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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

JUDY D. DOUGLAS

Grievor

and

TREASURY BOARD
(Human Resources Development Canada)

Employer



Before: D.R. Quigley, Board Member

For the Grievor: Debra Seaboyer, Public Service Alliance of Canada

For the Employer: Richard Fader, Counsel

Heard at Vancouver, B.C.,
March 23 to 25, 2004.

DECISION

[1] Judy Douglas, a Program Officer (PM-02), Grants and Contributions, at Human Resources Development Canada (HRDC), grieves her indefinite suspension, effective June 18, 2002 (Exhibit E-3), and her subsequent termination of employment, effective September 4, 2002 (Exhibit E-10).

[2] The grievor filed a complaint with the Canadian Human Rights Commission (CHRC) alleging that she was suspended and later discharged following an administrative investigation around events whereby her illness, Bipolar Disorder, played a significant role yet was given minimal consideration by the employer. By letter dated November 6, 2003, the CHRC advised the grievor that, pursuant to paragraph 411(b) of the *Canadian Human Rights Act (CHRA)*, it had decided not to deal with her complaint at that time because it could be more appropriately dealt with according to a procedure provided for under another Act of Parliament.

[3] Both representatives made brief opening remarks. Counsel for the employer filed 17 exhibits and called four witnesses. The grievor's representative filed six exhibits and called two witnesses.

[4] The reasons for the termination of employment are stated in a letter dated August 29, 2002, from W.D. Gardner, Regional Executive Head, British Columbia and Yukon Territory Region, HRDC (Exhibit E-10):

I am writing you to advise you that the administrative investigation reviewing your involvement with the Skill Development Employment Benefit (SDEB), application of a member of the public, known to you, has now reported its findings to me.

After giving very careful consideration to the Administrative Report, it has been clearly established that you afforded preferential treatment to a member of the public, known to you, placed yourself in a conflict of interest, released confidential information to said person, falsified documents, attempted to fraudulently obtain Employment Benefits for said person, were untruthful to your Team Leader and accessed confidential information for personal purposes. Behaviour of this nature is unacceptable and is incompatible with the level of trust placed in a Program Officer. I have concluded your actions constitute grave misconduct.

It is of paramount importance that the public have confidence in the integrity of Human Resources Development Canada and its employees. Your actions have put this integrity at risk.

I have considered your years of service and previous good record as well as your explanation that your medical condition was responsible for your decisions. However, I have also considered that when confronted with the evidence of your inappropriate conduct, you failed to be forthright and truthful. Your actions were deliberate, pre-meditated and inexcusable. You have broken the bond of trust that is essential for your continued employment with HRDC.

Accordingly, under the authority delegated to me by the Deputy Minister your employment is terminated for cause in accordance with Section 11(2)(f) of the Financial Administration Act.

This decision is effective close of business September 4, 2002.

In accordance with Section 91 of the Public Service Staff Relations Act you may present a grievance against my decision within twenty-five (25) days of receipt of this letter.

[5] The grievor's work description was filed as Exhibit E-1. Under "Key Activities", it notes, in part:

- Consults and advises on application/proposal/action plan development, assesses applications/proposals/action plans, recommends and/or approves program financial support; and negotiates and concludes agreements and schedules thereto with employers/sponsors/individual clients;
- Monitors, analyzes and evaluates the effectiveness of agreement activities and ensures employer/sponsor/client understanding of financial support/claim processes; ascertains and records project/participant outcomes;
- Calculates and approves advances and progress payments to projects; conducts financial monitoring; and performs closeout activities; approves disposition of capital assets and calculates and establishes over/underpayments, as required;

[...]

The Facts

[6] John Parrott has been employed in the public service for approximately 35 years and since 1985, has been a Team Leader (PM-03) in the Chilliwack office. He has seven program officers (PM-02s), including the grievor, and one clerk (CR-04) reporting directly to him and he in turn reports to the Program Services Manager for the Fraser Valley Service Area, Lucia MacLean.

[7] The witness stated that he is responsible for the Chilliwack office budget, for the planning and drafting of proposals for the contracting of case manager and counsellor services, and for reviewing applications that are rejected by the program officers.

[8] The witness stated that he worked with the grievor for approximately 20 years and his office was located about 30 feet from her own.

[9] Mr. Parrott testified that on June 12, 2002, the Unit clerk was entering data from an application (Exhibit E-2) into the computer and noticed that the names of the children listed on the application were identical to the names of the children of the grievor's boyfriend. The grievor's boyfriend at the time was named Mr. "S", and it was the grievor who had approved the application that the clerk was working on. The clerk brought this to Mr. Parrott's attention and he then asked the grievor to accompany him into an interview room. Upon entering the interview room, the grievor stated: "I bet I know what this is all about. It's about the file I gave to the clerk for data entry."

[10] The witness testified that during their meeting, he asked the grievor on three separate occasions if Mr. "S" was her boyfriend. She replied: "Absolutely not. We went out a few times, but that was months ago. This is not a person I am currently seeing." The witness stated that he took possession of the file and informed the grievor that even if Mr. "S" was not her boyfriend, she should not have processed his application, as it could be perceived by the public to be a conflict of interest.

[11] It was Mr. Parrott's intention to send the file to Abbotsford to ensure that the applicant did not receive preferential treatment and that there was no conflict of interest. However, upon discussing the matter with Laurie Weins, a PM-02 and backup Team Leader, he was informed by Ms. Weins that the grievor and Mr. "S" were, in fact, still seeing each other. He therefore decided to perform a cursory review of the file

and it was then that he noticed that Mr. "S"'s home address was the same as the grievor's, there was information missing on his application, there was no documentation from the case manager on file, no explanation from the grievor to justify the amount of financial assistance to be provided, no letter of acceptance from the college that Mr. "S" had applied to, the money for the course was to be sent to Mr. "S" rather than to the college, and expenses for dependent care were authorized but there was no letter from any daycare centre.

[12] That same day, the witness telephoned Judy Jack, a staff relations officer in Vancouver, and left a message outlining his concerns that the grievor had processed this application. He stated that the next day he noticed that the labour market information allegedly supplied by Mr. "S" was identical to information in another file (hereinafter referred to as "client #1"). That file had been assigned to Ms. Weins. It was in total disarray and some pages had been removed. The witness forwarded the file to Ms. MacLean, for her review.

[13] With respect to the grievor's medical condition, Mr. Parrott stated that, during their working relationship, he and the grievor had discussed her Bipolar Disorder on many occasions. He noted that he first became aware of her condition in 1995. The grievor informed him that both she and her brother were affected by Bipolar Disorder; she was on the lower end and her brother was on the high end.

[14] The witness also stated that on numerous occasions the grievor had requested permission to leave work because of her illness and she was always granted time off. She would say: "I can tell when I am manic. I need to go home."

