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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

TEMMA K. DADAH,

Plaintiff and Appellant,

v.

MOUNT SAN JACINTO COMMUNITY  
COLLEGE DISTRICT,

Defendant and Respondent.

E054269

(Super.Ct.No. RIC542941)

OPINION

APPEAL from the Superior Court of Riverside County. Paulette Durand-Barkley,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Stokes Roberts & Wagner, Peter B. Maretz and David E. Amaya for Plaintiff and  
Appellant.

Carpenter, Rothans & Dumont, Martin L. Carpenter and Jill Williams for  
Defendant and Respondent.

# I

## INTRODUCTION

This action arises from Mount San Jacinto Community College District (the District) terminating Dr. Temma K. Dadah's employment because Dr. Dadah used her District-issued credit card to gamble at local casinos during work hours and lied about it. Dr. Dadah appeals judgment entered following the trial court granting the District's motion for summary judgment and denying Dr. Dadah's cross-motion for summary adjudication. Dr. Dadah contends triable issues of fact exist as to whether there was good cause for terminating her employment under Labor Code section 2924.<sup>1</sup> Dr. Dadah also argues there is a triable issue as to whether the District terminated her based on her psychological disability, without reasonably accommodating her disability. In addition, Dr. Dadah argues a triable issue exists as to whether the District intentionally inflicted emotional distress on Dr. Dadah.

We conclude it is undisputed that the District had good cause to terminate Dr. Dadah and her termination was not based on any psychological disability. We also conclude Dr. Dadah failed to present any evidence the District failed to provide a reasonable accommodation for her psychological disability. In addition, Dr. Dadah failed to present any evidence supporting her fourth cause of action for intentional infliction of

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Labor Code.

emotional distress.<sup>2</sup> Accordingly, the judgment is affirmed.

## II

### FACTS AND PROCEDURAL BACKGROUND

#### *A. Background Facts*

Dr. Dadah began working for the District in January 2008, as Dean of the Math and Science Department at the District's Menifee Valley Campus. Shortly after Irma Ramos, District vice-president of human resources, began working at the District, Ramos had all of the District administrators sign new employment contracts. In March 2008, Dr. Dadah signed a new two-year contract that superseded her previous contract. Her new employment contract began on July 1, 2008, and terminated on June 30, 2010.

As Dean of Math and Science, Dr. Dadah reported directly to her supervisor, Dr. Dennis Anderson, vice-president of instruction for the District. Dr. Anderson set Dr. Dadah's work hours. As an administrator and "academic employee," Dr. Dadah had very flexible work hours. She did not have to work from 8:00 a.m. to 5:00 p.m., and did not have prescribed lunch breaks. Ramos testified that there was nothing wrong with Dr. Dadah going to the local casino during her lunch break.

Dr. Anderson testified during his deposition that, during Dr. Dadah's 18-month employment with the District, she performed her job responsibilities well. She had no specific performance-based shortcomings or problems, other than misuses of the District credit card and unauthorized absences.

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<sup>2</sup> Plaintiff is not challenging on appeal summary judgment as to the third cause of action for wrongful termination in violation of public policy.

Around May 2008, Dr. Dadah told Dr. Anderson she suffered from post-traumatic stress disorder (PTSD) and anxiety attacks. Dr. Dadah testified that Dr. Anderson told her “to take care of what I needed to do as long as I had my work done and that I was not on the clock, and to use whatever time I needed as long as all of my responsibilities were taken care of.”

On August 26, 2008, the District issued Dr. Dadah a District credit card. Dr. Dadah signed a copy of District policy AP 6319, acknowledging receipt of it. Becky Elam, District vice-president of business services, testified that the District’s credit card policy is violated when (1) a District employee uses a District credit card for personal reasons, even if mistakenly, and (2) the cardholder fails to retain possession of the card and keep it safe and secure at all times. There is no stated penalty for violating the District’s credit card policy. Elam stated that, generally, the District’s practice was that, when an employee misuses a District credit card, the employee is counseled against such misuse. If the employee commits additional credit card violations, then there has been a pattern and practice of misusing the credit card, and the employee is disciplined for the policy violation. Dr. Anderson testified that, when an employee breached the District’s credit card policy, the credit card normally was taken away from the employee and the employee was required to pay the credit card debt, without any further consequences.

