport illegal drugs. There, the employee’s violation of the Criminal Records Check Policy was only a minor consideration, as opposed to the only consideration, in the Department’s decision to dismiss him. As such, the ALJ’s finding that these prior cases are “neither comparable nor convincing” is supported by the evidence. This factor weighs against a finding of just cause.

In summary, we conclude that Zanchelli engaged in UPC by willfully violating

the Criminal Records Check Policy. All five *Wetherington* factors, however, weigh in Zanchelli's favor and support the conclusion that the Department lacked just cause to dismiss Zanchelli. As such, the ALJ did not err by reversing Zanchelli's dismissal.

*b. Unavailability*

The Department also contends that it had just cause to dismiss Zanchelli based upon his unavailability to work. Specifically, the Department argues that “[i]t was error for the ALJ to exclude or not consider evidence of conduct unbecoming a State employee as a basis of UPC[.]” This issue is not preserved for our review.

“In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C. R. App. P. 10(a)(1) (2023).

The Dismissal Notice in this case stated that Zanchelli was dismissed for “unacceptable personal conduct as defined in Section 7 of the State Human Resources Manual” and listed three examples of UPC from the Manual: “(1) conduct for which no reasonable person should expect to receive prior warning; (2) conduct unbecoming a State employee that is detrimental to State service; and (3) the willful violation of a known or written work rule [i.e., Department of Health and Human Services (DHHS) Criminal Records Check Policy].” Under the “Specific Acts or Omissions” section of the Dismissal Notice, the Department concluded:

The management investigation determined that you were



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unavailable to report to work, and you did not report to [Grimes] within five calendar days that you were charged with criminal offenses on November 1, 2022, and arrested. You violated the DHHS Criminal Records Check Policy, which provides: “*Covered persons are required to report any arrest, criminal charges, or criminal convictions (other than minor traffic violations), as well as any protective orders entered against them or any confirmed finding of abuse or neglect against them to their supervisor no later than (5) five calendar days after such occurrence. The supervisor shall then notify the Human Resources Director. Employment actions shall be reviewed according to this policy.*”

At the hearing, the ALJ struck and prohibited testimony regarding “conduct unbecoming a State employee that is detrimental to State service.” Because the Dismissal Notice “merely” defined “unacceptable personal conduct,” the ALJ concluded that there is no “allegation [in the Dismissal Notice] that Mr. Zanchelli’s conduct constituted conduct unbecoming a [S]tate employee.” The ALJ stated, “I’m not going to consider [the witness’s testimony] as evidence of his dismissal if it wasn’t alleged against him.”

Zanchelli’s counsel stated, “[T]here is no conduct alleged within the letter – that’s alleged in the dismissal letter to have been conduct unbecoming.” The Department’s counsel then admitted, “Your Honor, we don’t see it in the letter beyond what we’ve already discussed and placed on the record.” The ALJ then thanked the Department’s counsel for their “candor on that point” and noted that they were not responsible for what was or was not in the Dismissal Notice; they were “just kind of stuck with it, which is not [their] fault.”

Because the Department failed to object to the trial court's ruling, this issue is not preserved for our review and is dismissed.

### ***3. The Department's Remaining Arguments***

The Department argues that the ALJ made several other errors in its Final Decision that warrant remand.

First, the Department argues that the ALJ erred by failing to consider Zanchelli's violation of the OIA Code of Ethics Policy as just cause for his dismissal. As discussed above, an employee disciplined under N.C. Gen. Stat. § 126-35 must be provided with a written notice stating the specific reasons for his discipline. The statutory provision "requires that the acts or omissions be described with sufficient particularity so that the discharged employee will know precisely what acts or omissions were the basis of his discharge." *Leiphart*, 80 N.C. App. at 351-52, 342 S.E.2d at 923 (quotation marks and citation omitted).

Here, Zanchelli's Dismissal Notice fails to specify his violation of the OIA Code of Ethics policy as a reason for his dismissal. Therefore, as Zanchelli's alleged violation of the OIA Code of Ethics Policy was not specifically included in his disciplinary notice, we dismiss the Department's argument that it should be considered as providing just cause for dismissal.

Second, the Department argues that if we conclude that it lacked just cause for Zanchelli's dismissal, we should find, in the alternative, that just cause existed for a lesser discipline. The Department, however, has failed to cite any legal authority to

support this argument. Accordingly, this argument is deemed abandoned. *See* N.C. R. App. P. 28(b)(6) (2023) (“Issues not presented in a party’s brief, or in support of which no reason or argument is stated, will be taken as abandoned.”); *see also* N.C. *State Bar v. Ethridge*, 188 N.C. App. 653, 668, 657 S.E.2d 378, 387 (2008) (holding that assignments of error for which a party fails to cite any authority are deemed abandoned pursuant to Rule 28(b)(6)).

### **B. The Department’s Motion for Directed Verdict**

The Department next contends that the ALJ erred by denying its motion for a directed verdict.

Our appellate courts review the denial of a directed verdict to determine “whether the evidence, taken in the light most favorable to the non-moving party, is sufficient as a matter of law to be submitted to the jury.” *Davis v. Dennis Lilly Co.*, 330 N.C. 314, 322-23, 411 S.E.2d 133, 138 (1991) (citation omitted). “When determining the correctness of the denial for directed verdict or judgment notwithstanding the verdict, the question is whether there is sufficient evidence to sustain a jury verdict in the non-moving party’s favor . . . or to present a question for the jury.” *Id.* at 323, 411 S.E.2d at 138 (citations omitted).

Zanchelli was dismissed for violating the Department’s Criminal Records Check Policy, which the Department argued constituted UPC. As discussed above, the Department failed to present sufficient evidence showing that the behavior amounted to just cause for the disciplinary action taken. As the evidence, taken in

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the light most favorable to Zanchelli, was insufficient to direct a motion in the Department's favor, the ALJ did not err by denying the Department's motion for a directed verdict.

**III. Conclusion**

For the reasons set forth above, we affirm the ALJ's Final Decision reversing Zanchelli's dismissal and reinstating him with back pay.

AFFIRMED.

Judges ARROWOOD and WOOD concur.

Report per Rule 30(e).