

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Williams v State of Queensland (Queensland Health)* [2022] QIRC 090

PARTIES: **Williams, Nancy**
(Appellant)

v

State of Queensland (Queensland Health)
(Respondent)

CASE NO: PSA/2021/344

PROCEEDING: Public Service Appeal – Appeal against a fair treatment decision

DELIVERED EX TEMPORE ON: 10 March 2022

MEMBER: Dwyer IC

HEARD AT: Brisbane

HEARING DATE: 10 March 2022

ORDER: **1. The decision appealed against is confirmed.**

CATCHWORDS: PUBLIC SERVICE – EMPLOYEES AND SERVANTS OF THE CROWN GENERALLY – PUBLIC SERVICE APPEAL – appeal against a fair treatment decision – where allegations against the Appellant substantiated – disciplinary finding – where Appellant claims the disciplinary finding is unfair and unreasonable – where it was open to decision maker to prefer evidence of an eyewitness – decision fair and reasonable

LEGISLATION: *Industrial Relations Act 2016* (Qld) ss 562B, 562C

Public Service Act 2008 (Qld) s187

CASES: *Goodall v State of Queensland* (Unreported decision of the Supreme Court of Queensland, Dalton J, 10 October 2018)

APPEARANCES: Ms K. Prior for the Appellant

Ms S. Bainbridge, Mr C. Duffy and Ms J. Hotz of the State of Queensland (Queensland Health)

Reasons for Decision (*ex tempore*)

Background

[1] Ms Nancy Williams is employed by the Wide Bay Hospital and Health Service ('the Health Service') as an enrolled nurse in Bundaberg. On 25 June 2021, Ms Williams was the subject of a show cause process arising from four allegations concerning events said to have occurred on 20 June 2021. Relevantly, the allegations were as follows.

Allegation one - On 20 June 2021, Ms Williams failed to comply with the documentation standards as outlined within the Wide Bay Hospital and Health Service procedure.

Allegation two - On 20 June 2021, Ms Williams failed to comply with the medication order when she administered Olanzapine wafer tablet 5 milligrams against the medication order prescribed as Olanzapine 2.5 milligrams for a patient.

Allegation three - On 20 June 2021, Ms Williams administered Olanzapine 5 milligram for a patient without a clinical need.

Allegation four - On 20 June 2021, Ms Williams administered Olanzapine 5 milligrams to a patient with an intent to ensure the patient remained calm throughout her shift.

[2] Notably, in her response to the allegations, Ms Williams conceded allegation one, albeit she asserted mitigating factors. Ms Williams denied the other allegations.

[3] Following a show cause process, Ms Williams received correspondence from Ms Debbie Carroll, Chief Executive of the Health Service, informing her that allegations one, two and three were substantiated ('the decision'). Allegation four was not

substantiated. It is this decision in respect of the findings on allegations one, two and three that Ms Williams now seeks to have reviewed.

- [4] The letter from Ms Carroll further indicated proposed disciplinary action arising from these findings however, to be clear, it is the findings substantiating allegations one, two and three that I have jurisdiction to review. The proposed disciplinary action contained in the decision letter does not amount to a decision and cannot be subject to a review by the Commission.

Statutory framework

- [5] The *Industrial Relations Act 2016* (Qld) ('the Act') gives the Queensland Industrial Relations Commission ('the Commission') jurisdiction to review decisions of this nature.¹ A review of the decision is not a fresh hearing of the matter or a hearing *de novo*.² I am tasked in these proceedings to review the decision to determine if it is fair and reasonable.³

- [6] In the process of reviewing the decision, the Act allows for the making of limited orders.⁴ In appeals of this nature, the Commission can either:

- confirm the decision appealed against;
- set aside the decision appealed and substitute another decision; or
- set aside the decision appealed and return the matter to the decision maker for further consideration with appropriate directions.

Submissions of the parties

- [7] In this appeal, the parties filed written submissions in accordance with directions issued on 22 October 2021. I propose to summarise those submissions but will not descend to a full reproduction of them in these reasons.

