

***Health & Hospitals Corp. (Elmhurst Hospital Ctr.) v. Morsley***  
OATH Index No. 383/16 (Oct. 7, 2015)

Petitioner's undisputed evidence established that respondent was absent without official leave from January 19, 2015, to present. Termination from employment recommended.

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**NEW YORK CITY OFFICE OF  
ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**HEALTH AND HOSPITALS CORPORATION  
(ELMHURST HOSPITAL CENTER)**

*Petitioner*

*-against-*

**RONALD MORSLEY**

*Respondent*

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**REPORT AND RECOMMENDATION**

**ASTRID B. GLOADE**, *Administrative Law Judge*

This is a disciplinary proceeding referred by the petitioner, the New York City Health and Hospitals Corporation, Elmhurst Hospital Center ("Corporation"), pursuant to section 7.5 of the Personnel Rules and Regulations of the Corporation. The Corporation charges Ronald Morsley, a service aide, with being absent without official leave ("AWOL") from January 19, 2015, to the present.

At a trial scheduled to be conducted before me on October 5, 2015, respondent failed to appear. A representative from respondent's union appeared at the start of the trial to request an adjournment. That request was denied as respondent had not contacted the union or responded to its efforts to reach him regarding this proceeding. The union representative, who had not received authorization from respondent to act on his behalf in this proceeding, was then excused. *See* 48 RCNY § 1-11(d) (Lexis 2014) ("A person may not file a notice of appearance on behalf of a party unless he or she has been retained by that party to represent the party before OATH"); *Health & Hospitals Corp. (Elmhurst Hospital Ctr.) v. Filipello*, OATH Index No. 172/10 at 1 (Aug. 12, 2009) (union representative excused where respondent had had no contact with union and had not been a contributing member during period of absence without leave).

Petitioner submitted proof of service of the charges and the notice of hearing to respondent at his last known address by regular and certified mail on August 27, 2015 (Pet. Ex. 1). Such evidence satisfied the jurisdictional prerequisites for finding respondent in default, and the hearing proceeded as an inquest.

Petitioner submitted the affidavit of Yulieth Fonseca, Assistant Director of Environmental Services Department of the Queens Health Network/Elmhurst Hospital Center, whose duties include responsibility for time and leave control records of the environmental services department and corresponding with employees regarding time and leave matters (Pet. Ex. 2). The affidavit establishes that respondent was last seen at work on November 30, 2014, and has been AWOL since January 19, 2015. Petitioner notified respondent of his AWOL status by letters dated January 30, 2015, and February 6, 2015, and respondent failed to resolve his employment status as directed (Pet. Ex. 2). Ms. Fonseca states that respondent's absence has affected environmental services department by requiring other employees to perform the duties assigned to respondent, and has sometimes required the petitioner to order employees to work overtime to perform respondent's duties (Pet. Ex. 2).

Accordingly, I find that the Corporation has established that respondent has been absent without official leave since January 19, 2015.

### **FINDINGS AND CONCLUSIONS**

1. Respondent was properly served with the charges and notice of hearing.
2. Respondent has been absent without official leave as charged since January 19, 2015.
3. Respondent failed to respond to letters from the hospital regarding his absence.

### **RECOMMENDATION**

Petitioner requested that respondent's employment be terminated in light of his lengthy absence without authorization. This is appropriate. Respondent has been absent from work without official leave for over eight months and he did not appear at the trial to offer any evidence in his defense or in mitigation. His unauthorized absence is a fundamental form of

misconduct that impedes petitioner's ability to fulfill its mission in that it has become necessary for other employees to assume respondent's duties in addition to their own. *Health & Hospitals Corp. (Harlem Hospital Ctr.) v. Lawal*, OATH Index No. 317/13 at 2 (Oct. 1, 2012).

Therefore, I recommend that respondent's employment be terminated.

Astrid B. Gloade  
Administrative Law Judge

October 7, 2015

SUBMITTED TO:

**CHRIS CONSTANTINO**

*Executive Director*

APPEARANCES:

**RHONDA RICHARDSON**

*Associate Director, Labor Relations  
Representative for Petitioner*

*No Appearance by Respondent*