[15] Mr. Parrott further testified that from March to June 2002, he and the grievor worked very closely together on a number of complicated cases, as well as negotiating agreements with service providers. During that period of time, he never noticed her in a manic state nor did she at any time mention to him that she was in such a state. He noted that in previous years he had seen her in such a state; she would become extremely loud and irritable with her colleagues.

[16] The witness concluded his testimony by stating that the grievor clearly understood his questioning regarding her relationship with Mr. "S" but chose to be dishonest. "I was surprised that I read her so wrong," he declared.

[17] In cross-examination, the witness agreed that the grievor's long suit was not documentation. However, in Mr. "S"'s file, there were an extraordinary number of gaps with no document rationale as to why the application was approved.

[18] Lucia MacLean, the Program Services Manager for the Fraser Valley Service Area, has been employed with HRDC for the past 20 years. Her responsibilities include overseeing offices and staff in Langley, Abbotsford and Chilliwack that provide services to enable people changing occupations and unemployed Canadians to have access to employment opportunities within Canada. These include a number of employment services such as training, counselling, career decisions and self-employment opportunities. She has an annual budget of approximately 26 million dollars and three Team Leaders (PM-03s) reporting directly to her.

[19] The witness explained the process followed by a person seeking financial assistance in order to attend a training course. The applicant meets with a Community Case Manager for counselling, to discuss labour market information and to determine the training required in view of the applicant's skills. The applicant is then referred to a program officer to discuss the cost of the requested training, the amount of financial assistance required, the applicant's availability for training and alternate sources of income. The program officer assesses the file, writes in recommendations and processes the applicant's financial package, as HRDC is the first payor; in other words, the first cheque sent to the applicant or to an institution is sent directly by HRDC.

[20] The witness stated that the level of trust required of a program officer is extreme, as any decision made on the amount of financial assistance to be provided to an applicant is discretionary and these dollars are public funds. The program officer has a lot of discretion and works under minimal supervision; therefore, the individual needs to be very trustworthy. A program officer negotiates agreements with third party service providers based on community needs and the supply and provision of services. These agreements can range from \$50,000 to 3 million dollars depending on the type of service required.

[21] The witness stated that the "Conflict of Interest and Post-Employment Code for the Public Service" (Exhibit E-11) sets out specific directions for employees to follow to avoid giving preferential treatment to clients and conflict-of-interest situations. The object of the Code is to enhance the public's confidence in the integrity of HRDC staff and the public service. Under Part I, "Principles and Administration", it states:

Principles

Every employee shall conform to the following principles:

- (a) *employees shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced;*
- (b) *employees have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;*
- [...]
- (f) *employees shall not step out of their official roles to assist private entities or persons in their dealings with the government when this would result in preferential treatment to any person;*
- (g) *employees shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities and that is not generally available to the public.*

[...]

Under Part II, "Conflict of Interest Compliance Measures", it states:

Avoidance of Preferential Treatment

30. *Employees must not accord preferential treatment in relation to any official matter to family members or friends, or to organizations in which the employee, family members or friends have an interest. Care must be taken to avoid being placed, or appearing to be placed, under obligation to any person or organization that might profit from special consideration by the employee.*

[...]

Failure to Comply

33. *An employee who does not comply with the measures described in Parts I and II is subject to appropriate disciplinary action up to and including discharge.*

[22] The witness stated that on January 5, 1983, the grievor signed a "Memorandum of Understanding" (MOU) concerning restriction on employee involvement in certain matters (Exhibit E-12). This MOU stated:

It is not permissible for employees to be directly involved in, or attempt to influence, the recording, processing, or adjudication of a claim or application for a grant, work permit, visa, or any other benefit administered by the Commission, on behalf of a relative or friend in which they have a personal interest or concern, financial or otherwise. An employee must advise his/her supervisor immediately when faced with such a situation.

Commission management appreciates that there are often instances where there is a desire to ensure minimum delay in service, but it is in our joint interest to avoid the type of involvement outlined above. Infraction of this policy constitutes misconduct requiring disciplinary action and may constitute an offence under the Criminal Code.

[23] The witness stated that because of a previous incident involving the grievor that could have been perceived as preferential treatment toward a client, she sent the grievor an e-mail on June 10, 2000, reiterating the contents of the MOU and including possible scenarios on what might constitute preferential treatment. She also reminded her that preferential treatment was not to be given to clients.

[24] Ms. MacLean stated that upon being advised by Mr. Parrott of his concerns that the grievor had processed Mr. "S"'s application, she reviewed the file and decided that a full investigation was warranted. As a result, the grievor was suspended without pay, effective June 18, 2002 (Exhibit E-3).

[25] On June 19, 2002, Ms. MacLean scheduled a meeting in Abbotsford with the grievor, her union representative, Diane Mitchell, and Nancy Emery, a PM-05 who was to observe and take notes. The purpose of the meeting was to provide the grievor with an opportunity to explain why she had processed Mr. "S"'s application and to discuss management's concerns. The essence of the meeting was captured in Ms. Emery's notes (Exhibit E-14), as well as in notes taken by Ms. MacLean (Exhibit E-4). During the meeting, the grievor stated that her job triggered her mania. Ms. MacLean testified that it was her belief that the allegations cited below were founded in view of the explanations provided by the grievor.

1. Preferential Treatment

- The grievor provided Mr. "S" with an application and relevant documentation; he never had to visit the HRDC office. He was not assigned a

case manager, which was a requirement, and jumped the queue in respect of others who were waiting to have their applications processed.

2. Conflict of Interest

- The grievor and Mr. "S" were involved in a relationship and living together when she processed his application. Since they lived in the same residence, any money allotted to Mr. "S" could be perceived as a financial benefit to the grievor. (The grievor admitted that she paid his June 2002 child support payment of \$450.)

3. Releasing of Confidential Information

- The grievor released "client #1's" labour market information to Mr. "S".

4. Falsifying Documents

- The grievor removed "client #1's" labour market information from his file and entered it on Mr. "S"'s application in order to have it appear that Mr. "S" had performed the required analysis.
- On May 22, 2002, the grievor submitted an application for coverage to the Public Service Health Care Plan, listing Mr. "S" as a dependent and her common-law spouse, as of April 2001.

5. Access to Confidential Information

- On May 7, 2002, the grievor retrieved Mr. "S"'s confidential Employment Insurance information. This information contained tombstone data such as his social insurance number, birth date, address, and telephone number.

6. Untruthful to her Team Leader

- During her meeting with Mr. Parrott, the grievor denied on three separate occasions that Mr. "S" was her boyfriend.

