

## **TERMINATION DISPUTE FORUM**

In re \_\_\_\_

(Hearing Officer Lee Hornberger)

### **DECISION OF THE HEARING OFFICER**

#### **INTRODUCTION**

This matter is before me following a Termination Dispute Forum Hearing on April 4, 7, and 15, and May 2, \_\_\_\_\_. Oral argument was on May 5, \_\_\_\_\_. Post-hearing documents were submitted on May 5, \_\_\_\_\_. The Employer was represented by \_\_\_\_\_. Claimant was represented by \_\_\_\_\_.

In rendering this Decision, I considered the testimony of the witnesses, the exhibits, and the submissions. In weighing the testimony, I considered each witness's relationship to the Employer or to Claimant; their interest, if any, in the outcome of the hearing; their manner of testifying; their opportunity to observe or acquire knowledge concerning facts about which they testified; the extent to which their testimony was consistent with their prior statements; and the extent to which they were supported or contradicted by other credible evidence.

The parties stipulated that the matter was properly before me.

I set forth the following Findings of Fact and Conclusions. Employee Handbook, Grievance Procedure, Article H, p 45. I have gone to great lengths to carefully document these Findings and the basis for this Decision.

#### **ISSUE**

The issue is whether the Employer proved by a preponderance of evidence that the action to terminate Claimant was warranted and appropriate under the circumstances, and, if not, what is the proper remedy.

## **RELEVANT EMPLOYEE HANDBOOK PROVISIONS**

### **“EMPLOYEE HANDBOOK**

#### **INTRODUCTORY STATEMENT**

This handbook is designed to acquaint you with ... and provide you with information about working conditions, employee benefits, and some of the situations affecting your employment. You should read, understand, and comply with all provisions of the handbook. It describes many of your responsibilities as an employee and outlines the programs developed by the \_\_\_ to benefit employees. One of our objectives is to provide a work environment that is conducive to both personal and professional growth.

No employee handbook can anticipate every circumstance or question about policy. As the \_\_\_ continues to grow, the need may arise and ... \_\_\_ reserves the right to revise, supplement, or rescind any policies or portion of the handbook from time to time as it deems appropriate, in its sole and absolute discretion. Employees will, of course, be notified of such changes to the handbook as they occur. Any such changes will be communicated to the employee before any action can be taken following an elimination or addition to a portion of the handbook. \*\*\*

#### **PHILOSOPHY**

The \_\_\_ can only be as good as the people who help provide the services. We strive to employ the best qualified people in accordance with \_\_\_, and encourage everyone to reach their highest potential. Our philosophy is to treat all employees in a fair manner and with the same level of courtesy and dignity as the members we serve. \*\*\*

## **VI. EMPLOYEE CONDUCT & WORK PROVISIONS**

### **A. BUSINESS CONDUCT**

Every organization must have certain rules in order to operate in an orderly and efficient manner, to make cooperation with other employees easier and to assist in properly respecting the rights of \_\_\_ and its employees. The following misconduct by an employee may result in disciplinary action up to and including termination. This list is not all-inclusive, as circumstances change, rules of conduct may also change. \*\*\*

15. Unsatisfactory performance or conduct.

## **VIII. PROGRESSIVE DISCIPLINE**

\_\_\_ recognizes that there are certain types of employee problems that are serious enough to justify either a reprimand, suspension, or, in extreme situations, termination of employment. Based on the situation and as determined by the Human Resources Director and the Director/Program Manager steps may be bypassed because of the impact on the \_\_\_ and/or other employees of the unacceptable behavior. All disciplinary action will begin with the department director and or program manager consulting with the Human Resources Director about the alleged violation or behavior that needs to be addressed and corrected. The Regulatory Director/Department Manager in consultation with the Human Resources Director shall determine the legitimacy of the complaint and provide direction as to the proper course of action in an attempt to either improve the problem, or in the case of a serious infraction protect the \_\_\_, other employees, and guests against a future infraction. This course of action can be a warning at any step in the progressive discipline process, with an action plan for the improvement of the problem; and a guideline should the problem continue or in the case of a serious infraction the

suspension or termination of employment. ...

The course of action (dependent on the severity of the infraction) will be initiated as follows:

1. **Verbal warning.** ...

2. **Written warning.** ...

3. **Suspension.** ...

4. **Termination.** The final disciplinary action step taken by the employee's supervisor shall be termination of employment. All terminations shall be conducted in consultation with the Human Resources Director.

## **IX. DISCIPLINARY ACTIONS**

An immediate supervisor shall initiate a request for disciplinary action to the Human Resources Director and this request will be commensurate with the seriousness of the violation of policies that has been committed. The activities listed below shall be considered prohibited conduct. An employee who commits these violations can be subject to disciplinary action. The following shall define the infractions and/or penalties or appropriate actions to be taken by a supervisor for an employee committing violations of policies. The following list is not all-inclusive. \_\_\_ retains the rights to modify the list as necessary.

W shall refer to: Written warning

S shall refer to: Suspension

T shall refer to: Termination ...

1. Work Performance ...

a) Insubordination, including disobedience, or failure/refusal to carry out assignments or instructions. W/S/T. \*\*\*

c) Intentional failure to provide accurate and complete information whenever an authorized person requires such information. S/T. \*\*\*

g) Negligence in the performance of assigned duties. W/S/T. \*\*\*

4. Personal Action and Appearance. \*\*\*

k) Failure to exercise proper judgment. W/S/T. \*\*\*

## **I. GRIEVANCE PROCEDURE OVERVIEW ...**

### **G. Rules for the Grievance Hearing**

Grievance Hearings are to proceed as follows: ...

2. The \_\_\_ must present its evidence first and must show by a preponderance of the evidence that the action was warranted and appropriate under the circumstances. ....

## **H. Hearing Officer's Determinations**

A Hearing Officer's determinations must be in writing. The determinations must contain findings of fact on the material issues and the grounds in the record for those findings. ....

Hearing Officers may determine appropriate remedies, but may not determine relief that is inconsistent with \_\_\_\_ law or personnel policies. In suggesting relief, the Hearing Officer should consider the relief requested in the written grievance.

### **(a) Examples of relief, which may be determined:**

1. Reinstatement to the Claimant's former position, or, if occupied, hiring into an objectively similar position at the same rate of pay
2. Upholding, reducing, or rescinding the termination or reduction in pay
3. An award of full, partial, or no back pays, from which interim earnings must be deducted.
4. The restoration of full benefits and seniority. ...

## **VII. Definitions ...**

**Preponderance of the Evidence** - Evidence, which shows that what is sought to be proven, is more probable than not; evidence that is more convincing than the opposing evidence. ... .”

