Martin #3

IN THE MATTER OF THE ARBITRATION

Between

EMPLOYER

And

EMPLOYEE

TERMINATION APPEAL PROCEDURE

OCTOBER 1 & 2, 2003

REPORT AND DECISION OF ARBITRATOR

In these proceedings a single grievance was submitted for an Award to James P Martin, selected by the parties under the Termination Appeal Procedure to act as impartial arbitrator herein. A hearing was held in City A, Michigan on October 1 & 2, 2003 at which the parties were fully heard.

Briefs were filed by the Company on December 18, 2003. Ms. Employee waived the filing of a brief.

ISSUE

Was the termination of Employee for just cause? If not, what is the remedy?

NATURE OF CASE

Ms. Employee was employed by the Employer in March, 2001, at one of its City A, Michigan stores. After two promotions within a year, she was promoted and transferred to a City B, State A store as a trainee for a higher level management position. In July 2002, the Grievant required surgery, complicated by a chronic anemia condition. She had the surgery in City A, and

was hospitalized from July 17 to July 19. She was on properly approved medical leave at this time. On August 22, 2002, Ms Employee had a doctor's appointment, and brought a medical update form with her to be filled up by the doctor. Ms. Employee filled out the top portion of the form, and the doctor filled in the bottom portion. According to the doctor, she returned the form to Ms. Employee to submit to her employer. According to Ms. Employee, the doctor filled out the form and mailed it in to the Employer benefits department.

The Company received the medical update (MU) form on August 2. Based upon that, the Company extended the Ms Employee', sick leave until September 12. Later review of the MU revealed two changes in the document three weeks was changed to two, and a one was added. The ink used to make the changes was similar to the part of the form filled out by Ms. Employee, and dissimilar to that used to fill out the form by the doctor. These changes were not noted at the time the form was received by the Company. On September 11 Ms. Employee called the Company and stated that her next doctor's appointment was not until September 17, and she would require an extension on her sick leave until that date. This was granted. As later testified by the doctor, Ms Employee's next visit was October 17, not September 17. According to Ms. Employee, she went to her doctor's office on September 17, made a payment, and left a second MU form for the doctor to fill out and send in. According to the doctor's office records, Ms Employee came to the office and made a payment on September 16, and no MU form was brought to the office to be filled out. On September 20, the Employer received an MU form for Ms Employee, and it was entered in the records on September 23. The form had a return to work date of September 30 and "one unit" written in the treatment plan. The Employer benefits department did not understand the "one unit" notation and called Ms Employee's doctor's office to clarify the entry. The form showed a return to work date of September 30. The doctor's office

informed the Employer that it felt the "one unit" meant that a transfusion was needed, and based upon this, the Employer extended Ms Employee's sick leave until September 30.

The doctor called the Employer and informed it that the September 17 MU was a forgery. This happened on October 2, after the Grievant had returned to work on September 30. An investigation ensued and the Grievant was discharged in early October, 2002. The bases for the discharge was a conclusion by the Company that Ms Employee had forged the September 17 MU, thereby violating Employer policies regarding Honesty, Falsification of Documents, Fraudulent Misuse of Benefits, and Fraudulent Misuse of Disability Leave. Ms. Employee filed an appeal under the Termination Appeal Procedure.

CONTENTIONS

According to Ms Employee, she did not falsify any documents, she did not violate the Employer policy regarding Honesty, and she did not fraudulently misuse benefits of disability leaves The Employer terminated her employment as a ruse to avoid charges which the Ms Employee eventually brought against the Employer. The Employer did not have just cause to terminate her employment, and she should be returned to employment in accordance with the provisions of the Termination Appeal Procedure.

According to the Employer, this case is about dishonesty, deception and forgery. Ms. Employee was dishonest and deceived the Employer by forging 2 MU forms to extend her leave of absence. In so doing, she received leave time and pay to which she was not entitled. Her appeal is without merit, and her discharge should be upheld.