On January 8, 2009, Dr. Dadah made four separate charges at Pechanga Casino using her District credit card. The charges totaled \$200 each, plus a \$12 process fee for each charge (\$848). After repaying the charges the following day, Dr. Dadah met with Dr. Anderson and told him she had mistakenly used her District credit card at the casino,

but had repaid the charges. Dr. Anderson told her she had nothing to worry about. He assured her it was not a problem. Dr. Anderson testified he did not discipline Dr. Dadah because he thought the charges were a mistake and not an intentional violation.

Dr. Anderson never took plaintiff's District credit card away from her or told her that her card could be taken away or she could be terminated for violating the District credit card policy. Dr. Dadah acknowledged she did not recall Dr. Anderson ever telling her she could use her District credit card for personal expenses as long as she repaid the charges. Dr. Dadah also acknowledged that the language in the District's credit card policy did not suggest this.

About two weeks later, on January 23, 2009, Dr. Anderson wrote Dr. Dadah's annual performance evaluation, stating that plaintiff's performance as an administrator had been excellent. No mention was made of her misuse of the District credit card on January 8, 2009.

On March 6, 19, 20, 21, and 24, 2009, Dr. Dadah made nine additional charges using her District credit card at the Pechanga and Soboba casinos. The charges totaled \$1,490.96. Dr. Dadah admitted during her deposition that it had been a mistake to use her District credit card to gamble and her timing of when she was at the casinos was a mistake: "In the afternoon. Any of the times I probably chose to go." Dr. Dadah acknowledged she went to the casinos during her normal working hours. She estimated she went more than 10 times to the casino during regular working hours. Dr. Dadah repaid in one lump sum all of the March casino charges.

Dr. Dadah testified that, after she repaid the charges, she spoke to Gail Ward of the District business services office about the charges. She told Ward that the charges were made by a member of her family. Dr. Dadah testified, “I did not tell her the truth on it. I told her that somebody in my family had used it.” Dr. Dadah did not tell Dr. Anderson about the charges. She assumed the matter was taken care of. Dr. Anderson testified that in late March or April 2009, District administrative assistants, Carrie Stantz and Shelley Excell-Wertman,<sup>3</sup> each separately met with him.<sup>4</sup> Stantz was Dr. Dadah’s main clerical assistant. Wertman worked in the same office as Stantz and was an administrative assistant for the dean of instruction, library and technology. Stantz and Wertman told Dr. Anderson they were concerned that Dr. Dadah was excessively absent from the office. Stantz said that Dr. Dadah was seldom available in the afternoon and her staff could not reach her. Stantz was concerned about the clerical staff morale. Wertman also told Dr. Anderson that Dr. Dadah was frequently out of the office and unavailable, especially during the afternoons.

Dr. Anderson did not tell Dr. Dadah that he had received complaints about her absences because he believed plaintiff’s absences were medically related. Dr. Anderson

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<sup>3</sup> Wertman’s name is spelled differently throughout the record. Such spellings include: Shelly Excel-Workman; Shelley Excell-Wertman; and Shelley Excel-Wertman. This court will use the spelling used in the human resources transcript of Wertman’s recorded investigative interview.

<sup>4</sup> Shelley Excell-Wertman testified that she met with Dr. Anderson in May, rather than in March or April 2009.

did not object to accommodating Dr. Dadah's medical needs. Dr. Dadah's department did not suffer, as far as he knew, from her absences.

Ramos testified that she first became aware of Dr. Dadah's absentee and gambling problems during the summer of 2009. Ramos was aware that Dr. Dadah had paid back all of her casino credit card charges made in January and March 2009. The District superintendent and board president, Roger Schultz, told Ramos that one of Dr. Dadah's assistants saw Dr. Dadah at a casino, and Dr. Dadah had made multiple charges using the District credit card at casinos. Schultz asked Ramos to investigate the matter.

On June 22, 2009, Ramos met with Dr. Dadah and discussed the allegations that she had misused the District credit card at casinos. Dr. Dadah told Ramos the charges were a mistake. Someone in her family had used the District credit card at the casinos in January and March 2009. Dr. Dadah testified that when she met with Ramos on June 22, 2009, she told Ramos she had already told Ward that a family member had used her District credit card at the casinos. Ramos suspected that the person who made the charges was not a family member, because there were multiple charges and, also, an employee reported she had followed Dr. Dadah to a casino on June 17, 2009.

After meeting with Dr. Dadah, Ramos met with other District support staff at the Menifee Valley campus and obtained the credit card receipts from the casinos showing the dates and times of the charges, and the signatures of the person who signed for the charges. Ramos learned that Dr. Dadah, not a family member, had made the casino charges on the District credit card. The casino charge receipts showed Dr. Dadah's

signature on receipts for 13 casino charges made in January and March 2009. The charges amounted to a total of \$2,338.96.