### **POSITION OF THE EMPLOYER**

It is the Employer's position that the termination of Claimant should be upheld on all grounds, and it has been established by a preponderance of the evidence that the termination was warranted and appropriate under the circumstances inasmuch as Claimant was guilty of:

- 1) Insubordination, including disobedience, or failure, and refusal to carry out assignments or instructions;
- 2) Intentional failure to provide accurate and complete information whenever an authorized person requires such information;
- 3) Negligence in the performance of her assigned duties;
- 4) Failure to exercise proper judgment; and
- 5) Unsatisfactory in her performance and conduct.

According to the Employer, the termination was warranted and should be sustained.

## **POSITION OF THE CLAIMANT**

It is Claimant's position that, based on the evidence and testimony produced by both sides, her termination was unwarranted and not consistent with the Employer's progressive discipline policy. Claimant acknowledges that her failure to complete the ABP warranted some type of disciplinary response. Her employment record and lack of prior disciplinary actions indicate that the discipline should have been something other than termination. She had a solution and strategy to address the ABP which would have taken less time than the approach that was ultimately taken by the Employer.

Claimant should be reinstated as Chief Financial Officer (CFO) and her termination rescinded and be paid back-pay from the January 31, \_\_\_\_, termination date and receive all the benefits to which she would have been entitled to during this period, including three percent 401 (k) match, Paid Time Off accrual, and/or any other benefit which she would have received.

Alternatively, Claimant would accept demotion to Controller at the highest pay level for Controller. She should be paid back-pay from January 31, \_\_\_\_, at the rate of pay she was receiving as CFO, and all the benefits to which she would have been entitled to during this period, including three percent 401 (k) match, Paid Time Off accrual, and/or any other benefit which she would have received.

## **FINDINGS OF FACT**

### **Background**

Claimant was hired on March 22, \_\_\_\_, as the Controller in the Accounting Department. On June 9, \_\_\_\_, she signed an Acknowledgment Form for the Employee Handbook. The Form indicated:

“... I have received the handbook, and I understand that it is my responsibility to read and comply with the policies contained in this handbook and any revisions made to it.” Exh 3.

While Claimant was Controller, her supervisor was CFO [1\_\_\_\_], and Claimant received “very good” annual performance appraisals. Exh 102. She did not receive any disciplines or performance plans while she was Controller.

### **March \_\_\_\_**

The Interim \_\_\_\_ Agreement (ABA) for \_\_\_\_ was dated March 17, \_\_\_\_\_. Exh 21. The ABA is the documentation approving an indirect cost rate to reimburse the \_\_\_\_ from the \_\_\_\_ for certain expenses.

### **July \_\_\_\_**

Outgoing CFO [1\_\_\_\_] submitted an ABP on July 20, \_\_\_\_\_. Exh 18. This was the ABP that would result in the \_\_\_\_ ABA. An ABP is the documentation prepared by the \_\_\_\_ requesting an \_\_\_\_\_. Exh 29. The ABP for a year is due by July 1 of the prior year. Exh 18. Hence the ABP for \_\_\_\_ was due by July 1, \_\_\_\_\_.

CFO [1\_\_\_\_] resigned in July \_\_\_\_\_. The CFO position was posted on July 20, \_\_\_\_\_. Exh 27. The job posting indicated, as the second bullet point, “essential duties and responsibilities preparation of \_\_\_\_ proposal annually.” It also indicated that the successful applicant “Must have and maintain Certified Public Accounting License... .” “Education and experience required CPA... .” *Id.*

There were job descriptions for the CFO position. Exhs 27 and 28. The second requirement listed for CFO was “Preparation of ABA” agreement. The ABA is part of the Employer’s annual budget process. It is part of the \_\_\_\_ that come to the Employer from the \_\_\_\_.

Outgoing CFO [1\_\_\_\_] completed a “to do” “transition list,” Exh 22, when she resigned with two weeks notice. According to Claimant, [1\_\_\_\_] spoke for about fifteen minutes with Claimant concerning the ABP. Claimant had not previously been involved with the ABP.

Claimant was promoted to Interim CFO. After she became the Interim CFO, her immediate supervisor was the Chairperson. She received no appraisals while she was Interim CFO and CFO.

There are 13 other employees in the Accounting Department. These employees report to the CFO.

**August \_\_\_\_**

[2\_\_\_\_] became the Chairperson on August 23, \_\_\_\_\_. The \_\_\_\_ Chairperson is the \_\_\_\_\_. \_\_\_\_, Article VI (B). “The ... is vested in the \_\_\_\_ Chairperson and the Vice-Chairperson.” *Id* at Article VIII (A). The \_\_\_\_ Chairperson has the “powers and duties ... [t]o execute and administer the laws and regulations of the [\_\_\_\_] ... [and] ... [t]o oversee all \_\_\_\_ departments, boards, commissions, and committees created by the \_\_\_\_ ... .” *Id* at Article VIII.

The CFO, Administrator, and Executive Assistant report directly to the Chairperson. The other departments report to Administrator [3\_\_\_\_]. The Education Director and the Health Director report to Administrator [3\_\_\_\_].

The Chairperson selected Claimant to be the CFO. Previously CFO [1\_\_\_\_] had been the CFO, and Claimant had been the Controller. [1\_\_\_\_] had been hired ca \_\_\_\_.

Claimant was initially on a one-year contract for Interim CFO. There were some concerns that Claimant was not qualified for CFO.

The posting for CFO occurred before Chairperson [2\_\_\_\_] took office. The prior Chairperson left the CFO position open so the incoming Chairperson could fill it. The applications were already in. Claimant was already the Interim CFO when Chairperson [2\_\_\_\_] took office. The ABP was discussed with Claimant at that time. Claimant said she was gray in that area.

The Administrator’s opinion was asked concerning Claimant becoming CFO. He “had

some reservations.” The Human Resources Director had some concerns about Claimant becoming CFO. The CFO is responsible for a \$28,000,000 budget.

Claimant planned to hire [4\_\_\_\_] as Interim Controller to help with the ABP. Claimant attended training in \_\_\_\_ in March \_\_\_\_ concerning ABP preparation. Exh 10.

The ABP for \_\_\_\_ was due by July 1, \_\_\_\_\_. The Chairperson found out in January \_\_\_\_ that the ABP was six months late. This belatedness was a reflection on the Chairperson. The \_\_\_\_ Chairperson, “was counting on [Claimant], and she let me down.”