7. Attempted Fraud

- By falsifying information to obtain medical coverage, the grievor attempted to qualify Mr. "S" and his children for benefits under the Public Service Health Care Plan, to which they were not entitled.
- The grievor approved \$7,500 for dependent care costs for Mr. "S"'s children, although she was aware of the fact that they were beyond daycare age and did not live with their father.
- She suggested that Mr. "S" apply for a Canada Student Loan contrary to HRDC policy, as HRDC is the first payor with respect to training costs for eligible clients but does not pay off applicants' loans.
- She made the cheque for tuition payable to Mr. "S" rather than to CDI College, contrary to HRDC policy. If Mr. "S" decided not to attend college and skipped town, HRDC would have to take steps to recover the money.

[26] Ms. MacLean stated that the grievor contravened Part I, subsections 6(a)(b)(f) and (g) of the "Conflict of Interest and Post-Employment Code for the Public Service" (Exhibit E-11). The bond of trust with the employer has been broken. The employer must have a level of trust in a program officer who negotiates large contracts on behalf of the Canadian government and works under minimal supervision.

[27] The witness noted that she, as well as the grievor's supervisor, was well aware of the grievor's medical condition. If the grievor needed time away from the office for medical or EAP visits, it was always granted. Had she asked for accommodation in 2002, in terms of relief from her duties, it would have been approved, as it had in the past. Ms. MacLean stated that in July 1999, the grievor asked for time off and was absent from work for a considerable period of time. Ms. MacLean personally retrained her when she returned to work.

[28] The witness noted as well that she reviewed all the files the grievor worked on between March and June 2002. They were all in order except for Mr. "S"'s.

[29] Ms. MacLean concluded her testimony by stating that she recommended that the grievor's employment be terminated after taking into consideration the severity of the misconduct and the last paragraph of a letter dated July 31, 2002, to Judy Jack, Staff

Relations, HRDC, from Eric Jeffries, Medical Officer, Health Canada (Exhibit E-13), which stated:

Although the illness triggered that action, it was not the type of illness that blurred Ms. Douglas' ability to distinguish right from wrong. It would appear that the action was deliberate, she was aware of what she was doing, and knew it was wrong. Whether this illness excuses her wrongdoing is a matter for the employer to determine.

[30] In cross-examination, the witness agreed that it was Mr. "S" and not the grievor who signed two Canada Customs and Revenue Agency (CCRA) consent forms for the Canada Student Loan on May 13 and July 2, 2002 (Exhibit E-7).

[31] The witness confirmed that it was after she reviewed the July 31, 2002, letter from Dr. Jeffries that she decided to recommend terminating the grievor's employment.

[32] As well, she confirmed that Mr. "S"'s new application to attend CDI College, which she subsequently handled, was approved.

[33] Nancy Emery has worked for HRDC for 32 years. She testified that she had no direct relationship with the grievor.

[34] With respect to the interview on June 19, 2002, the witness stated that her role was to record the questions posed to the grievor and the answers she provided. Her notes were filed as Exhibit E-14.

[35] The witness confirmed that the grievor stated: "My job triggers my mania" during the interview.

[36] There was no cross-examination of this witness.

[37] Both parties recognized Dr. Ronald A. Remick as an expert in the diagnosis and treatment of mood disorders and anxiety.

[38] Dr. Remick described Bipolar Disorder as a medical illness that affects approximately one to two percent of the population. The symptoms of the disorder vary from cycles of mania to being in a depressed state that may last from two weeks to two months. A person in a manic state experiences feelings of elation that can last weeks or months. The individual survives on minimal sleep, is highly agitated, speaks

rapidly, is easily distracted, has impaired judgement, has no perception of consequences, has sexual indiscretions, has the potential to become involved in events that can lead to painful consequences, is overly forthright and can spend enormous amounts of money, which may lead to significant debt.

[39] The witness stated that depression can be described through the acronym "SIGECAPS":

- S = sleep change (too much)
- I = interests down
- G = guilt
- E = energy down
- C = concentration (low memory; decisions difficult to make)
- A = appetite change (too much; too little)
- P = psycho-motor activity (sped up or agitated or perhaps retorted)
- S = suicide (feelings of hopeless; no future expectations)

[40] One in six persons suffering from Bipolar Disorder commits suicide.

[41] The witness stated that persons in their early twenties who are depressed and do not undergo treatment might feel depressed for a period of six to nine months. Persons in a manic state who are not treated may feel that way for three to four months.

[42] Bipolar Disorder is broken down into two levels:

- Bipolar I: Manic depression; hallucinations; impaired judgement; hospitalization.
- Bipolar II: Hypomania; same symptoms as Bipolar I but not as severe.

[43] The Bipolar person normally has between 10 and 12 manic episodes during his/her lifetime. The likelihood of overcoming Bipolar Disorder without medical treatment is marginal, at best. However, with proper treatment, approximately 80 percent of patients do not suffer manic episodes but if they do, they are relatively mild. With treatment, the vast majority lead normal, productive lives. Many professionals, such as lawyers and doctors, are treated for Bipolar Disorder. The treatment needs to be adjusted regularly and is normally for life. Many patients remember or choose to take their medication; approximately 50 percent, however, do not.

[44] A person in a manic state feels elated and distracted and as a result might not take his/her medication. The usual prescription is three pills per day, and there may be side effects (nausea, for example). The risk of relapse is 60 percent in the first year and 80 percent in the second or third year for those who fail to take their medication.

[45] Dr. Remick stated that the grievor was referred to him by her family physician, Dr. Randy Minion, on March 18, 1996 (Exhibit G-1, tab 8). He treated her on four or five occasions during 1996-97; he then lost track of her until she reappeared in November 2003. There is a history of Bipolar Disorder in the grievor's family, as this illness is genetic. While under his care in 1996-97, the grievor was prescribed and treated with Lithium.

[46] With regard to a medical evaluation that Health Canada requested and which Dr. Alan Buchanan, an independent qualified psychiatrist, performed, the witness stated that he agreed with Dr. Buchanan's assessment and conclusions that the actions the grievor took in regard to Mr. "S" could be attributed to her illness and that "she is currently capable and will be capable in the foreseeable future for performing her duties as required..." (Exhibit G-1, tab 10).

[47] Dr. Remick identified Exhibit G-1, tab 9, as his report and findings following an interview with the grievor held on November 20, 2003. Although he had not seen her in six years, it is his opinion that her behaviour during the spring of 2002 was the result of a hypomanic episode.

[48] When the witness was referred to Dr. Jeffries' letter of July 31, 2002 (Exhibit E-13), he stated that he did not disagree with Dr. Jeffries' conclusion that although the illness triggered the actions [referring to the incident involving Mr. "S"], it is not the type of illness that could blur the grievor's ability to distinguish right from wrong. He stated, however, that it is his belief that the grievor's judgment was impaired due to her illness to the point that she was not making sane judgments.

[49] In conclusion, the witness indicated that at the time of the incident, the grievor was not on any medication. He is currently treating her. When asked by the grievor's representative if the grievor could satisfactorily perform the key duties of her job description, he replied: "If she receives proper treatment, maintains her drug requirement and if the employer so wishes, I see no reason why she could not return to her former position."