Dr. Anderson testified that, when he returned from vacation in June 2009, Ramos told him about Dr. Dadah's March credit card charges and that there was a problem with Dr. Dadah having unexcused absences. Dr. Anderson told Ramos what Stantz and Wertman had previously told him about Dr. Dadah's absences and that Dr. Dadah had told him she was absent because of her medical problems. Dr. Anderson testified that he believed some of Dr. Dadah's absences were because she went to casinos to gamble. This belief was based on what he was told and on the District investigation. He believed the days she was absent because of gambling were the days she used her District credit card at the casinos and the day a District employee saw Dr. Dadah drive to a local casino. Dr. Anderson testified that, if he had personally misused the District credit card as Dr. Dadah had, the violation would have been considered so significant that it would not require another chance.

On July 2, 2009, Ramos and Dr. Anderson met with Dr. Dadah. Ramos told Dr. Dadah she had concrete evidence that Dr. Dadah, rather than a family member, had misused the District credit card. Dr. Dadah said she was on an antidepressant which resulted in an adverse reaction, causing her to be manic and compulsive. She could not control her behavior and was embarrassed by the credit card situation. She said her doctor gave her the wrong medication but she had recently switched to the correct medication. Dr. Dadah was certain the problem would not occur again. She asked for another chance. Ramos told Dr. Dadah she could not have a second chance but could

voluntarily resign. Otherwise the District would proceed with terminating her. Ramos told her the misconduct charges were serious charges and agreed to let Dr. Dadah think about her options over the weekend.

On July 6, 2009, Ramos again met with Dr. Dadah, who said she was not resigning. Ramos told Dr. Dadah that the District would proceed with the charges against her. Ramos also met with District staff employees, Rich Rowley, Wertman and Stantz. Rowley stated that other employees had talked about Dr. Dadah not being in the office and he personally observed that Dr. Dadah was not in the office for long periods of time. Dr. Dadah would say she was going to the District's San Jacinto campus. Wertman told Ramos that Dr. Dadah was never at the office. She always had an excuse for leaving and not returning to work. Dr. Dadah would tell Stantz she would be back in a few hours and then not return. The staff joked about Dr. Dadah always being at medical appointments. The staff assumed Dr. Dadah had a gambling problem. In May 2009, the staff got fed up and mentioned it to Dr. Anderson.

Stantz also told Ramos Dr. Dadah was gone a lot. She would arrive at the office at around 8:00 a.m., stay for a little while, and then say she had to leave to get an X-ray or go to a medical appointment. The staff joked that she should be "glowing" due to all the X-rays she said she was getting. Dr. Dadah also would say she was going to the San Jacinto campus and generally did not return. On March 20, 2009, she canceled a department chair meeting five minutes before the meeting. Another time, Dr. Dadah said she was going to meet with Ramos but did not meet with her. On another occasion, a District employee followed Dr. Dadah to see where she was going when she left the

campus. Dr. Dadah went to the Pechanga casino. Everyone assumed Dr. Dadah had a serious gambling problem. On May 13, 2009, Dr. Dadah rushed into the office, handed Stantz her District credit card, and asked her to put it away, in a safe place. Stantz did so. Stantz believed Dr. Dadah was often manic. She also would get very low.

On July 15, 2009, Dr. Anderson wrote a six-month job evaluation of Dr. Dadah's job performance. The evaluation stated that since Dr. Dadah's last evaluation in January 2009, the District had become aware that Dr. Dadah was frequently absent from the office for several hours during the work day and those absences affected the efficiency and operational integrity of her area of responsibility as dean of instruction and as a supervisor. Dr. Dadah was required to be readily available and on campus to meet the immediate day-to-day management needs. Dr. Anderson added: "[T]he frequent absences from the office have impacted her attendance at meetings. On several occasions Dr. Dadah has left early in the day with the stated intent to return, only to call later and cancel or rearrange meetings. She has also left meetings early, on one occasion claiming that she needed to visit another location of the District, but did not arrive for several hours. The practice of frequent absences coupled with missed meetings has developed into a disturbing trend." Dr. Anderson further noted that Dr. Dadah was visiting local casinos during the work day, when she should have been performing professional duties, and this was inexcusable.

