

EN BANC

[A.M. No. 2008-05-SC, August 06, 2008]

RE: FREQUENT UNAUTHORIZED ABSENCES OF MS. NAHREN D. HERNAEZ

R E S O L U T I O N

REYES, R.T., J.:

MS. Nahren D. Hernaez, Utility Worker II, Maintenance and General Services Division, detailed to the Personnel Division, Office of Administrative Services (OAS), is administratively charged with habitual absenteeism.

The Antecedents

In her Report^[1] dated March 26, 2008, Gloria P. Kasilag, Supervising Judicial Staff Officer, OAS, brought to the attention of the Complaint and Investigation Division, this Court, for appropriate action the matter of habitual absenteeism of the said utility worker, as follows:

Year 2007 MONTH	Number of Days Absent	Year 2007 MONTH	Number of Days Absent
January		July	
February	15	August	
March	8	September	
April		October	
May		November	5
June	2	December	17.624

On April 3, 2008, Atty. Eden Candelaria, Deputy Clerk of Court and Chief Administrative Officer, OAS, submitted a report and recommendation dated April 1, 2008:

The Civil Service Law allows only a maximum of 2.5 unauthorized absences in a month, any excess for at least three (3) months in a semester or at least three (3) consecutive months during the year has a corresponding sanction as circumscribed by the rules. Pertinent to this is **Section 22(q) of the Omnibus Rules Implementing Book V of the Administrative Code of 1987**, reiterated in **Memorandum Circular No. 4, series of 1991**, which reads as follows:

A. "HABITUAL ABSENTEEISM

1. *An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly*

leave credit under the leave law for at least three (3) months in a semester or at least three (3) consecutive months during the year."

Ms. Hernaez's *Leave Card* shows that for the month of September 2007, out of ten (10) leave applications, three (3) days were disapproved covering the period September 17-19, 2007. For November 2007, out of six (6) leave applications, five (5) days were disapproved. For December 2007, she did not report for work, and her subsequent sick leave applications were disapproved for that month, which totaled 17.624 days.

Once the leave application is recorded in the leave card of the personnel concerned, the Leave Division, this Office is under no obligation to retain long duration leave applications that have been acted upon, this is to prevent congestion of unnecessary papers which clog office space/s. Ms. Hernaez's *leave application* for the month of September is no longer available as her application had already been reflected in the leave card. Among the leave applications that are still with the Office of Administrative Services are that of November, December 2007, and January 2008, and it shows the following actions taken by the concerned immediate supervisor:

Undated Sick Leave Application for absence on November 29, 2007 with the reason: she went to a doctor with her daughter because of hyperacidity. The wordings of the action taken where: "*disapproved due to late filing, after thought, same reason as 11/26 - vomiting.*"

Sick Leave Application dated December 17, 2007 for absences on December 3-7, 190-14, 2007 (10 days) with Medical Certificate dated **December 5** advising medication and rest for 8 days due to Benign Positional Persistent Vertigo. The wordings of the action taken where: "*Disapproved sick leave application has been overused and abused. No actual medical intervention has happened. Habitual.*"

Due to her straight absences since November 29, 2007, a Memorandum dated January 7, 2008 was sent to Ms. Nahren D. Hernaez and received by the latter on January 8, 2008, directing her to return to work and undergo medical check up at the Supreme Court Clinic. She neither reported for work nor submitted herself for medical check up at the SC Clinic.

Ms. Hernaez filed a *Sick Leave Application* dated January 16, 2008 for absences on December 17-21, 26-28, January 7-11, 14 (14 days) with a Medical Certificate dated January 5, 2008, advising medication and rest for 9 days due to Benign Positional Persistent Vertigo. The wordings of the action taken where: "*Disapproved, no medical certificate for the period 17-21; 26-28, 2007. For the period January 7-11, 14, 2008, same medical certificate conveniently issued on December 5, 2007.*"

The *Special Leave Application* dated January 16, 2008 for absences on January 2, 3 & 4, 2008 (3 days) was belatedly filed. The wordings of the

action taken where: "*disapproved, application of a scheme to circumvent leave law.*"

Perusing the previous Memoranda to Ms. Nahren D. Hernaez shows:

1) On January 16, 2003, she was sent a letter by this office to explain within five (5) days why she should not be dropped from the roll for having been continuously absent from office since December 20, 2002.