### **September \_\_\_\_**

[4\_\_\_\_] became the Controller on September 21, \_\_\_\_, replacing Claimant. [4\_\_\_\_] became the Interim CFO in January \_\_\_\_.

On September 27, \_\_\_\_, Council passed Resolution \_\_\_\_ which placed the CFO, among others, on the \_\_\_\_ team. Exh 1.

### **February \_\_\_\_**

On February 3, \_\_\_\_, Payroll Clerk [5\_\_\_\_] sent Claimant an e-mail requesting “your activity reports” from Claimant. Exh 17. Follow-up request e-mails were sent by [5\_\_\_\_] to Claimant on March 26, April 14, May 12, June 9, August 17, September 10, and November 19, \_\_\_\_\_. *Id.* According to Claimant, she did not respond to [5\_\_\_\_]s’ e-mails concerning time verification sheets.

### **March \_\_\_\_**

The ABA for \_\_\_\_ was signed by the Chairperson on February 26, \_\_\_\_, and ultimately dated March 5, \_\_\_\_\_. Exh 21. The ABP for this ABA had been prepared and submitted by [1\_\_\_\_] in July \_\_\_\_\_. Exh 18.

Claimant attended ABP training in March \_\_\_\_\_. Exh 10. She thought this would be “nuts and bolts” training about how to prepare an ABP. But instead of this the training concerned how



to negotiate with the \_\_\_\_ . The training gave Claimant no knowledge of how to prepare an ABP. She did not tell anyone that the training was insufficient until January \_\_\_\_.

According to Claimant, she tried to put an ABP together. She looked at prior ABPs that had been prepared when [1 \_\_\_\_] was CFO. Claimant could not figure out what information to gather for the ABP.

#### **June \_\_\_\_**

On June 6, \_\_\_\_, \_\_\_\_ passed Resolution \_\_\_\_ which repealed Resolution \_\_\_\_ and removed the Interim CFO, among others, from the bond negotiation team. Exh 1.

#### **August \_\_\_\_**

In August \_\_\_\_ Claimant went from a one-year contractual Interim CFO to CFO under the Employee Handbook. She had by then completed ABA training. She had taken, but not passed, the accounting certification tests. The one-year Interim CFO contract gave Claimant until August 30, \_\_\_\_, to pass the tests. Exh 107. Claimant applied for the program. She took the test in September \_\_\_\_ and did not pass. She was scheduled to take the test again in February \_\_\_\_.

Claimant and the Chairperson had a discussion in August \_\_\_\_ . Claimant did not indicate that she needed more training.

#### **September \_\_\_\_**

Claimant was promoted from Interim CFO to CFO on September 20, \_\_\_\_ . Exh 12.

In September \_\_\_\_, Executive Assistant [6 \_\_\_\_] told the Chairperson that she was concerned that the ABA had not been done.

The audit report for \_\_\_\_ was completed on September 30, \_\_\_\_ . The ABP would eventually have the audit report as an attachment. The ABP could not be completed without the audit report. The audit was finished later than in prior years. According to [4 \_\_\_\_], this was because the Request for Proposals (RFP) for the audit firm had not been completed by the CFO.

According to Claimant, this was because of the departure of the Finance Director, Claimant having to help the \_\_\_\_ in the meantime, the lead auditor working as a consultant for the \_\_\_\_, and the \_\_\_\_ needing a market analysis. In addition, questions from the auditors came later than usual and Claimant “can’t control the auditors.”

On September 15, \_\_\_\_, Grant Writer [7\_\_\_\_] sent Claimant an e-mail asking “Do we have an \_\_\_\_for \_\_\_\_ yet?” (Underlining in original) Exh 14. [7\_\_\_\_] sent follow-up e-mails to Claimant requesting \_\_\_\_ ABA information on October 4 [Would you ... send me a copy of our \_\_\_\_ plan?], and 8 [Please send me a copy of our \_\_\_\_ and \_\_\_\_ Plans] \_\_\_\_, and January 18, \_\_\_\_ [Has an \_\_\_\_ plan been submitted for \_\_\_\_? Will you please e-mail me a copy?]. *Id* and Exh 15.

On September 20, \_\_\_\_, Claimant was “evaluated and promoted by Chairman” from Interim CFO to CFO. Exh 12.

### **October \_\_\_\_**

In ca October \_\_\_\_, Controller [4\_\_\_\_] told Senior Staff Accountant [8\_\_\_\_] that the ABP for \_\_\_\_ had not been completed. [8\_\_\_\_] did not question Claimant about this. He thought Claimant had been working on the ABP. Claimant had asked him to work on one part of it and he had provided that part to her. According to [8\_\_\_\_], he or other employees could have helped with the other parts.

### **November \_\_\_\_**

According to [4\_\_\_\_], there was an Accounting Department staff meeting in early November \_\_\_\_\_. At least one employee came to work that day just for the staff meeting. Claimant was not there at the beginning. After 15 minutes, [4\_\_\_\_] started the meeting without Claimant. When Claimant arrived, she was very upset. Claimant refused to attend the meeting. She went to her office. [4\_\_\_\_] usually ran the monthly meetings.

According to Claimant, she had directed that the meeting start at 9:30 a.m. Claimant had

some work related activity to do before 9:30 a.m. Claimant called [4\_\_\_\_] concerning this and [4\_\_\_\_] said “okay.” Claimant arrived at 9:20 a.m. The meeting was already in process. Claimant said to [4\_\_\_\_] “I thought you were holding off” starting the meeting. [4\_\_\_\_] responded “just chill.” Claimant became upset. Claimant left the meeting room and went to her office.

According to Claimant, the Chairperson later told her, after the PTO was denied, that “you were mad at a meeting.” At the following staff meeting, Claimant apologized to the Accounting Department staff.

In November \_\_\_\_, Controller [4\_\_\_\_] spoke with Claimant concerning the ABP. [4\_\_\_\_] asked Claimant if Claimant needed help. According to [4\_\_\_\_], Claimant said the ABP was almost done. According to Claimant, Claimant does not recall any discussions with [4\_\_\_\_] concerning the ABP.

On November 16, \_\_\_\_, [6\_\_\_\_] sent an e-mail to Claimant concerning the ABA. The e-mail said “Hey \_\_\_\_ have we got the \_\_\_\_ yet for next year? If so what \_\_\_\_ did we receive?” Exh 26. Claimant did not respond. According to Claimant, she either does not recall this e-mail or she opened it but did not read it.

On November 23, \_\_\_\_, the Chairperson sent an e-mail to Claimant concerning the ABA. The e-mail said “Is all our \_\_\_\_ prepared, submitted, up to date and in compliance as requested?” Exh 20. Claimant did not respond. According to Claimant, she “was embarrassed” and frustrated. She felt bad because she could not give the Chairperson a time-line. According to Claimant, she “was wrong.” The Chairperson did not come to her in person.