In addition, Dr. Anderson stated in the evaluation that Dr. Dadah had misused the District credit card on several occasions at casinos, in violation of the District credit card policy. Some of the charges occurred when Dr. Dadah claimed she was engaged in

professional duties. Dr. Dadah provided conflicting information about the use of her District credit card at casinos. She further violated District policy by giving her card to a subordinate employee when she was required to keep the credit card in her own possession. Dr. Anderson concluded the evaluation by stating Dr. Dadah's overall performance was unsatisfactory. The evaluation normally would be considered by the board president in deciding whether to recommend to the board to renew Dr. Dadah's contract in 2010.

On July 27, 2009, Ramos met with Dr. Dadah to discuss the charges against her and was given an opportunity to respond. By letter dated August 3, 2009, to the president of the board of trustees, Roger Schultz, Ramos advised Schultz that she had investigated Dr. Dadah's employment and recommended terminating Dr. Dadah. Ramos's recommendation was based on Dr. Dadah's misuse of her District credit card, dishonesty about the credit card charges, gambling-related absences from work, and breach of her fiduciary duty to the District. Schultz in turn sent the board a letter, also dated August 3, 2009, repeating the detailed information provided in Ramos's letter and recommending Dr. Dadah be terminated.

On August 5, 2009, the District provided Dr. Dadah with notice of the misconduct charges against her. On August 6, 2009, Dr. Dadah's attorney faxed to the District's attorney a letter dated July 28, 2009, from plaintiff's treating psychiatrist, Diane Highum, stating that she had diagnosed Dr. Dadah with bipolar disorder, type II, which had previously been misdiagnosed as depression and anxiety. Dr. Dadah's condition, if not

properly treated, could lead to hypomania, with bouts of risky and irrational behavior. According to Dr. Highum, gambling is very common during a bout of hypomania.

By letter dated August 14, 2009, the District informed Dr. Dadah that on August 13, 2009, the board terminated her employment, effective immediately.

### *B. Procedural Facts*

Dr. Dadah filed a discrimination complaint with the California Department of Fair Employment and Housing (FEHA). Dr. Dadah alleged the District discriminated against her based on a physical or psychological disability, by failing to accommodate her disability and terminating her employment. The FEHA granted Dr. Dadah's request for a right-to-sue notice and closed Dr. Dadah's FEHA case.

In December 2009, Dr. Dadah filed a wrongful termination complaint for damages against the District. Dr. Dadah's complaint included causes of action for (1) breach of contract, (2) disability discrimination for failure to provide reasonable accommodation, (3) wrongful termination in violation of public policy, and (4) intentional infliction of emotional distress.

The District filed a motion for summary judgment or, alternatively, for summary adjudication. Dr. Dadah filed a motion for summary adjudication as to the first and second causes of action. After the trial court heard and took under submission both motions, on June 17, 2011, the trial court granted the District's motion for summary judgment and denied Dr. Dadah's motion for summary adjudication. The trial court explained in its minute order granting summary judgment that, "Based on the evidence submitted, the Court cannot conclude that the termination was improper based on the

credit card use, even if the absences could be excused. Turning to the issue of accommodations, [Dr. Dadah] has failed to provide any accommodations that were presented and rejected, and failed to present evidence that the absences were the sole basis of termination.”

### III

#### SUMMARY JUDGMENT STANDARD OF REVIEW

The purpose of summary judgment “is to provide courts with a mechanism to cut through the parties’ pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute. [Citations.]” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 844.) Our de novo review is governed by Code of Civil Procedure section 437c, which provides in subdivision (c) that a motion for summary judgment may only be granted when, considering all of the evidence set forth in the papers and all inferences reasonably deducible therefrom, it has been demonstrated that there is no triable issue as to any material fact and the cause of action has no merit. The pleadings govern the issues to be addressed. (*City of Morgan Hill v. Brown* (1999) 71 Cal.App.4th 1114, 1121.) A defendant moving for summary judgment bears the burden of persuasion that there is no triable issue. This burden is met by producing evidence that demonstrates that a cause of action has no merit because one or more of its elements cannot be established to the degree of proof that would be required at trial, or that there is a complete defense to it. Once that has been accomplished, the burden shifts to the plaintiff to show, by producing evidence of specific facts, that a triable issue of

material fact exists as to the cause of action or the defense. (*Aguilar*, at pp. 849-851, 854-855.)

A triable issue of material fact exists where a reasonable trier of fact would find that the evidence supports the underlying factual premises necessary for the plaintiff's causes of action. (*Borders Online v. State Bd. of Equalization* (2005) 129 Cal.App.4th 1179, 1187.) A showing sufficient to survive a motion for summary judgment must be based on substantial evidence, not mere speculation or conjecture. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 483; *Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 99.)