DISCUSSION

The conclusions in this case are both fact-driven and credibility-driven.

As to the first document, the MU of August 22, the handwriting expert found that three weeks had been changed to two, and in another place, a one had been overwritten with a two, and an additional I added. Further, he found that the ink used to make these changes, in the section filled out by the doctor, was similar to the ink used in the top of the form filled out by Ms. Employee, and dissimilar to the ink used in the bottom half by the doctor. Ms. Employee denied that she had made these changes, and claimed that the document was not in her possession after the doctor filled out her section To the contrary, the doctor testified in her deposition that she returned the document to Ms. Employee for transmittal to the Employer. Ms Employee testified that she was in the office with the doctor, and testified with precision and great specificity every detail of the visit. She knew the location of the doctor when she was filling out the form initially, remembered that she came over next to her on a rolling stool, made changes in view of her although the changes made were not clearly identifiable, and later testified that she remembered almost nothing from a deposition taken many months later "this is referred to as selective memory,", and, on the whole, is harmful to credibility. As to this issue, I find that I believe the doctor and disbelieve Ms Employee. I find that the MU was given to Ms. Employee to send to the Employer, and the opportunity to make the changes noted by the handwriting, expert existed.

As to the second document, the MU of September 17, the handwriting expert testified that, while Ms. Employee acknowledgedly filled out the top or the form, his examination strongly suggested that Ms. Employee filled out the bottom half as well. He found that the signature of the doctor was an attempt to simulate the doctor's signature, and the form was not

signed by the doctor. He found that the remainder of the bottom half had been copied from the August 22 MU, also an attempted simulation. Both halves were filled out with a pen using similar ink. Still further the dates on the form were numerals separated by dashes, a form used by Ms. Employee but not by the doctor, who separated the numerals with slashes. The Examiner also found "impressed writing" on the document. This was writing which was made with another piece of paper between the document and the writing implement. He found that the writing was the address to the benefits department of the Employer, and all indications were that it was in Ms Employee's handwriting.

Ms Employee denied filling out the September 17 document, claiming that she had dropped it off at her doctor's office on September 17 to be filled out and returned of the Employer. There are major problems with this claim. The doctor's records show that she was there to make a payment on September 16, not 17. The document had the notation "one unit", which by agreement represented one unit of blood. Ms. Employee saw her other doctor, who was treating her for anemia, on September I7 the day after the records show she saw her surgeon. There was no way the notation "one unit" could have been placed on the September 17 form by her surgeon, because Ms. Employee was not diagnosed as needing one unit, if at all, until the following day. While Ms Employee claimed to the contrary, two employees in the benefits department of the Employer testified that she told them she had a return to work date on September 3O, as a result of her September 17 MU form from her doctor.

Here are the problems with the September 17 form the handwriting expert testified that the form was not filled out nor signed by the doctor the date of the visit is not the same as the doctors office shows the visit, the "one unit" could only have been based upon the report from Ms Employee's other doctor, and her visit to that office was the day following, her visit to the

office where the form was purportedly filled out, the return to work date was purportedly based upon the “one unit", which information could not have been known by Ms Employee's doctors office on the day the she last visited and the handwriting expert testified that the patently forged document appeared to have been forged by Ms Employee.

Ms Employee, on her part, simply denies all the above.

The finding which must be made, based upon the above, is that the Employer's position is sustained by the evidence, and Ms Employee's bald denial is not adequate to offset the established physical evidence. Her credibility is lacking, based upon her precise and detailed recollection of every event in some cases, and her total inability to remember any thing which was detrimental to her case. The further finding must be that the Employer had just cause to discipline the Grievant for the violations set out by it when it terminated her employment, and the imposition of discharge as that discipline is reasonable. The appeal must be denied.

AWARD

That the Employer had Just Cause to discharge Ms Employee, that the Appeal of Ms Employee is denied.

James P Martin

Labor Arbitrator

February 13, 2004