According to [4\_\_\_\_], around Thanksgiving \_\_\_\_ Claimant told [4\_\_\_\_] the ABP was “almost complete.” [4\_\_\_\_] had a meeting with Claimant concerning the ABA. Claimant said the ABP was not complete. She said she was trying to work on it at home. Claimant said she had met with the Treasurer that day and let him know it was not complete. [4\_\_\_\_] told Claimant that

Claimant should speak with the Chairperson. According to Claimant, Claimant does not recall discussing the ABP with [4\_\_\_\_] at all.

According to Claimant, Senior Staff Account [9\_\_\_\_] asked Claimant what happened with the ABP for \_\_\_\_\_. Claimant told [9\_\_\_\_] she was trying to figure it out.

**December \_\_\_\_**

According to the Chairperson, he denied Claimant's request for Personal Time Off (PTO) in December \_\_\_\_ because he wanted to discuss some accounting issues with her. This included the ABA situation and friction in the Accounting Department. Eventually Vice-Chairperson [10\_\_\_\_] approved the PTO request and Claimant took the December 21 to 24, \_\_\_\_, leave.

**December 28, \_\_\_\_**

According to Claimant, the Chairperson came to her office on December 28, \_\_\_\_\_. He was "very agitated." He said "You need to do your job. ... You need to step up to the plate." He was not specific.

**January 5, \_\_\_\_**

There was a January 5, \_\_\_\_, meeting between Claimant and the Chairperson. There were "voices raised" during this meeting. The Chairperson was "upset." According to the Chairperson, Claimant said she "didn't know how much payments are from the \_\_\_\_." Claimant got loud speaking to the Chairperson, and the Chairperson "went over the top." Executive Assistant [6\_\_\_\_] came into the room and said "It's loud in here. You should quiet down."

According to [4\_\_\_\_], Claimant was "very upset" after the January 5, \_\_\_\_, meeting. Claimant told [4\_\_\_\_] that the Chairperson wanted to know what the \_\_\_\_ from \_\_\_\_ will be. He asked Claimant, "How much are we going to \_\_\_\_ from the \_\_\_\_ on a monthly basis?" Claimant responded, "I don't know." The Chairperson said, "You should know." It escalated into an argument from there.

[6 \_\_\_\_] spoke with [4 \_\_\_\_] about this meeting. [6 \_\_\_\_] said she could hear the “shouting match.” Both Claimant and the Chairperson were shouting. The Chairperson told [6 \_\_\_\_] that he was not going to let Claimant shout him down.

According to [4 \_\_\_\_], it is key to get the \_\_\_\_ for \_\_\_\_ purposes. Claimant could have asked for that information from persons that had it in January \_\_\_\_.

According to Claimant, the Chairperson asked for \_\_\_\_ schedules. Claimant said she did not have the information. The Chairperson became “agitated” and was “screaming.” Claimant explained that she was not at most of the \_\_\_\_ discussion meetings after July \_\_\_\_.

The Chairperson said, “You should have gone to those meetings.” [6 \_\_\_\_] entered the room and said, “I can hear you yelling. You might want to keep it down.”

After this meeting, Claimant was able to get the information and prepare the \_\_\_\_ for the January 8, \_\_\_\_, meeting.

According to Claimant, she was hardly involved with the negotiations for the new \_\_\_\_ documents after July \_\_\_\_.

The new \_\_\_\_ documents would contain a formula to create the \_\_\_\_.

It was not until Friday, January 7, \_\_\_\_, that Claimant found out how much the \_\_\_\_ would be.

The \_\_\_\_ staff accountant told Claimant what the \_\_\_\_ was.

A financial report was completed for the January 8, \_\_\_\_, \_\_\_\_ meeting.

Apparently Claimant created two schedules. One reflected interest payments. The other reflected interest payments plus \$2,000,000 in principal payments.

#### **January 7, \_\_\_\_**

On January 7, \_\_\_\_, the Chairperson sent an e-mail to Claimant concerning the ABA. The e-mail said, “Has the \_\_\_\_ paper work been submitted? I have not seen a response to [my November 23, \_\_\_\_] e-mail ... . Please respond.” Exh 20. Claimant did not respond.

According to Claimant, she did not respond to this e-mail for the same reason that she had not responded to the November 23, \_\_\_\_, e-mail.

According to Claimant, she did not receive the \_\_\_\_ until January 7, \_\_\_\_, even though she had requested it earlier.

**Friday morning, January 14, \_\_\_\_**

Prior to January 17, \_\_\_\_, Claimant had not received any disciplines.

At approximately 11:00 a.m., Friday, January 14, \_\_\_\_, an oral reprimand was given to Claimant for requesting PTO from the Chairperson by texting him. This was in a meeting with the Chairperson, Interim HR Director, and Claimant. This was the first discipline Claimant had received. According to Claimant, this concerned a December 19, \_\_\_\_, text message Claimant had sent to the Chairperson. The message indicated that Claimant did not have a baby-sitter for her daughter the following week. The Chairperson did not respond, and Claimant contacted the Vice-Chairperson who approved the PTO request. Apparently on December 19, \_\_\_\_, Claimant came to her office, sent the PTO slip to the Chairperson's office, and the Chairperson's Executive Assistant took the request slip to the Vice-Chairperson. Claimant had previously requested the PTO in an October 27, \_\_\_\_, request which had been denied by the Chairperson.

According to Claimant, she had previously called and e-mailed the Chairperson, and he had not responded. Previously text-messages had resulted in a response. The Chairperson had never previously said not to use text messaging.

Treasurer [11\_\_\_\_] contacted Claimant via e-mail Friday morning, January 14, \_\_\_\_\_. The e-mail requested the "\_\_\_\_ Proposal ... \_\_\_\_ [and] Letter of Confirmation of rate." Exh 7.

**Friday afternoon, January 14, \_\_\_\_**

Claimant and Treasurer [11\_\_\_\_] had a conversation just before the 1:00 p.m. meeting. Claimant told [11\_\_\_\_] the ABP was not done, she did not have a proposed \_\_\_\_ for \_\_\_\_, and she was looking for a contractor to do the ABP. According to Claimant, [11\_\_\_\_] thanked her for the information and said, "It's OK."