The Appellant

- [8] In summary, Ms Williams submits that the Health Service erred in finding that there were grounds for her to be disciplined in accordance with s 187 of the *Public Service Act 2008* (Qld) ('PS Act'). Ms Williams submits that the weight of evidence does not support the version of events found by the decision maker.

- [9] In respect of Allegation one, Ms Williams contends that, while she failed to comply with the policy regarding documentation, she did so with reasonable excuse and

¹ *Industrial Relations Act 2016* (Qld) s562B.

² *Goodall v State of Queensland* (Unreported decision of the Supreme Court of Queensland, Dalton J, 10 October 2018), 5.

³ *Ibid* s562B (3).

⁴ *Ibid* s562C.

therefore does not meet the standard required for a finding pursuant to s 187(1)(g) of the PS Act.

- [10] In respect of Allegation two, there is no dispute that Ms Williams administered Olanzapine to the patient at the relevant point in time. However, Ms Williams submits that the dosage administered was not 5 milligrams but rather, was 2.5 milligrams as she broke a 5-milligram wafer in half and disposed of the unused portion into a sharps bin.
- [11] Ms Williams further questioned the reliability of the evidence from an eyewitness as to the proof (or lack thereof) that 5 milligrams was administered. I note there is no dispute that Ms Williams was, at the very least, in possession of a 5-milligram wafer of Olanzapine immediately prior to administering the drug to the patient in question.
- [12] In respect of allegation three, Ms Williams relies (with respect to the dosage) primarily on her response in relation to allegation two. Further, as to the clinical need for the Olanzapine to be administered, Ms Williams relies on her observations and those of the supervising registered nurse ('RN').
- [13] The Health Services' submissions in summary note the concession by Ms Williams with respect to the first allegation.
- [14] With respect to allegations two and three, the Health Service indicates it preferred the account of events provided by the eyewitness and, further, was critical of the failure of Ms Williams to make adequate observations of the patient before administering the drug.
- [15] The Health Service also made a point in their submissions that the conceded conduct in respect of allegation one is not just a simple documentation failure, but instead is a significant departure from professional standards.

Consideration

- [16] Central to my consideration as to the fairness or reasonableness of the decision in this matter will be an evaluation of the evidence available to the decision maker.
- [17] In respect of allegation one, which is conceded by Ms Williams, it ought to be noted that, consistent with the submissions of the Health Service, I agree that this is no trivial breach of policy. A failure to record what medication has been administered to a patient, either immediately or without unreasonable delay creates an enormous risk to the health and safety of a patient.
- [18] The risk is exacerbated by circumstances, for example, such as a patient having a communication deficit for whatever reason or the access of other nursing staff to that

patient who are subsequently attending to that patient and exercising their own discretion to administer medication as well.

- [19] Ms Williams has offered mitigating circumstances such as the chart for this particular patient going missing immediately after she administered the medication,⁵ or saying that it is common practice for staff to delay in writing up medication administered.
- [20] What is not disputed however, is that the medication was administered sometime between 2:10pm and 2:30pm and that, as at 5pm when her shift was terminated, Ms Williams still had not updated the patient's chart.⁶ During that two and a half hours, there is no indication that Ms Williams was seeking to address her failure to document the medication administered and then, by the time she left the premises, she *still* had not attended to it.
- [21] This failure in itself is serious enough, but given it subsequently transpired that the patient was not among the patients that Ms Williams was supposed to be treating on that shift, there was a very real possibility that another member of the nursing staff might have similarly decided to administer medication, but they might have done so in total ignorance of the medication already administered by Ms Williams.
- [22] It does not take any imagination at all to see how Ms Williams' failure to document the medication in a timely manner could have had serious or even fatal consequences for the patient. In my view, the failure to document in these circumstances is clearly misconduct within the meaning of the term as it appears in section 187 of the PS Act, given the significant risk to health and safety created by the failure on the part of Ms Williams.
- [23] I note the finding of the decision maker relates to s 187(1)(g) of the PS Act, that is, that Ms Williams contravened, without reasonable excuse, a relevant standard of conduct in a way that is sufficiently serious to warrant disciplinary action. On the evidence available, including the admissions of Ms Williams, I have no difficulty in seeing how the decision maker came to this conclusion. Nothing offered in mitigation by Ms Williams amounts to a reasonable excuse.
- [24] In respect of allegation two the decision maker has, on my consideration of the material, had proper regard to all of the evidence available. Ms Williams was able to provide a full and comprehensive response (through her authorised representatives) to the allegation, and her response was clearly considered in the decision-making process. The decision maker simply preferred the evidence of the eyewitness.