[50] In cross-examination, Dr. Remick agreed that he had not seen or treated the grievor in the spring of 2002, and all he had to base his assessment and conclusions on was her explanation of her mental state at that time.

[51] Dr. Remick also agreed that anyone working shoulder-to-shoulder with a person who is manic would observe changes in his/her behaviour. He explained that one would observe rapid speech, which cannot be interrupted, the setting of unrealistic plans and goals, and restlessness. Behavioural patterns would be less obvious in a person who is hypomanic. He also agreed that persons diagnosed with Bipolar I Disorder would have hallucinations and be in a psychotic state, whereas persons diagnosed with Bipolar II Disorder would not be in a psychotic state, but their judgment would be impaired.

[52] He agreed as well that Exhibit E-15, "Diagnostic and Statistical Manual of Mental Disorders" (Fourth Edition), published by the American Psychiatric Association, is relied upon by physicians and psychiatrists in Canada and in most countries to make a consistent diagnosis.

[53] The witness reiterated that it is his belief that the grievor suffered a hypomanic episode, as her behaviour during the incident in question was so out of character. All these events happened within a two to four-month period.

[54] In redirect, the witness stated that there is no doubt in his mind that the grievor suffers from Bipolar Disorder. Malingering is extremely rare in cases of Bipolar Disorder.

[55] Dr. Eric Jeffries is currently employed with Health Canada as a medical officer/occupational health physician.

[56] Dr. Jeffries testified that on July 23, 2002, the grievor voluntarily underwent a fitness-to-work assessment conducted by Dr. Buchanan. It was he who suggested Dr. Buchanan, who specializes in occupational psychiatry. The reason for the assessment was to determine if the grievor was fully fit, fit with limitations or unfit to perform her duties and to take a forensic look at culpability with regard to the incidents involving Mr. "S".

[57] With respect to Dr. Buchanan's conclusion that the grievor is capable and will be capable in the future of performing her duties as long as she maintains a monitoring program, as indicated by Health Canada, Dr. Jeffries stated that he disagreed with this assessment and was disappointed that Dr. Buchanan did not find her culpable for her actions. He stated that the grievor knew right from wrong; she had insight. He noted that the right and wrong implied a moral judgment. The correct medical term would be insight.

[58] As part of his assessment, Dr. Buchanan also had the grievor undergo a "Mental Status Exam" on July 23, 2002. She was diagnosed as non-suicidal and non-violent. As well, she underwent a "Global Assessment and Function (GAF) Exam." The GAF is used by psychiatrists to evaluate a person's ability to work socially. The grievor scored 85 points out of 100 on the GAF; most persons score 90 to 95 points. Persons who score 60 to 70 points are determined fit to work socially.

[59] The witness reiterated that he disagreed with Dr. Buchanan's assessment and as he was the one who had to sign off on her medical assessment and limitations, it is his belief that she had insight at the time of the incident and was fit to work. Before sending his letter of July 31, 2002, to Ms. Jack, he sent a draft to Dr. Buchanan and attached a note indicating: "...basically trying to make it a management decision and not a medical one - some hope!!" (Exhibit E-17). Dr. Buchanan replied: "This is OK with me. You are drawing a distinction between attributable actions from a medical illness and the judgement whether those actions are punishable by management regardless of their attribution or cause." The witness stated that the grievor's actions were fraudulent; she purposely falsified records. This was not attributable to a medical condition. The witness referred to Exhibit E-15, "Diagnostic and Statistical Manual of Mental Disorders", at page 365, wherein it states: "In contrast to a Manic Episode, a Hypomanic Episode is not severe enough to cause marked impairment in social or occupational functioning..."

[60] In cross-examination, Dr. Jeffries agreed that, although he spoke with the grievor in November 2002, he never treated her and he is not an expert in the diagnosis and treatment of Bipolar Disorder.

[61] When asked by the grievor's representative if he had prejudged the grievor in regard to her actions regarding Mr. "S", Dr. Jeffries stated: "I felt quite certain she was fit at the time of the incident and I did not prejudge her. I felt confident that this issue would come before an adjudicator."

[62] Judy Douglas has been employed with HRDC since 1984. She has worked as a Native Employment Counsellor, a General Employment Counsellor at the STO-LO Nation, and until the termination of her employment, she was a program officer in the Chilliwack office. Her duties included providing employment services and job counselling to applicants in and around the Hope, Chilliwack and Abbotsford areas.

[63] The grievor began her testimony by describing some events in her personal life. She married into a large family, her husband being one of 22 children, and in a few years seven of those children, including her husband, had died. In 2001, she was diagnosed with breast cancer and has undergone four different surgeries since then as a result of the cancer. As well, her youngest son was diagnosed with throat cancer. As a result of these events, she was under a lot of stress, which, she stated, put her in a manic state.

[64] In mid-March 2002, after ending a four-year relationship with Mr. "X", she met Mr. "S" through the Internet and after meeting face-to-face, it was the start of a whirlwind romance ("a heavy-duty sexual relationship", as described by the grievor). She stated that Mr. "S" was very attentive and doting and on two separate occasions sent her flowers at work.

[65] The grievor noted that early in April 2002, she purchased a truck worth approximately \$20,000, which she did not need, and she and Mr. "S" spent the third week of April on the road, as Mr. "S" was in the trucking business. It was during this trip that it became clear that Mr. "S" could not continue working in the trucking business. Approximately every 200 miles, Mr. "S", who suffers from two herniated discs, had to stop the truck and take a walk to ease the pain. Mr. "S"'s doctor had advised him to get out of the trucking business. It was then that they began discussing alternate employment opportunities for him.

[66] She noted as well that early in May 2002, she travelled with her grandchildren to Victoria to see the "Emily Carr Exhibition". She stated: "We lived large, we did everything there was to do in Victoria and the room at the Grand Pacific Hotel was \$100 a night." The grievor stated that this was out of character for her.

[67] The grievor went on to state that she was in a "heavy-duty" sexual relationship with Mr. "S" and thought she was in love with him. She spent time with his children; in fact, they stayed with her on weekends. He moved into her home in May 2002. However, unknown to him, toward the end of May, she rekindled her relationship with her former partner, Mr. "X". Mr. "S" was devastated when he found out. Mr. "X" told Mr. "S" to move out of her home. She stated that Mr. "S" was a very needy person and could not let go of her. He could not understand that he was not her type. She stated that she "hurt his heart". She felt responsible; she felt bad. She noted: "As I look back at the wreckage, it is very painful."