#### IV

#### FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT

Dr. Dadah contends a triable issue of fact exists as to whether the District breached Dr. Dadah's employment contract by terminating her without cause. Dr. Dadah argues she presented evidence that the District did not have sufficient cause to terminate her.

In the first cause of action for breach of contract, Dr. Dadah alleges that the District breached Dr. Dadah's employment contract "by discharging Dr. Dadah before the end of the term of this contract, not paying the amounts due pursuant to this contract, not following its own processes as well as the processes mandated by law in terminating Dr. Dadah, and/or not discharging Dr. Dadah based on valid 'for cause' reasons."

Under the terms and conditions of Dr. Dadah's employment contract, the District Board had authority to terminate Dr. Dadah's employment unilaterally, with or without

cause. But if the District terminated Dr. Dadah without cause, the District was required to pay Dr. Dadah for the balance of her contract term.

With regard to termination of academic employees for cause, District administrative procedure AP 7360, specifies various grounds or causes upon which a District academic employee may be dismissed or penalized. Those causes include “Immoral or unprofessional conduct,” “Dishonesty,” “Unsatisfactory performance,” “Evident unfitness for service,” and “Persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations prescribed for the government of the community colleges by the Board of governors or by the governing board of the district.”

Dr. Dadah’s employment contract was subject to section 2924, because it was for a fixed term. Section 2924 states: “An employment for a specified term may be terminated at any time by the employer in case of any willful breach of duty by the employee in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform it.” Dr. Dadah argues on appeal she did not breach any duty or policy warranting termination of her employment. We disagree. There was undisputed evidence Dr. Dadah willfully violated the District’s credit card policy, lied about use of her District credit card, and gambled at casinos during work hours, which amounted to committing unauthorized absences from work.

Dr. Dadah’s employment contract stated that, as an administrator, she was required to abide by District policies: “The Administrator [plaintiff] shall perform all duties assigned and execute all authority delegated to him/her, pursuant to the policies adopted by the Board. . . . [¶] The Administrator shall devote his/her time, skills, labor,

and attention to perform faithfully all the powers and duties of the position in accordance with the laws, rules, regulations, administrative handbooks, policies and procedures set forth by the Board and/or the Superintendent/President.”

*A. District Credit Card Violation and Related Dishonesty*

Dr. Dadah was terminated in part for misusing her District credit card in violation of the District’s credit card policy, AP 6319, and for dishonesty about her credit card charges. District policy AP 6319 states that a District “credit card is to be used by the cardholder only. The cardholder must not authorize another person to use the credit card and/or credit card number. The cardholder has a fiduciary responsibility to provide safekeeping for the card at all times.” AP 6319 further states in relevant part that “[t]he following items must not be charged to District credit cards: a. personal purchases.” In August 2008, Dr. Dadah signed a copy of AP 6319, acknowledging receipt of the policy.

It is undisputed that Dr. Dadah violated District policy AP 6319 by making 13 charges on the District credit card for personal gambling expenditures at local casinos. Becky Elam, District vice-president of business services, who was the person most knowledgeable regarding the District’s credit card policies and procedures, testified that the District’s credit card policy is materially violated when (1) a District employee uses a District credit card for personal reasons, even if mistakenly, and (2) the cardholder fails to retain possession of the card and keep it safe and secure at all times. Dr. Dadah admitted during her deposition that she used the District credit card in January and March 2009, for gambling at local casinos. She also admitted that when she used the District

credit card in March 2009 at the casinos, she knew she was using the District credit card, as opposed to her personal credit card.

There was also evidence establishing that when plaintiff made the casino charges, she knew that doing so constituted a violation of the District credit card policy. This, no doubt, was why she immediately told Dr. Anderson in January 2009, that she had mistakenly used the District credit card, rather than her personal credit card, for charges at a casino. She also notified the District business services office that her District credit card had been used at casinos in March 2009, but lied that a family member had used the card without her consent. In addition, when Ramos was investigating the matter, Dr. Dadah initially told Ramos that she notified the business services office that a family member had used her District credit card at the casinos. It was not until later, when Ramos told Dr. Dadah she had evidence that Dr. Dadah made the charges herself, that Dr. Dadah admitted it was true. A reasonable inference can be made from these circumstances that she lied because she knew she had violated the District credit card policy.