2) A Memorandum by this Office dated March 21, 2006 to Ms. Nahren D. Hernaez also cited her act of reporting irregularly to the prejudice of her assigned task.

3) As a result of incurring absences more frequently than the allowable number of days per month from January to August 2006, a Memorandum dated September 7, 2006 enjoined her to report to office regularly and sternly warned that any further incursion of absences shall constrain the office to file the necessary administrative charges.

It appears from Ms. Hernaez's record that sick leave applications have been abused and overused even prior to the report of the Leave division, this Office. The approving authority of leave applications within OAS is duty bound to verify and satisfy for herself the veracity of sick leave applications. This is in accord with No. 2 of Supreme Court Administrative Circular No. 14-2002 dated March 18, 2002, to wit:

In case of claim of ill health, heads of department or agencies are encouraged to verify the validity of such claim and, if not satisfied with the reason given, should disapprove the application for sick leave. On the other hand, cases of employees who absent themselves from work before approval of their application should be disapproved outright.

The aforesaid Supreme Court Administrative Circular jibes with the CSC ruling that:

*x x x when a sick leave of absence is filed by an employee, the head of office does not have any other choice but to grant the same. In which case, it becomes now a ministerial duty on the part of the agency to grant the application for sick leave, **the only exception, is when the head of agency entertains doubt on the employee's claim of ill health. In such case, it is incumbent upon the head of agency to determine or verify the veracity of the employee's claim of ill health.** On the other hand, leave of absence for any other reason than illness of an officer or employee is discretionary on the part of the head of agency to approve the same.*

Except that, verification of Court employees' sick leave application's authenticity is lodged with **heads of department** of agencies and not on

the head of the agency. In Ms. Hernaez' case, the Chief of Office where she is under supervision of, or his/her representative, the Assistant Chief of Office is left with this task.

Ms. Hernaez submitted a Medical Certificate showing that she has a benign postural persistent vertigo. This is actually treatable with the *appropriate repositioning maneuver* of the head/eyes from left to right to prevent/reduce dizziness that transpired in a given time. *Benign paroxysmal positional vertigo (BPPV is based on the patient's history and eye movements evoked during positional tests. x x x Once the involved canal is identified, BPPV may be effectively treated with a physical maneuver. The maneuvers may be performed by a clinician or by patients themselves.*

Benign paroxysmal positional vertigo is the most common cause of peripheral vertigo. This type of vertigo occurs when you move the position of your head in a sudden manner. The attacks last up to a minute. This kind of vertigo results from the dislodgment of normal crystalline structures in the ear's balance detectors. Vestibular rehabilitation exercises may help in this condition. They consist of having you sit on the edge of a table and lie down to one side until the vertigo resolves followed by sitting up and lying down on the other side, again until the vertigo ceases. This is repeated until the vertigo is no longer inducible.

The rest periods can have a maximum of three (3) days, the eight (8) and nine (9) days rest period issued to Ms. Hernaez is highly questionable and no treatment whatsoever was carried out. Moreover, her leave of absence has exceeded the advised rest periods. A special privilege leave was applied subsequent thereto, which was also disapproved.

Ms. Hernaez incurred unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three (3) months in a semester, that is, for the month of September, November and December 2007. She even subsequently incurred nine (9) days [January 2-4, 7-11, 14] unauthorized absences for January, 2008.

On the other hand, her prior unauthorized absences for the month of February [15 days], March [8 days] and June [2 days] 2007, though short of the number of days for the month of June to qualify for habitual absenteeism, can still be sanctioned pursuant to Administrative Circular No. 14-2002 dated March 18, 2002, which under the whereas clause provides:

WHEREAS, x x x "Absenteeism and Tardiness, even if such do not qualify as 'Habitual' or 'Frequent' under CSC MC No. 04, s. 1991, shall be dealt with severely x x x." (underscore supplied)

Moreover, in a Memorandum dated **February 22, 2008**, this Office inquired from Dr. Prudencio P. Banzon, Jr., SC Senior Chief Staff Officer of