[68] The grievor testified that she wanted Mr. "S" to move out of her home but felt that she should assist him in securing an opportunity to attend CDI College in Abbotsford to enrol in a computer course. The course was to begin on June 12, 2002. As she wanted Mr. "S" out of her home and her life, she gave him preferential treatment in order to expedite the process. If Mr. "S" had gone through the regular process, he would have been approved, but just not in time to attend the course, which was scheduled to commence on June 12, 2002. She was just trying to push him through. She commented: "Looking back, I put myself in a conflict of interest. I knew I should not have handled his case. It was absolutely stupid." Mr. "S" was subsequently funded by HRDC to attend CDI College. The grievor stated that there was no way that she could have profited by Mr. "S" attending CDI College, other than having him leave her home.

[69] As far as the \$7,500 she approved for daycare expenses for his three children, as opposed to child support, it was an error. The old form was revised and the new form does not have an area to enter child support payments. The old form had an area called "Other Instructional Costs" and this is where the child support payments would have been entered. Mr. "S" needed the money for child support. It would have been approved; if not, he would not have been able to attend school.

[70] The grievor testified that the labour market information used in Mr. "S"'s application was not pulled out of "client #1's" file but rather from his brother's file, which was dormant; his brother had been a client of hers. She only gave Mr. "S" the labour market information to help expedite his application. Because of the timeframe to attend CDI College, Mr. "S" did not have enough time to complete the labour market information. He was, however, fully capable of putting it together.

[71] The grievor indicated that she did not involve herself with Mr. "S"'s Canada Student Loan application but only suggested that he apply for a loan, as he had very high expenses. If he received this loan, it would be up to him to repay it since HRDC does not pay back loans.

[72] The grievor stated that the reason she made out the tuition cheque to Mr. "S", rather than to CDI College, was that she was confident that he was not going to skip town and pocket the money. Mr. "S" wanted this training; it was very important to him.

[73] The grievor testified that when she enrolled Mr. "S" in her Public Service Health Care Plan on May 22, 2002, she believed that they were going to live together. Mr. "S" was very depressed and was having problems with his children at that time. He never benefited from the medical coverage before she stopped it on June 25, 2002.

[74] The grievor concluded her testimony by stating that Mr. Parrott never asked her about her relationship with Mr. "S" during their meeting. He knew about Mr. "S", as he had approved her request for leave when she went on her trip with Mr. "S" in April.

[75] In cross-examination, the grievor admitted that "client #1's" file was not one of hers.

[76] When counsel for the employer referred her to the Employment Insurance Board of Referees Decision (Exhibit E-8), wherein it states: "She indicated she had gone to her doctor three weeks before the incident on June 12 and she was aware of her own condition...", the grievor replied that she did not remember making that statement.

[77] When asked why she fraudulently applied for medical coverage for Mr. "S" on May 22, 2002, she could offer no explanation other than to say that her life was pretty intense.

[78] In redirect, the grievor conceded that what she did was wrong but at that time, in her depressed state, she did not realize that it was that wrong. She rationalized that it was a suitable intervention on behalf of Mr. "S" and if the application went through, as of June 12, 2002, he would be attending college in Abbotsford and would be out of her life. After this matter came to light, Mr. "S" had to resubmit his application to attend CDI College and HRDC provided him with approximately double the financial assistance that she had approved originally.

Arguments

For the Employer

[79] Counsel for the employer stated that the employer has to establish, pursuant to section 11.2 of the *Financial Administration Act*, a *prima facie* case. In a medical defence case, however, the onus is on the employee to prove that he/she is non-culpable. The questions that need to be addressed in this case are:

- I Did the grievor commit the alleged infractions?
- II Is there a medical defence?
- III Was the suspension and subsequent termination of employment justified?

I Did the grievor commit the alleged infractions?

[80] The employer has proven this allegation and during her testimony, the grievor admitted committing these infractions. She violated the "Conflict of Interest and Post-Employment Code for the Public Service" and the MOU concerning restriction on employee involvement in certain matters.

[81] In cross-examination, the grievor admitted motive: she wanted to get Mr. "S" out of her home and her life. This was not a spur-of-the-moment decision; it was premeditated. The employer has met the burden of proof.

II Is there a medical defence?

[82] This is not a duty-to-accommodate case referred back by the CHRC. It is an employment case. The grievor has the burden of proof, based on a balance of

probabilities, to establish a medical defence. All the medical evidence is based on her self-reporting after the incident. Dr. Remick did not see or treat her between 1997 and 2003, and he testified that he did not disagree with Dr. Jeffries' conclusion that the grievor had the ability to distinguish right from wrong. Dr. Buchanan's assessment was also based on her self-report. Ms. MacLean testified that all the files the grievor worked on between March and June 2002 were fine except for Mr. "S"'s. Mr. Parrott testified that he worked closely with the grievor on files and negotiations and at no point, from March to June 2002, did he notice any Bipolar Disorder symptoms. As well, she never requested time off or relief from work due to her illness. The onus was on the grievor to communicate with the employer (self-report) but she chose not to.

[83] As far as rehabilitative potential is concerned, it should be noted that Ms. MacLean and Mr. Parrott always accommodated the grievor; however, she chose to commit an act of misconduct that has seriously jeopardized the employer's confidence. There is no guarantee that the employer will not have to look over its shoulder continuously while she performs her duties, should she be reinstated.

III Was the suspension and subsequent termination of employment justified?

[84] By falsifying documents in order to obtain money for Mr. "S", the grievor would benefit, since they were living together, thereby creating a trickle-down effect. The grievor paid Mr. "S"'s \$450 child support payment for June 2002. If Mr. "S" received \$7,500 for dependent care costs, she could benefit and there was an interest for her. This was not a spontaneous act. The grievor did not self-report; she was caught. She was deceptive and lied when confronted by Mr. Parrott. These illegal acts were premeditated and deliberate. They are very serious acts that violate the core principles of her duties. She was in a position of trust - the public face in the community for HRDC - and had discretion over public funds. The grievor's suspension and termination of employment are, therefore, justified and should be maintained.

[85] In response to my question that if I found that termination of employment was too severe but that reinstatement was not an option, Mr. Fader argued that pay in lieu of reinstatement would send a wrong message to public servants. However, if I decided that compensation should be a consideration, Mr. Fader referred me to *Carl S. Gannon and Treasury Board (National Defence)*, 2002 PSSRB 32. In that case, the grievor received one year in compensation in lieu of reinstatement. This case does

not have the same set of facts and six months' compensation would be more than sufficient.