In addition, Dr. Anderson stated in Dr. Dadah's July 2009 evaluation that some of the casino credit card charges occurred when Dr. Dadah had said she was engaged in professional duties. She also provided conflicting information about the use of her District credit card at casinos and violated the District credit card policy AP 6319 by giving her District credit card to a subordinate employee, when Dr. Dadah was required to keep the credit card in her own possession.

We conclude it is undisputed that Dr. Dadah knowingly and willfully misused her District credit card in violation of District policy AP 6319. It is also undisputed that Dr. Dadah lied about such violations. Dr. Dadah's violation of the District credit card policy and related dishonesty constituted a "willful breach of duty" under section 2924, and good cause to terminate under District administrative policy AP 7360, apart from any other additional misconduct.

*B. Unauthorized Absences*

It is also undisputed that Dr. Dadah had unauthorized absences, during which she gambled at casinos during work hours. On July 15, 2009, Dr. Anderson wrote a six-month evaluation of Dr. Dadah's job performance, stating that Dr. Dadah was frequently absent from the office for several hours and was visiting local casinos during the work day, when she should have been performing her professional duties. Dr. Anderson acknowledged during his deposition that he had authorized Dr. Dadah to be absent for medical matters but believed that some of Dr. Dadah's absences were attributable to Dr. Dadah going to casinos to gamble. He believed the days Dr. Dadah was absent while gambling at casinos were the days she used her District credit card at the casinos and the day a District employee saw Dr. Dadah drive to a local casino.

During a recorded investigative interview by Ramos, Dr. Dadah's clerical assistant, Stantz, said that, because of Dr. Dadah's frequent absences, a District office worker followed Dr. Dadah to see where she was going. Dr. Dadah went to the Pechanga casino. Stantz also told Ramos that on March 20, 2009, Dr. Dadah canceled a department

chair meeting five minutes prior thereto. This was on one of the days Dr. Dadah used the District credit card at a casino.

Dr. Dadah admitted during her deposition that it had been a mistake to use her District credit card to gamble and her timing of when she was at the casino was a mistake: “In the afternoon. Any of the times I probably chose to go.” Dr. Dadah acknowledged she went to the casinos during her normal working hours. She estimated she went more than 10 times to the casino during regular working hours.

It is undisputed that the District had good cause to terminate Dr. Dadah under section 2924 for violating District policies, procedures and rules. Dr. Dadah has failed to present any evidence refuting that she knowingly, willfully, and intentionally violated the District’s credit card policy on multiple occasions, was dishonest about such misuse, and knowingly and intentionally committed unauthorized absences during which she gambled at casinos during work hours.

### *C. Progressive Discipline*

Dr. Dadah acknowledges in her appellate opening brief that, “[t]o be clear, Dr. Dadah’s explanations for the charges to the district credit card constituted violations that could have possibly led to a breach of the District’s credit card policy.” However, Dr. Dadah argues that, before terminating her, District policy AP 7360 required the District to counsel Dr. Dadah against such misconduct and impose progressive discipline, including taking away her District credit card after the first instance of misuse and giving her written notice of the charges of misconduct and an opportunity to cure any misconduct.

AP 7360 states that the District “shall not act upon any charges of unprofessional conduct or unsatisfactory performance unless . . . prior to the date of the filing of the charge, . . . the employee against whom the charge is filed has been given written notice of the unprofessional conduct or unsatisfactory performance, specifying the nature of the conduct with specific instances of behavior and with particularity to permit the employee an opportunity to correct his or her faults and overcome the grounds for the charge.”

Dr. Dadah argues the District violated this provision by terminating her without giving her a chance to correct her behavior that led to her termination, that of using her District credit card to gamble. When she informed Dr. Anderson that she had inadvertently used her District card at a casino, he told her it was not a problem. He did not tell her not to do it again. When she used her District credit card at casinos on five subsequent occasions, no one reprimanded her or gave her an opportunity to correct her behavior before terminating her employment.

Under AP 7360, the District was not required to give Dr. Dadah the opportunity to change her behavior before terminating her, because the District did not terminate her “upon any charges of unprofessional conduct or unsatisfactory performance.” The District told Dr. Dadah she was terminated on the grounds of “dishonesty, evident unfitness for service, and a persistent violation of, or refusal to obey, the school laws of the state or the reasonable regulations prescribed for the government of the community colleges by the board of governors or by the governing board of the community college district employing Dr. Dadah.” It is undisputed there was good cause to terminate plaintiff, and progressive discipline was not required.