At 2:36 p.m., Friday, January 14, \_\_\_\_, the Chairperson sent an e-mail to Claimant concerning the ABA. Exh 18 and 20. Claimant did not respond. Exh 23. He wanted to see what Claimant's response would be. He was expecting a response. Exh 106. After the non-responded to January 14, \_\_\_\_, e-mail, the Chairperson thought there was a possibility that Claimant was trying to get the ABA done. According to Claimant, this e-mail was sent while she was in a Finance Committee meeting. Apparently she saw there was an e-mail but did not read it until Monday, January 17, \_\_\_\_.

After the Finance Committee meeting, Claimant was informed by the \_\_\_\_ that there was a situation concerning the \_\_\_\_.

**Monday morning, January 17, \_\_\_\_**

Claimant was at a meeting Monday morning, January 17, \_\_\_\_, to try to figure out the \_\_\_\_ situation. There were different interpretations of the \_\_\_\_ . January 17, \_\_\_\_, was Martin Luther King, Jr Day and important offices were closed.

According to Claimant, she checked her Blackberry e-mails around 10:00 a.m. and realized the Friday e-mail from the Chairperson was there. She read the e-mail for the first time and was not sure how to proceed. She called a [5\_\_\_\_] for guidance on how to proceed. Claimant wanted to send a response e-mail to the Chairperson. The [5\_\_\_\_] suggested that Claimant should meet with the Chairperson face to face. Claimant sent an e-mail to the Chairperson requesting a meeting and waited for a response.

**Monday afternoon, January 17, \_\_\_\_**

On Monday afternoon, January 17, \_\_\_\_, there was a meeting with Claimant, the Chairperson, Vice-Chairperson [12\_\_\_\_], and Interim Human Resources Director [13\_\_\_\_]. This meeting was at the initiation of the Chairperson and in the Chairperson's office. Exh 31.

According to the Chairperson, the meeting was "frustrating." The ABA situation was

discussed. Exh 31. Claimant indicated that she was afraid to respond to the e-mails because she did not know how to do the ABA. Claimant said she had a plan to do the ABA by sub-contracting it. In response to this, the Chairperson said, "It's too late."

According to the Chairperson, by Monday, January 17, \_\_\_, "the camel's back was broken." Claimant had a huge responsibility. She was in one of the top positions. It was clear to him that Claimant did not know how to do the CFO duties. Based primarily on the ABA situation, the Chairperson now had extreme concerns about keeping Claimant as CFO.

According to Claimant, the Chairperson "was very upset and very adversarial." Claimant indicated she had contacted a consultant to do the ABP. The consultant could have been retained without competitive bidding. Claimant apparently had the signature authority to do this.

#### **Tuesday, January 18, \_\_\_**

At a January 18, \_\_\_, meeting, Claimant was placed on a five day non-paid suspension during which there would be further investigation. This was a result of the ABP not being done. Claimant was told to report back on Tuesday, January 25, \_\_\_

According to Claimant, the ABA reimburses the \_\_\_ for \_\_\_. It is done annually. It had not been done yet for \_\_\_. It would be submitted by the Claimant. When Claimant became the CFO, she did not know how to prepare the ABP. When she became the Interim CFO, she told the Chairperson she did not know how to do the ABP. She was to receive ABP training.

Claimant recognizes that it was wrong for her not to have done the ABP, and it was her responsibility to have timely done the ABP. The ABP is "important." It has been submitted at different times. According to Claimant, not having a \_\_\_ could adversely impact the \_\_\_. \_\_\_ spending is not the same for each quarter. It is higher at the end of the year than at the beginning of the year. Most ABA \_\_\_ are at the end of the year.

#### **January 19 to 24, \_\_\_**



As part of the investigation, while Claimant was on suspension, there was a meeting with all the Accounting Department staff. The ABP had to be done. Claimant's computer file was reviewed.

According to the Chairperson, after Claimant was suspended from working, other situations were discovered concerning her CFO job performance. These included (1) a "trail" of e-mails and (2) some \_\_\_ forms not done.

According to [8\_\_\_], Claimant had not completed work concerning the \_\_\_, allegedly resulting in a loss of \$26,000 to the \_\_\_. In addition, the "\_\_\_ work sheets" had not been completed since the Spring of \_\_\_ and the "Adjusting Journal Entries" had not been done. Exh 32. According to [4\_\_\_], Claimant should have requested an amendment to the \_\_\_ document. The CFO deals with the \_\_\_. On December 9, \_\_\_, the \_\_\_ document was on Claimant's desk. It was not faxed to the \_\_\_ until February \_\_\_ when Ms [4\_\_\_] faxed it. Because of this the \_\_\_ did not have cash flow of \$172,000. Although that money has by now been obtained, the \_\_\_ did not have use of that money for several months.

According to Claimant, as of May 2, \_\_\_, she did not know how to do the ABP.

According to Claimant, she was never contacted by the auditors to do any "Adjusting Journal Entries." Exh 32.

According to Claimant, she did not turn in all of the time sheet verification forms in \_\_\_. There was not a rule that required this to be done. No one ever told her there was a problem with this.

According to Claimant, she originally did the \_\_\_. At a certain point, [4\_\_\_] started doing the \_\_\_. Claimant assumed [4\_\_\_] was doing this.

According to [8\_\_\_], the "\_\_\_ payment" could be easily determined. Claimant not knowing the payment amount would "dumbfound" him.

According to the Chairperson, Claimant was not getting the CFO job requirements done; and returning Claimant to the Accounting Department would cause morale problems. Claimant was “in over her head” with the CFO position. The Chairperson expected better communication from the CFO, and Claimant should have picked up the phone and called him.

Morale went up with the Accounting Department when Claimant left. The Department completed the ABP within two weeks. Interim CFO [4 \_\_\_\_] and other Department employees researched the proper ABP format. The final ABA was submitted to the \_\_\_\_ . This ABP process took around two weeks. It has now been submitted. As of April \_\_\_\_, no \_\_\_\_ had been agreed on. The Department is waiting for a response from the \_\_\_\_.

**January 25, \_\_\_\_**

At the end of the five day non-paid suspension, it was decided that Claimant would not be returned to the CFO position. According to the Chairperson, he was not directly responsible for the termination of anyone else. He had some involvement with the Administrator’s termination of a communications employee who had used the office computer for \_\_\_\_ activity.

Claimant was placed on a five day paid administrative leave to provide more time to decide what to do.

Apparently initially during the January \_\_\_\_ suspensions, the Employer “considered a Controller position for” Claimant. But the other problems that surfaced during the ten day period precluded this.

According to Claimant, she was given three choices: first, do a voluntary resignation and the \_\_\_\_ would not contest her unemployment application; second, find another position with the \_\_\_\_; third, involuntary termination. She was told that more time was needed for another position to be found and for Claimant to report back on Friday, January 28, \_\_\_\_ . She would be on paid administrative leave until then.