⁵ This is contradicted by the supervising RN who said Ms Williams had the chart in her hand when they discussed the intervention.

⁶ There is a contention that Ms Williams entered the intervention into her 'handover sheet' but Ms Williams placed this document in a shredder as she was being escorted from the premises thereby eliminating any evidence that might corroborate her assertion.

- [25] When confronted with competing versions of events absolute proof is not required to render a decision fair and reasonable. Ultimately a decision maker will, from time to time, be required to make a judgment call as to whose evidence is preferred and whose is not.
- [26] I have had regard to the evidence relied on by the decision maker. The eyewitness has given a cogent account of her observations, namely, that she saw Ms Williams place a yellow-coloured tablet in the patient's mouth. She was concerned by this fact because she also observed that Ms Williams, when doing so, did not look at or sign the patient's medical chart. So concerned was she that the eyewitness immediately retrieved the medication wrapper from the bin and subsequently noted the wrapper was for a 5-milligram dose of Olanzapine.
- [27] When this version of events was put to Ms Williams she responded, not by denying that she had administered medication, but by saying that she had broken a 5-milligram wafer in half and had only administered 2.5 milligrams. This response was subsequently put to the eyewitness. The eyewitness specifically (and adamantly) refuted that the wafer was broken in half when opened. There was no doubt whatsoever in the eyewitness' account in responding to this suggestion.⁷
- [28] I note the statement of the eyewitness that is contained in her email report of 20 June 2021. The account is clear and, in my view, without any attempt to embellish the events. There is also an expression of sincere reluctance to report Ms Williams due to an otherwise positive relationship with her in the workplace.
- [29] In those circumstances, I consider that it was entirely open for the decision maker to prefer the evidence of the eyewitness.
- [30] As I observed above, absolute proof was not necessary in order for the decision maker to come to a fair and reasonable conclusion with respect to this allegation. Both accounts of the event were considered. In those circumstances, I consider that the decision in relation to allegation two was open to the decision maker and ultimately fair and reasonable.
- [31] In relation to allegation three, having regard to my conclusions in relation to allegation two, I consider the conclusion is equally fair and reasonable, given there was no clinical history or need to administer 5 milligrams of this particular medication.
- [32] However, if I am incorrect about my conclusion in allegation two and the dosage administered on this particular occasion, having regard to the evidence of the supervising RN and Ms Williams, I am similarly satisfied that the evidence suggests that neither the supervising RN nor Ms Williams adequately conducted observation of

⁷ I note as an aside that the eyewitness was not asked to address the alleged missing chart, but given the concession to allegation one, this aspect of allegation two has less significance.

the patient that could safely inform them of the need to administer medication of this type.⁸

[33] I have no difficulty in seeing how the decision maker was persuaded by the available evidence, including the statement of the supervising RN and Ms Williams, to reach the conclusion that allegation three was substantiated. In the circumstances I equally consider that the conduct in respect of allegations two and three amounts to misconduct for the purposes of section 187 of the PS Act.

[34] It follows, in all of those circumstances, that I consider the decision in every respect is fair and reasonable.

Order

[35] In all of the circumstances, I make the following order:

- 1. The decision appealed against is confirmed.**

⁸ I note that Ms Williams and the supervising RN contradict each other with respect to which of them had the patient's chart at the time the decision was made to administer medication. Ms Williams provides no response that includes a reference to her considering the chart.