## SECOND CAUSE OF ACTION FOR FAILURE TO ACCOMMODATE

Dr. Dadah contends she presented evidence raising a material triable issue as to the second cause of action for disability discrimination under the FEHA (§ 12940 et seq.). She argues that the District unlawfully discriminated against her by terminating her employment based on her psychological disability, without reasonably accommodating her disability.

In the second cause of action, Dr. Dadah alleged that the District failed reasonably to accommodate her psychological disability, bipolar disorder, type II. Dr. Dadah informed the District of her condition and need for treatment, which required her to attend medical appointments during the workday. Nevertheless, the District terminated Dr. Dadah based in part on her absences for treatment of her disability.

*A. Applicable Law*

In order to establish a prima facie case of disability discrimination under FEHA, Dr. Dadah must prove: “(1) she suffered from a disability; (2) with or without reasonable accommodation, she could perform the essential functions of the employment position she held or desired; and (3) that she was subjected to an adverse employment action because of her disability. [Citation.] At a motion for summary judgment in a discrimination case, the defendant ‘may meet its burden by showing that one or more of these prima facie elements is lacking, *or that the adverse employment action was based on legitimate nondiscriminatory factors*. [Citation.] [¶] If the employer has met its burden by showing a legitimate reason for its conduct, the employee must demonstrate a

triable issue by producing substantial evidence that the employer's stated reasons were untrue or pretextual, or that the employer acted with a discriminatory *animus* . . . .'  
[Citation.]" (*Jenkins v. County of Riverside* (2006) 138 Cal.App.4th 593, 603 [Fourth Dist., Div. Two] (*Jenkins*).)

In addition to prohibiting unlawful employment discrimination based on disability generally, "FEHA provides an independent cause of action for an employer's failure to provide a reasonable accommodation for an applicant's or employee's known disability. ([Gov. Code,] § 12940, subs. (a), (m).) 'Under the express provisions of the FEHA, the employer's failure to reasonably accommodate a disabled individual is a violation of the statute in and of itself.' [Citations.]" (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 54.) "Two principles underlie a cause of action for failure to provide a reasonable accommodation. First, the employee must request an accommodation. [Citation.] Second, the parties must engage in an interactive process regarding the requested accommodation and, if the process fails, responsibility for the failure rests with the party who failed to participate in good faith. [Citation.]" (*Ibid.*; see also *Arteaga v. Brink's, Inc.* (2008) 163 Cal.App.4th 327, 349 (*Arteaga*).)

#### *B. Discussion*

Dr. Dadah has failed to present any evidence that the District failed reasonably to accommodate her psychological disability. We agree there was substantial evidence establishing that Dr. Dadah had a psychological disability and she notified the District of it. Dr. Dadah told Dr. Anderson, her supervisor, in May 2008, that she suffered from PTSD and anxiety attacks. Dr. Anderson agreed to accommodate Dr. Dadah's

psychological disability by allowing her to be absent from work whenever she needed treatment. Dr. Dadah did not request any other accommodation for her disability.

Although Dr. Dadah did not allege in the second cause of action that her psychological disability included PTSD and anxiety attacks, Dr. Dadah argues on appeal that the second cause of action is based on those psychological conditions, as well as bipolar disorder, which is alleged in the complaint. We will assume for the purposes of this appeal that Dr. Dadah's psychological disability included all three conditions.

### **1. Bipolar Disorder**

The District was not notified that Dr. Dadah suffered from bipolar disorder, type II, until August 6, 2009, one week before she was terminated. The District first received notice when Dr. Dadah's attorney faxed the District a letter from Dr. Dadah's psychiatrist, stating that Dr. Dadah had recently been diagnosed with bipolar disorder, type II, which had previously been misdiagnosed as depression and anxiety. By this time, the District had already initiated proceedings to terminate Dr. Dadah based on Dr. Dadah repeatedly misusing her District credit card at casinos, lying about the misuse, and gambling during work hours. Dr. Dadah did not request any accommodation for her bipolar condition. She only requested she be given a second chance.

“‘Reasonable accommodation’ does not include excusing a failure to control a controllable disability or giving an employee a ‘second chance’ to control the disability in the future. [Citation.]” (*Brundage v. Hahn* (1997) 57 Cal.App.4th 228, 239.) ““It is an employee’s responsibility to understand his or her own physical or mental condition well enough to present the employer at the *earliest opportunity* with a concise list of

restrictions which must be met to accommodate the employee.” [Citation.]” (*Arteaga, supra*, 163 Cal.App.4th at p. 349.) Dr. Dadah did not do this. The District was therefore not required to accommodate Dr. Dadah’s bipolar condition by aborting or suspending the termination proceedings and acquiescing to Dr. Dadah’s request for a second chance. The District had already charged Dr. Dadah with misconduct and there was good cause to terminate her for reasons unrelated to her psychological disabilities.