**Friday, January 28, \_\_\_\_**

On January 28, \_\_\_\_, there was a meeting of the Chairperson, Vice-Chairperson, and Interim HR Director with Claimant. Exh 31. The Chairperson removed Claimant from the CFO position. She was offered a staff Human Resources Generalist position that would pay approximately \$47,000 a year. This was a supervised much lower position. [13 \_\_\_\_] was confident that Claimant could do that job. Claimant declined this position. The HR Generalist job was “still available” in April \_\_\_\_.

According to Claimant, she was given three options on January 28, \_\_\_\_: first, resign and not have her unemployment compensation contested; second, accept the HR Generalist position and sign a release and not contest the removal from the CFO position; third, termination. She believed they were “setting [her] up for failure.” Exh 25.

According to Claimant, in response to Claimant not immediately accepting the HR Generalist position, the Chairperson “literally blew up and started screaming.” The Chairperson then walked out of the meeting. Claimant, the Vice-Chairperson, and the Interim HR Director were still there. After more discussion, it was decided Claimant would have until Monday, January 31, \_\_\_\_, to make a decision.

**Monday, January 31, \_\_\_\_**

On Monday, January 31, \_\_\_\_, Claimant declined the HR Generalist proposal and “counter-offered” with being transferred to Controller. The Chairperson declined this counter-offer. The Chairperson declined this proposal because he believed it would be detrimental to the Accounting Department. Claimant was terminated. According to [13 \_\_\_\_], Claimant could not be returned to the Controller position because there already was a Controller, and “some bridges may have been burnt in” the Accounting Department.

The termination notice, Exh 1, indicated the Handbook provision violations were:

“Section IX, 1 (a): Insubordination, including disobedience, or failure/refusal to carry out assignments or instructions. Section IX.1.: Intentional failure to provide accurate and complete information whenever an authorized person requires such information. Section IX.1.(g): Negligence in the performance of assigned duties. Section IX.4.(k): Failure to exercise proper judgment. Section VI.A.(15): Unsatisfactory performance or conduct.” *Id.*

[4\_\_\_\_], the Controller, took over Claimant’s CFO duties.

**January 31, \_\_\_\_**

The ABP was submitted on January 31, \_\_\_\_\_. An outside consultant was not hired to complete the ABP. “It was like a large term paper.” According to [4\_\_\_\_], a lot of the ABP could have been done before the audit was done.

As of April \_\_\_\_, the \_\_\_\_ could not \_\_\_\_ until it has an approved \_\_\_\_ . Therefore at that point in time the cash flow is dried up. The \_\_\_\_ cannot get \_\_\_\_ until there is an approved \_\_\_\_ . Apparently \$375,000 has already been used on which interest cannot be earned.

**February 6, \_\_\_\_**

On February 6, \_\_\_\_, Claimant filed her Grievance protesting the termination. Exh 1. Her Grievance indicated, in part:

“I believe that the employee handbook was violated along with \_\_\_\_ when I was terminated [from] my position as [CFO].” *Id.* ... [She requested] “Reinstatement of position of [CFO] including back pay from 1/31/ to present and all benefits from 1/31/11 to present.” *Id.*

The Grievance resulted in an investigation by the Administrator. The Administrator was not directly involved in the termination of Claimant, but he was “kept in the loop.” The Administrator was involved in the grievance process. As part of the grievance process, the Administrator met with Claimant on February 22, \_\_\_\_\_. Exh 30. There were additional meetings, including on February 24, \_\_\_\_\_. The Administrator submitted his response on February 24, \_\_\_\_\_. Exh 1. The Response concluded:

“Based on the seriousness of the violations committed by the [CFO] ..., the

irreparable damage to the trust relationship between the Chairman ... and [CFO] ... and damage to \_\_\_\_ relationship with the \_\_\_\_ representatives handling the ABA, I uphold the decision terminating the employment of ... [Claimant] ... .” *Id.*

The matter then proceeded to the Hearing Officer stage.

The Administrator was not privy to the demotion offer conversations. The Administrator supported the termination because there had been a “breakdown in communications between the Chairperson and the CFO.” The ABA had not been done. Claimant had limited knowledge of ABA. Claimant failed to keep the chain of command informed of the ABA progress. After Claimant stopped working, other communication issues surfaced. According to the Administrator, the CFO position “was more than she could handle.” Claimant failed the “certification test.”

The Administrator did not look at Claimant’s evaluations. Claimant had no disciplines before \_\_\_\_\_. He did not see any prior “action plans” for Claimant. The CFO is a “very important” position.

According to the Administrator, the Hearing Officer has a number of options. These options include (1) reinstatement to CFO, (2) deny the appeal, and (3) “find another position [for Claimant] in the \_\_\_\_\_.”

### **ANALYSIS AND FINDINGS**

“The \_\_\_\_ ... must show by a preponderance of the evidence that the action was warranted and appropriate under the circumstances. ... .” Employee Handbook, p 44.

For the purpose of this case, I will decide whether a reasonable person, taking into account all relevant circumstances, including the Handbook provisions, would find sufficient basis in Claimant’s conduct to authorize discharge. This does not necessarily mean that under different circumstances in other cases there might be a different standard. “[A]dministrative adjudicatory bodies have special expertise in the subject matter they administer” and “[t]he

presence or absence of [‘warranted and appropriate under the circumstances’] in a particular situation is a factual matter, which is particularly suited to specialized inquiry before the [reviewing administrative adjudicatory body].” \_\_\_\_\_. “The term [‘warranted and appropriate under the circumstances’] is broad, and it encompasses a wide range of employer justifications for adverse action.” *Id.* Nonetheless, “warranted and appropriate under the circumstances” implies that the Employer must have fair reasons for taking adverse actions against an employee and that those reasons are supported by the facts of the case. \_\_\_\_\_.

The Employer bears the burden of proof to show that the action to terminate Claimant was warranted and appropriate under the circumstances.

For the reasons that follow, I conclude that the Employer has proven by a preponderance of the evidence that the termination action from the CFO position was warranted and appropriate under the circumstances within the meaning of the Handbook. I further conclude that the process used by the Employer in offering the HR Generalist position to Claimant violated the Handbook and was not appropriate under the circumstances within the meaning of the Handbook. Therefore the HR Generalist position should again be made available to Claimant with Claimant being returned to work in the HR Generalist position with back pay and benefits, and Claimant having a right of first refusal option should the Controller position become vacant at any time.