[86] Mr. Fader also referred me to the following cases: *Re Toronto Transit Commission v. Amalgamated Transit Union* (1997), 72 L.A.C. (4th) 109; *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.); *Canada (Attorney General) v. Boutilier*, [2000] 3 F.C. 27 (C.A.); *Jean Cherrier v. Treasury Board (Solicitor General - Correctional Services)*, 2003 PSSRB 37; *Chris Kehoe v. Treasury Board (Human Resources Development Canada)*, 2001 PSSRB 9; *Tipple v. Canada*, [1985] F.C.J. No. 818 (C.A.); *Canada (Treasury Board) v. Barratt*, [1984] F.C.J. No. 240 (C.A.); *Mackenzie* (PSSRB File Nos. 166-2-26614 and 26615(1997) (QL)); *Cie minière Québec Cartier v. Québec*, [1995] 2 S.C.R. 1095; *Funnell* (PSSRB File No. 166-2-25762 (1995) (QL)); *Canadian Postmasters and Assistants Association v. Canada Post Corporation* (2001), 102 L.A.C. (4th) 97; *Re Canada Safeway Ltd. and Bakery, Confectionery & Tobacco Workers' International Union, Local 252* (2002), 113 L.A.C. (4th) 385; *Re Canada Safeway Ltd. and United Food and Commercial Workers, Local 401* (2000), 94 L.A.C. (4th) 86; *Batiot* (PSSRB File No. 166-2-28540 (1999) (QL)); *McPhee* (PSSRB File No. 166-2-13787) (1983) (QL)); *Tipple* (PSSRB File No. 166-2-14758 (1985) (QL)); *Weber* (PSSRB File No. 166-2-15616 (1986) (QL)); *Threader v. Canada (Treasury Board)*, [1987] F.C.J. No. 1141 (C.A.) and *McIntyre* (PSSRB File No. 166-2-25417 (1994) (QL)).

For the Grievor

[87] The grievor's representative stated that in respect of a termination of employment, the burden of proof rests with the employer but shifts to the employee in a medical defence case. However, the existence of mitigating factors should be considered when determining the appropriateness of the discipline imposed by the employer.

[88] Ms. Seaboyer acknowledged that the grievor admitted giving Mr. "S" preferential treatment and that by processing his application, she put herself in a conflict-of-interest situation. The grievor admitted, as well, that she used the labour market information of another client but disputes whether the information was of a confidential nature. The information contained no tombstone data or financial information that could be used to readily identify the individual concerned. The grievor also admitted that she released documents to Mr. "S" regarding another client's labour market information.

[89] The grievor disputes that she attempted to obtain benefits fraudulently for Mr. "S" by approving \$7,500 in dependent care costs. She testified that the form had changed and she had approved the \$7,500 for child support, which Mr. "S" was obligated to pay.

[90] The grievor testified that she suggested that Mr. "S" apply for a Canada Student Loan because of his high expenses. By applying for this loan, Mr. "S" would have to pay back the loan and HRDC would not have to pay for the entire amount of his training.

[91] The grievor disputes Mr. Parrott's testimony that he asked her on three separate occasions during their meeting if Mr. "S" was her boyfriend. She stated that Mr. Parrott was aware of what went on in the office since his office was located approximately 30 feet from her own. The grievor testified that Mr. "S" sent her flowers at work. Mr. Parrott approved her vacation leave for her travel across the country with Mr. "S". In other words, Mr. Parrott should have been aware that something was going on in her life that was out of the ordinary.

[92] With regard to accessing Mr. "S"'s confidential information, the grievor cannot remember doing so. It is only an assumption on the employer's part that it was for personal reasons.

[93] Dr. Remick, an expert in this field, diagnosed the grievor with Bipolar Disorder. He referred to the list of symptoms and distinguished between hypomania and mania, with hypomania being less severe than mania but still having the same type of symptoms.

[94] Dr. Buchanan's report (Exhibit G-1, tab 10) indicates that the grievor had "a relapse of her Bipolar condition this spring" [2002]. Dr. Remick's report (Exhibit G-1, tab 9) states that the grievor "was clearly impaired with her hypomania and her judgment was significantly impaired in the spring, 2002." In reviewing the doctors' credentials, it should be noted that Dr. Remick is an expert in the field of mood disorders. Dr. Buchanan is a qualified psychiatrist and Dr. Jeffries is an expert in occupational health and has a PhD in clinical psychology. In comparing Dr. Remick's and Dr. Buchanan's conclusions that the grievor's illness contributed to her actions and Dr. Jeffries' assertion that he believes her illness contributed to her actions, yet she knew right from wrong, which should be given the most weight?

[95] If Dr. Remick's and Dr. Buchanan's conclusions are preferred, it is clear that the grievor's illness contributed to her actions. Therefore, she is not culpable and the bond of trust between her and the employer has not been irreparably broken. This illness is controllable with proper medical treatment and an established monitoring protocol, as indicated in Dr. Buchanan's report (Exhibit E-1, tab 10).

[96] The grievor has a clean record and longstanding service with this employer, some 20 years. This action was an isolated incident. She admitted her guilt during the investigation interview with Ms. MacLean and showed remorse for her actions.

[97] The grievor's suspension and termination of employment are not justified since the employer suffered no harm. No money was paid out to Mr. "S" as a result of her actions. In fact, Mr. "S"'s application was subsequently approved and he was provided with more financial assistance than the grievor had originally approved.

[98] The grievor's representative requested that the grievor's suspension and termination of employment be overturned and that she be returned to her former position with full compensation and no loss of benefits. In the alternative, if I believe some discipline is warranted, then a suspension comparable to the range imposed by other adjudicators in similar circumstances should be considered. If I feel that termination is too severe but that reinstatement is not an option, then the grievor should be compensated for a period of two years.

[99] Ms. Seaboyer referred me to the following cases: *Amarteifio* (PSSRB File No. 166-2-25829 (1995)); *Johnson* (PSSRB File No. 166-2-26107 (1995)); *Bastie* (PSSRB File No. 166-2-22285 (1993)); *Blair-Markland* (PSSRB File No. 166-2-28988 (1999)); *Conte* (PSSRB File No. 166-2-22281 (1992)); *Tosh* (PSSRB File No. 166-2-23614 (1993)); *Perry* (PSSRB File No. 166-2-17340 (1988)); *Robert Proulx v. Treasury Board (Solicitor General of Canada - Correctional Service)*, 2002 PSSRB 45, and section 7:4400 "Mitigating Factors" of *Canada Law Book Inc. 2004*.

Reply

[100] Dr. Buchanan's report was based on self-reporting by the grievor after the incident. Dr. Remick's report was 17 months after the grievor's suspension and was based on the grievor's self-reporting of her medical condition. The only doctor

treating her from March to June 2002 was her family doctor, who was not called to testify.

Reasons for Decision

[101] The grievor was suspended on June 18, 2002, and subsequently terminated from her employment at HRDC, effective September 4, 2002, following an administrative investigation into alleged misconduct. She filed a complaint with the CHRC, which decided, pursuant to paragraph 41(1)(b) of the *CHRA*, not to deal with the complaint at that time. Hence, the grievor falls under the jurisdiction of this Board.

[102] The grievor was terminated from her position as a Program Officer (PM-02), Grants and Contribution, for affording preferential treatment to a member of the public known to her, placing herself in a conflict of interest, releasing confidential information to said person, falsifying documents, attempting to obtain employment benefits fraudulently for said person, for being untruthful to her Team Leader and for accessing confidential information for personal purposes.