## **2. PTSD and Anxiety Disorder**

It is also undisputed the District, through Dr. Anderson, reasonably accommodated Dr. Dadah’s psychological conditions of PTSD and anxiety attacks. Dr. Anderson permitted Dr. Dadah to take time off for treatment, as requested by Dr. Dadah. Dr. Dadah argues she presented evidence that the District failed to accommodate her disability by terminating her because she took time off for treatment of her disability. She asserts that she was terminated for excessive absences, when some of the absences were for medical treatment. But it nevertheless is undisputed that the District accommodated Dr. Dadah by allowing her to take time off for medical treatment, and the District terminated Dr. Dadah based in part on Dr. Dadah taking at least 10 unauthorized absences for gambling during work hours, misusing the District credit card, and lying about it. There is no evidence the District terminated Dr. Dadah based on her absences for periodic medical appointments for treating her PTSD and anxiety attacks.

Dr. Dadah’s evidence fails to create a triable issue of material fact with respect to the second cause of action for disability discrimination. It is undisputed the District reasonably accommodated Dr. Dadah’s psychological disability to the extent the District

knew about it, and that Dr. Dadah was not terminated based on her disability or because she was absent while getting treatment for her disability. It was unrefuted that she was terminated based on legitimate nondiscriminatory factors. Dr. Dadah has failed to produce any evidence that the District's stated reasons for terminating Dr. Dadah were untrue or pretextual, or that the District acted with a discriminatory animus. (*Jenkins, supra*, 138 Cal.App.4th at p. 603.)

## VI

### INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Dr. Dadah briefly argues on appeal the trial court erred in granting summary judgment as to the fourth cause of action for intentional infliction of emotional distress (IIED). There is no merit to this contention.

Dr. Dadah alleged in the fourth cause of action that the District subjected her to extreme and outrageous conduct, thereby recklessly disregarding the probability of causing Dr. Dadah to suffer emotional distress. Dr. Dadah further alleged the District's termination of Dr. Dadah's employment was intentionally done in a malicious, oppressive manner.

In order to give rise to a cause of action for intentional infliction of emotional distress, the conduct must have “‘been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.’ [Citation.]” (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 888.)

Dr. Dadah argues on appeal that the court erred in granting summary judgment because there was evidence supporting her IIED claim. Dr. Dadah notes that employer and employee relationships are particularly susceptible to outrageous conduct, and the evidence in the instant case shows that (1) Dr. Anderson and Ramos abused their positions of authority over Dr. Dadah; (2) Dr. Anderson and Ramos knew Dr. Dadah suffered from emotional distress issues and was particularly vulnerable; and (3) it can be inferred that they knew that recommending terminating her, based on her absences for medical treatment and conduct caused by her disability, would likely cause her to suffer mental distress.

These facts are insufficient to support an IIED cause of action. “Managing personnel is not outrageous conduct beyond the bounds of human decency, but rather conduct essential to the welfare and prosperity of society. A simple pleading of personnel management activity is insufficient to support a claim of intentional infliction of emotional distress, even if improper motivation is alleged. If personnel management decisions are improperly motivated, the remedy is a suit against the employer for discrimination.” (*Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 80.)

Dr. Dadah has not presented any evidence that the District intended to cause Dr. Dadah severe emotional distress when it terminated her or that its conduct was anything other than reasonably carrying out personnel management activity. The evidence shows there was good cause to terminate Dr. Dadah based on her repeated misuse of the District credit card to gamble, lying about the misuse, and unauthorized absences during work hours to gamble. Before terminating Dr. Dadah, the District fully investigated Dr.

Dadah's misconduct charges, apprised Dr. Dadah of the charges, gave her an opportunity to respond to them and to resign voluntarily, and notified Dr. Dadah by letter of her termination, upon Dr. Dadah's refusal to resign. There is no evidence the District subjected Dr. Dadah to egregious, extreme or outrageous conduct when it terminated Dr. Dadah for cause.

VII  
DISPOSITION

The judgment is affirmed. The District is awarded its costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON  
J.

We concur:

RAMIREZ  
P. J.

MILLER  
J.