The Hearing Officer is a creation of the Handbook. My authority is derived from the Handbook. I am not a Knight Errant looking for rights to wrong. This decision neither addresses nor decides issues not raised by the parties.

The Handbook prohibits:

“Unsatisfactory performance or conduct.\*\*\*

Insubordination, including disobedience, or failure/refusal to carry out assignments or instructions. W/S/T. \*\*\*

Intentional failure to provide accurate and complete information whenever an authorized person requires such information. S/T. \*\*\*

Negligence in the performance of assigned duties. W/S/T. \*\*\*

Failure to exercise proper judgment. W/S/T. \*\*\* ...”

Claimant violated the above prohibitions.

Claimant argues that her termination from CFO was unwarranted. This argument does not control for a number of reasons. Major consideration should be given to the effect of Claimant's inadequate performance on a major portion of the CFO job on the Employer's operations. In some charges of inadequate performance, the importance and rank of the employee's position is of major importance. The CFO is an extremely high level management position. Claimant reported directly to the Chairperson, an \_\_\_\_\_. The CFO position is *sui generis*.

Furthermore, Claimant knows how to respond to e-mails as indicated in her e-mail traffic with [11 \_\_\_\_]. Exhs 7 and 8. Concerning the ABP, Claimant did not go to her supervisor, the Chairperson. She did not respond to inquiries from other employees. She basically did almost nothing concerning the ABP until approximately January 14, \_\_\_\_\_. She did not respond to the e-mails from the \_\_\_\_\_. This is a situation where, if there were no rate approved, the Employer has to use general funds and not be able to \_\_\_\_\_. This results in, at least, a cost of money loss to the Employer.

[4 \_\_\_\_] and the staff did the ABP within two weeks. They did it in-house. Claimant's contracting-out option could have been raised and implemented months earlier. Concerning certain important elements of the CFO position Claimant was in over her head, unwilling to ask for help, and unresponsive.

Claimant argues that her termination from CFO was inconsistent with the Employer's progressive discipline policy. This argument does not control for a number of reasons.

Concerning progressive discipline, the Handbook states:

“... misconduct by an employee may result in disciplinary action up to and including termination. ... Unsatisfactory performance or conduct. ... Based on the situation and as determined by the H... R... Director and the Director/ Program Manager steps may be bypassed because of the impact on the \_\_\_ and/or other employees of the unacceptable behavior. ... This course of action can be a warning at any step in the progressive discipline process ... or in the case of a serious infraction the suspension or termination of employment. ... The course of action (dependent on the severity of the infraction) will be initiated ... .”

The Handbook provides that under appropriate circumstances progressive discipline does not have to be used. Under certain circumstances the Handbook does not have a pure “just cause” standard. The Handbook created standard can result in the non-use of progressive discipline based on impact on the Employer, impact on other employees, serious infraction, and severity of the infraction. Successful completion of the probationary period does not immunize the employee against later charges of inadequate performance.

Claimant argues that her employment record and lack of prior disciplinary actions indicate that the discipline should have been something other than termination from CFO. This argument does not control. Timeliness was not a new issue with Claimant. Her appraisals while she was Controller indicated:

“March 3, 2008 ... Employee evaluations need to be done timely. ... .”

”May 11, 2006 ... Needs to be completed. ... Understanding of ... \_\_\_\_ ... .”

“April 20, 2005 ... Needs to be completed... All \_\_\_\_ reports are done timely. ... .”

”October 15, \_\_\_\_ ... Needs to be completed ... Monthly financial statements are released timely each month. ... All \_\_\_\_ reports are prepared and remitted timely. ... .” Exh 102.

Claimant argues that she had a solution and strategy to address the ABP which would have taken less time than the approach ultimately taken by the Employer. This argument does not control. Claimant had more than a year to start substantial work on the ABP. Her solution, the



\_\_\_ option, could have been started at almost any time. Claimant had in effect cut off substantially all communication with the Chairperson and her fellow employees concerning the ABP. Furthermore, it is not clear that the \_\_\_ option would have resulted in an actual ABP as opposed to several employees arguably trained to create an ABP.

Claimant argues that, in the alternative, she should be demoted to Controller. This argument does not control. This requested relief would inappropriately remove [4\_\_\_] from the only Controller position. In addition, Claimant only had a right of return to Controller under her Interim CFO one-year contract. That contract was no longer in effect.

Claimant argues that the termination was in retaliation for her allegedly protesting what she allegedly viewed as apparent illegal or inappropriate activity. This argument does not control. According to Claimant, while employed, she raised allegations concerning \_\_\_ alleged violations, temporary workers, \$18,000 for \_\_\_, alleged inappropriate transactions with \_\_\_, employees working eighty plus hours a week, and property leasing. None of these allegations has any effect on the significance of Claimant's failure to appropriately and timely handle the ABP. The termination was not in retaliation for Claimant allegedly raising these allegations. Furthermore, the Employer has shown by a preponderance of the evidence that Claimant would still have been terminated in the absence of any alleged protected activity. *Mt Healthy City Sch Dist v Doyle*, 429 US 274, 283-87 (1977).

The Employer's rules were reasonably related to efficient operations of the Employer. It is reasonable to expect that an employee should obey instructions to answer e-mails, communicate with \_\_\_, and do the ABP.

The Employer investigated before administering discipline. The investigation was fair and objective.

Before taking the termination action, the Employer had appropriate evidence or proof of

the rules violations.

The rules and penalties were applied evenhandedly and without discrimination.

In light of the provisions of the Employee Handbook and Claimant's ongoing conduct, the termination action was warranted and appropriate under the circumstances.

The termination was reasonably related to the seriousness of the situation.

There is no assurance that Claimant's conduct would not continue should she be returned to the CFO position. No reason has been given to believe that reinstatement to the CFO position would not result in the same situation.

The crucial points in this case concerning retaining Claimant in the CFO position include Claimant's (1) repeated failures to respond to e-mails from the Chairperson, (2) other repeated failures to respond to e-mails, (3) failure to complete or substantially start the ABP, (4) being a direct report to \_\_\_, (5) holding a very high level managerial position, and (6) the extreme overriding importance of the ABP. The Employer has shown by a preponderance of the evidence that the termination from the CFO position was warranted and appropriate under the circumstances.

The issue then is what, if anything, should be done concerning Claimant other than removal from the CFO position. The \_\_\_ Administrator testified that my options include (1) reinstate Claimant to CFO, (2) deny the appeal, and (3) **"find another position [for Claimant] in the \_\_\_."** Emphasis added.