[103] The grievor alleges that at the time of the incident her illness, Bipolar Disorder, played a significant role in the actions she took.

[104] The first question that must be addressed is whether the employer has met the burden of proof in establishing a *prima facie* case against the grievor for alleged misconduct.

I Did the grievor commit the alleged infractions?

[105] The grievor testified that in mid-March 2002, she ended a four-year relationship with Mr. "X". She subsequently met Mr. "S" online and shortly thereafter, they began a whirlwind romance. In April, during a cross-country trip they took, discussions revolved around Mr. "S"'s need to seek alternate employment. His two herniated discs were preventing him from effectively continuing to work in the trucking business. It was then that they decided that it would be better for Mr. "S" to return to school (college) and enrol in a computer course.

[106] In mid-May, Mr. "S" moved into the grievor's residence. However, near the end of the month, the grievor rekindled her relationship with her former partner, Mr. "X". The grievor testified that she wanted Mr. "S" to move from her residence but felt guilty

because she had "hurt his heart". In an effort to assist Mr. "S", she expedited his application for financial assistance to attend CDI College. She admitted during her testimony that she gave Mr. "S" preferential treatment and put herself in a conflict of interest because time was a factor. The course Mr. "S" was to enrol in was scheduled to begin on June 12, 2002. The preferential treatment afforded Mr. "S" lies in the fact that he never entered an HRDC office to complete an application, as the grievor brought all documents needed by him to her residence, that he was not assigned a case manager, as required by HRDC policy, and that he jumped the queue in respect of other applicants.

[107] The grievor admitted that when she processed Mr. "S"'s application, they were living together. This is clearly a conflict of interest. It is clear that she has violated the "Conflict of Interest and Post-Employment Code for the Public Service" and the MOU on restriction on employee involvement in certain matters.

[108] The grievor admitted that she provided Mr. "S" with labour market information belonging to another client, but not "client #1's", as alleged by the employer. She disputes that the information was confidential, as it held no tombstone data that would readily identify the individual concerned. Mr. Parrott testified that the information given to Mr. "S" was from "client #1's" file. That file had been assigned to Ms. Weins and it was in total disarray; the information had been literally removed and added to Mr. "S"'s file.

[109] In this instance, I prefer Mr. Parrott's testimony to that of the grievor. Whether the information given to Mr. "S" was part of "client #1's file" or another client's file is irrelevant. What matters is that the grievor knowingly released information to Mr. "S" from another file in an attempt to foster a deception that the labour market information was provided by Mr. "S".

[110] With respect to the allegation that she attempted to obtain benefits fraudulently under the Public Service Health Care Plan, the evidence is crystal clear, through Exhibit E-5, that she committed fraud by applying for coverage and listing Mr. "S" as a dependent and her common-law spouse as of April 2001. The result of this lie was that Mr. "S" and his children would be eligible for benefits. The fact that Mr. "S" never applied for or received benefits is also irrelevant. A conscious effort was made by the grievor to obtain these benefits.

[111] The grievor testified that she inadvertently approved \$7,500 for day care expenses for Mr. "S"'s children. Her explanation was that the new form did not have an area to enter child support payments and he needed the money for child support, otherwise he would be unable to attend CDI College. Although the grievor did not produce the old form that would depict the area where child support payments would be entered, I do not believe that she attempted to obtain the \$7,500 fraudulently. However, I do believe she wanted to be absolutely sure that Mr. "S" received the said monies, to which he would be entitled, as she had paid \$450 out of her own pocket for Mr. "S"'s child support payments in June 2002. She had an interest in his obtaining the money and I agree with counsel for the employer that there would be a trickle-down effect, which would be a benefit to her.

[112] Insofar as the grievor advising Mr. "S" to apply for a Canada Student Loan, I note that her signature does not appear on the application and Mr. "S" would be responsible for repaying the loan, if it were granted.

[113] I find as well that she contravened HRDC policy by issuing the tuition cheque directly to Mr. "S" rather than to CDI College.

[114] As well, I find that she was untruthful to her Team Leader. Again, I prefer Mr. Parrot's testimony to the effect that he had asked her on several occasions about her relationship with Mr. "S" during their meeting in June.

[115] In my view, the employer has met the burden of proof in establishing that the grievor committed fraud, violated HRDC policies, gave Mr. "S" preferential treatment, put herself in a conflict of interest and was untruthful to her supervisor.

II Is there a medical defence?

[116] It is my belief that the grievor's illness contributed to her making impulsive decisions, such as her living large, buying a \$20,000 truck, and starting a relationship with Mr. "S". However, on the balance of probabilities, I am not satisfied that her illness marked her judgment to the point that she did not realize that she was committing fraud and violating departmental policies.

[117] Dr. Remick testified that the grievor was referred to him by her family physician in March 1996. Although he did not see or treat her between 1997 and November 2003, it is his belief that during the spring of 2002, her behaviour was a result of a

hypomanic episode. He stated in cross-examination that his report and conclusions were based on the grievor's explanation of her mental state at the time. In redirect, Dr. Remick reaffirmed that there is no doubt in his mind that the grievor suffers from Bipolar Disorder.

[118] I agree that Dr. Remick is an expert in Bipolar Disorder. He testified that physicians and psychiatrists in Canada and most countries rely upon Exhibit E-15 in order to make a consistent diagnosis. In reviewing this document, I found no indication that persons suffering from a hypomanic episode would be impaired to the point of committing fraud and violating departmental policies.

[119] Dr. Remick testified that the symptoms of a Bipolar I manic episode and a Bipolar II hypomanic episode are similar. In Exhibit E-15, at page 362, it states:

Criteria for Manic Episode

- A. *A distinct period of abnormally and persistently elevated, expansive, or irritable mood, lasting at least 1 week (or any duration if hospitalization is necessary).*
- B. *During the period of mood disturbance, three (or more) of the following symptoms have persisted (four if the mood is only irritable) and have been present to a significant degree:*
 - (1) *inflated self-esteem or grandiosity*
 - (2) *decreased need for sleep (e.g. feels rested after only 3 hours of sleep)*
 - (3) *more talkative than usual or pressure to keep talking*
 - (4) *flight of ideas or subjective experience that thoughts are racing*
 - (5) *distractibility (i.e., attention too easily drawn to unimportant or irrelevant external stimuli)*
 - (6) *increase in goal-directed activity (either socially, at work or school, or sexually) or psychomotor agitation*
 - (7) *excessive involvement in pleasurable activities that have a high potential for painful consequences (e.g., engaging in unrestrained*

buying sprees, sexual indiscretions, or foolish business investments)