The action to remove Claimant from the CFO position was warranted and appropriate under the circumstances. The Employer unilaterally offering Claimant a demotion to the HR Generalist position only if she gave up her Employee Handbook rights to a hearing concerning the removal and demotion was not warranted and appropriate under the circumstances and violated the Handbook. The offered demotion was warranted and appropriate under the

circumstances but, under the totality of the circumstances, it was not warranted and appropriate under the circumstances to require Claimant to waive or give up her appeal rights to a Hearing Officer hearing as a condition for her being demoted to the HR Generalist position. This is especially the case where the “proposal” was given in an emotional meeting and with hardly less than one working day to make the decision. The Chairperson left the office upset because Claimant had not immediately accepted the HR position.

It is important to note that the HR Generalist demotion decision demanded of Claimant was not only a decision to be demoted to HR Generalist but also a “decision” for Claimant to waive and release her Handbook grievance and hearing rights. A proposal for an employee to surrender such vitally important rights must be done with more seriousness than occurred on January 28, \_\_\_\_\_. As indicated at \_\_\_\_\_, “We will work together in a constructive, cooperative spirit ... .” The Handbook Introduction states “One of our objectives is to provide a work environment that is conducive to both personal and professional growth.” The Handbook Philosophy states “Our philosophy is to treat all employees in a fair manner and with the same level of courtesy and dignity as the members we serve.”

The Handbook was not complied with concerning the requirement that Claimant give up her grievance and Hearing Officer hearing rights in order to accept a demotion rather than a complete termination. There is no evidence Claimant would not have come to work and been employed as an HR Generalist if (1) the proposal had been made in a “constructive, cooperative ... fair ... courte[ous] and digni[fied]” environment, (2) she had been given a reasonable period of time to consider the proposal rather than hardly one business day, and (3) she had not been required to surrender her grievance and hearing rights.

Under the Handbook, an employee is entitled to grieve and have a Hearing Officer hearing when there is a reduction in pay. A demotion is both a reduction in pay and a termination

from the prior job. It violated the Handbook to only provide the HR Generalist job if Claimant in a coercive quick decision environment gave up her grievance and hearing rights.

What is the remedy for this? The Employer determined that it was appropriate for Claimant to be the HR Generalist. In order to preserve and protect Claimant's Handbook rights, she should be given the opportunity with time to think about it in a non-coercive environment.

The appropriate remedy for the violation of Claimant's Handbook rights is that Claimant be placed on the payroll with full pay and benefits as a HR Generalist from January 31, \_\_\_\_, until she returns to work, and that Claimant be returned to work as a HR Generalist.

It is a fundamental principle of employment law that the issue of due process and following correct procedures can impact on the amount of discipline, if any, that should be approved or imposed. *Federated Dep't Stores v Food & Commercial Workers Local 1442*, 901 F2d 1494 (9th Cir 1990) (arbitrator appropriately determined due process to be component of good cause for discharge); *Teamsters Local 878 v Coca-Cola Bottling Co*, 613 F2d 716, 718 (8th Cir), *cert denied*, 446 US 988 (1980) (appropriate for arbitrator to interpret just cause as including requirement of procedural fairness); *Skelly v State Personnel Bd*, 15 Cal3d 194, 539 P2d 774 (1975) (remedy for violation of employee's due process rights was back pay from date of discipline until date of decision after a fair hearing); *Chromalloy Am Corp*, 93 LA 828 (Wolff 1989) (back pay from date of discharge to close of arbitration hearing awarded, since grievant not informed of specific charges against him prior to hearing); *State Paper & Metal Co*, 88-1 ARB §8112 (Klein 1987) (back pay awarded from date of discharge to date of hearing where contract provided that no employee would be discharged without hearing). See generally *Daimler Chrysler Corp v Carson*, unpublished opinion of Michigan Court of Appeals, issued March 6, 2003, 2003 WL 888043 (Docket No 237315), *lv den*, 469 Mich 969 (2003); *Wallad v Access Bidco, Inc*, 236 Mich App 303 (1999); and *Stacey v Providence Hosp*, unpublished

opinion of Michigan Court of Appeals, issued November 4, 1997 (Docket No 197099) (employer allegedly failed to follow its reassignment and preferential treatment policies).

The HR Generalist job was a *bona fide* job. Claimant has a degree in management. As CFO she had experience in managing thirteen employees and working with Employer staff and leadership. In light of the totality of the circumstances, if given appropriate consideration in a calm environment with appropriate time, and first-refusal option for a possible future Controller vacancy, the HR opportunity is “warranted and appropriate under the circumstances. ... .”

I affirm the termination of Claimant from the CFO position. I reduce the termination from the CFO position to a demotion to the HR Generalist position and, if a vacancy occurs in the Controller position, placement in the Controller position. Now that Claimant has exercised her right to a Hearing Officer hearing and has had a comprehensive hearing concerning the termination/demotion, Claimant does not have a right to a second hearing.

The reasons I determine that Claimant be returned to work for possible placement in the Controller position, if a vacancy occurs, include (1) Claimant performed “very well” as Controller for at least five years, Exh 102, (2) there were portions of the CFO position that Claimant performed satisfactory, and (3), if there were a future vacancy in the Controller position, there would be no need to displace anyone.

I specifically find under the Employee Handbook that Claimant should have been demoted to HR Generalist on January 31, \_\_\_, without requiring Claimant to waive Hearing Officer appeal rights. Claimant could and should have been employed as a HR Generalist while she was pursuing her appeal of the termination/demotion from the CFO position.

### **DECISION**

Accordingly, the relief I determine is:

1. The termination/demotion from the CFO position is affirmed. Employee

Handbook. Grievance Procedure, Article I (H) (a).

2. The termination from the CFO position is reduced to a demotion to the HR Generalist position. *Id* at Article I (H) (a) (2).

3. Claimant will be returned to work in the HR Generalist position within twenty calendar days from the date of this decision, *id* at Article I (H) (a) (2), with full back pay at the HR Generalist rate of pay and full benefits for the period from January 31, \_\_\_\_, with the deduction of interim earnings, if any. *Id* at Article I (H) (a) (3).

5. Claimant's full seniority and date of hire will remain as March 22, \_\_\_\_, with no interruption or gap. *Id* at Article I (H) (a) (4).

6. If there is a vacancy in the Controller position at any time and, if Claimant is still employed by the \_\_\_\_ when the vacancy occurs, Claimant will have the first option to be promoted/transferred to the Controller position, and she will be promoted/transferred to the Controller position if she exercises such option. *Id* at Article I (H) (a) (2).

DATED: May 11, \_\_\_\_

/s/Lee Hornberger  
Lee Hornberger  
Hearing Officer