- C. *The symptoms do not meet criteria for a Mixed Episode (see. p. 365).*
- D. *The mood disturbance is sufficiently severe to cause marked impairment in occupational functioning or in usual social activities or relationships with others, or to necessitate hospitalization to prevent harm to self or others or there are psychotic features.* [Emphasis added]
- E. *The symptoms are not due to the direct physiological effects of a substance (e.g., a drug of abuse, a medication, or other treatment) or a general medical condition (e.g., hyperthyroidism).*

Note: *Manic-like episodes that are clearly caused by somatic antidepressant treatment (e.g., medication, electroconvulsive therapy, light therapy) should not count toward a diagnosis of Bipolar I disorder.*

At page 368, it states:

Criteria for Hypomanic Episode

- A. *A distinct period of persistently elevated, expansive, or irritable mood, lasting throughout at least 4 days, that is clearly different from the usual nondepressed mood.*
- B. *During the period of mood disturbance, three (or more) of the following symptoms have persisted (four if the mood is only irritable) and have been present to a significant degree:*
 - (1) *inflated self-esteem or grandiosity*
 - (2) *decreased need for sleep (e.g., feels relaxed after only 3 hours of sleep)*
 - (3) *more talkative than usual or pressure to keep talking*
 - (4) *flight of ideas or subjective experience that thoughts are racing*
 - (5) *distractibility (i.e., attention too easily drawn to unimportant or irrelevant external stimuli)*

- (6) *increase in goal-directed activity (either socially, at work or school, or sexually) or psychomotor agitation*
- (7) *excessive involvement in pleasurable activities that have a high potential for painful consequences (e.g., the person engages in unrestrained buying sprees, sexual indiscretions, or foolish business investment*
- C. *The episode is associated with an unequivocal change in functioning that is uncharacteristic of the person when not symptomatic.*
- D. *The disturbance in mood and the change in functioning are observable by others.*
- E. *The episode is not severe enough to cause marked impairment in social or occupational function or to necessitate hospitalization, and there are no psychotic features.*
- F. *The symptoms are not due to the direct psychological effects of a substance (e.g., a drug of abuse, a medication, or other treatment) or a general medical condition (e.g. hyperthyroidism).*

Note: *Hypomanic-like episodes that are clearly caused by somatic antidepressant treatment (e.g. medication, electroconvulsive therapy, light therapy) should not count toward a diagnosis of Bipolar II Disorder.*

[Emphasis added]

[120] Based on the evidence, the grievor meets the criteria for B(7); she bought a \$20,000 truck, which she did not need, she lived large on a weekend getaway to Victoria, and was involved in a "heavy-duty sexual relationship". These are the criteria listed under hypomanic episode. The difference between a hypomanic episode and a manic episode is that a hypomanic episode is not severe enough to cause marked impairment in occupational functioning, where in a manic episode, the mood disturbance is sufficiently severe to cause marked impairment in occupational functioning.

[121] Mr. Parrott testified that from March to June 2002, he did not observe any sign of her illness but had had occasion to do so in the past. Ms. MacLean testified that all the files the grievor worked on prior to her suspension were in order except Mr. "S"'s.

[122] Dr. Remick stated that he agreed with Dr. Jeffries' opinion that, although the grievor's illness triggered her action, it is not the type of illness that could blur her ability to distinguish right from wrong.

[123] It is my opinion that the grievor's illness did not prevent her from distinguishing right from wrong, nor cause her to commit fraud, violate the conflict of interest code and afford Mr. "S" preferential treatment, which is contrary to the values and ethics of the public service.

[124] It is my opinion, as well, that after the grievor rekindled her romance with her former partner, Mr. "X", she used her position at HRDC to help Mr. "S" attend CDI College in an effort to ease her conscience for having hurt him. I see no direct link or nexus between the grievor's illness and her ability to appreciate the fact that her actions amounted to misconduct. Therefore, I do not accept her medical defence.

III Was the suspension and termination of employment justified?

[125] The grievor's suspension was justified in order to allow the employer time to conduct an investigation into the allegations against her. With respect to the termination of her employment, the employer took into consideration the grievor's years of service and previous good record. However, it also considered that she failed to be forthright and truthful when confronted by Mr. Parrott and her actions were deliberate, premeditated and inexcusable.

[126] I agree with the employer that the grievor misconducted herself by processing Mr. "S"'s application and violated the "Conflict of Interest and Post-Employment Code" and gave him preferential treatment. As well, she fraudulently applied for medical benefits under the Public Service Health Care Plan, listing Mr. "S" as her common-law spouse as of April 2001.

[127] I view the grievor's infractions as very serious. Her position was one of trust and she worked under minimal supervision. The handling of public funds in a prudent and honest manner is of paramount importance in the performance of her duties.

[128] However, having said this, I do believe the grievor's actions were a one-time convoluted indiscretion. As such, I would be remiss if I did not examine the mitigating factors in closer detail.

[129] The grievor is a 49-year old woman with 20 years of public service employment. Her previous good work record with no disciplinary infractions should be taken into account. Although she initially denied to Mr. Parrot that she was involved with Mr. "S", she did admit to Ms. MacLean and Ms. Emery that she gave him preferential treatment and put herself in a conflict of interest. She also expressed remorse during that interview and at this hearing, when she stated: "I knew I did wrong, but I never realized I did that wrong." Fortunately, the employer became aware of this matter before any money was given to Mr. "S". Later, however, he was granted more financial assistance than the amount originally approved by the grievor.

[130] It is unfortunate that the grievor did not express remorse or provide a reason for fraudulently applying for employment benefits for Mr. "S" under the Public Service Health Care Plan.

[131] After carefully weighing the mitigating factors, I have decided that the grievor is to be reinstated to her former position as a Program Officer (PM-02) at Chilliwack, or any other office the parties may agree upon, within two weeks of the date of this decision. She will not be entitled to any money or benefits from the date of her suspension (June 18, 2002).

[132] The grievor stated that her job triggered her mania. I agree that this may be the case. However, her illness in no way excuses the serious misconduct that she committed with respect to Mr. "S". Having decided that the grievor's illness did not excuse or justify her actions in regard to Mr. "S"'s application, I am still of the opinion that if her illness is left untreated, as it was during this incident, it may trigger unacceptable behaviour in the workplace.

[133] Both Dr. Remick and Dr. Buchanan indicated that she can be productive and is capable of performing her duties if she follows proper medical treatment and maintains a monitoring program, as indicated by Health Canada. Therefore, I would be remiss if I did not impose the following conditions in order to satisfy the employer that her illness is being treated.

- (1) She must continue to receive proper medical treatment, as indicated by Dr. Remick.

- (2) She must undergo a monitoring program in cooperation with Health Canada and in consultation with Dr. Remick.
- (3) For the two years following reinstatement, the employer can require the grievor to provide periodic evidence that she is being treated by Dr. Remick, as well as periodic fitness to work evaluations.

[134] The grievance is allowed to the extent stated above.

**D.R. Quigley,
Board Member**

OTTAWA, June 7, 2004.