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TENNESSEE DEPARTMENT OF INTELLECTUAL & DEVELOPMENTAL DISABILITIES1, Petitioner, v. Docket No.: 26.45-104178J INEZ BRYSON, Grievant

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BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION

IN THE MATTER OF:	)	
	)	
TENNESSEE DEPARTMENT	)	
OF INTELLECTUAL &	)	
DEVELOPMENTAL DISABILITIES[1],	)	
Petitioner	)	
v.	)	**Docket No.: 26.45-104178J**
	)	
INEZ BRYSON,	)	
Grievant	)	

ORDER DENYING PETITION FOR RECONSIDERATION

The hearing in this matter was held on December 10, 2010 in Nashville, Tennessee, before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, sitting for the Tennessee Civil Service Commission. Ms. Marilynn Tucker, Managing Attorney, Tennessee Department of Intellectual and Developmental Disabilities (DIDD) (the Department), represented the State. Grievant Inez Bryson was represented by Attorney Jonathan Stephens, of the Nashville bar.

The subject of this appeal is whether or not Grievant Bryson's separation/termination, for the good of the service, was proper. An Initial Order was issued on June 6, 2011, finding that termination was proper.

On June 20, 2011, the Grievant filed a timely Petition for Reconsideration. The State's Response was filed on June 21, 2011.

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[1] Formerly the Division of Intellectual Disabilities Services.

The first sentence of the closing of Grievant's Petition asserted that the Grievant "can fulfill the requirements of her job." The Undersigned inquired as to whether there had been a change in Grievant's medical condition, since the hearing, such that she can now work full-time as a Case Manager, as is required by DIDD for that particular position. The Grievant responded in the affirmative, on June 23, 2011.

The Undersigned inquired of the State regarding whether this new information affected the State's position in this matter overall, in light of the extreme positive regard in which the Grievant appeared to be held by the Department. On June 23, 2011, the State responded that Grievant may apply for any open positions for which she qualifies and characterized the issue as solely whether the State's action at the time of the separation was proper.

ANALYSIS

In the Undersigned's experience, when employees/former employees have been disciplined, yet are viewed by the Department as valuable, and where the deficiency or behavior complained of has been rectified (inability to attend work full-time) or cured, quite often the parties reach a settlement. However, there is no guarantee or legal requirement that the parties do so.

It remains true that at the time of her separation/termination, the Grievant had exhausted all of her sick and annual leave, plus any compensatory time, been afforded FMLA, and been given Leave Without Pay status, as a matter of Departmental discretion for an extended period of time.

It also remains true that "the responsibility of the Department, when dismissing an employee "for the good of the service," pursuant to T.C.A. 8-30-326(a) and (b) is to "outline in detail how the service will be benefited by such termination." " In this matter, "the Department delineated the benefits as:

A. Positioning the Department to replace absent Grievant with someone who could work more than four (4) hours per day, drive more than sixty (60) minutes at one time, and sit at a computer more than sixty (60) minutes at one time, in the replacement's effort to fulfill the duties and responsibilities of a full time Case Manager.

B. Enabling the Department to remove an absent employee who had exhausted all of her leave statuses and was unable to return to her full time work schedule and job duties and replace that employee with one who could work a full time schedule and fulfill a Case Manager's duties. Such removal would also lighten the overload being experienced by the absent employee's colleagues, as they attempt to work their own case loads in addition to a portion of the case load of the absent employee."

It is again **CONCLUDED** that the benefits identified for the Department are **SUFFICIENT** to make the Grievant's separation/termination proper. Grievant is a victim of hapless misfortune, not improper separation/termination by the State.

Thus, after due consideration, pursuant to T.C.A. Section 4-5-317(d), based on the analysis above, it is hereby **ORDERED** that the Grievant's Petition for Reconsideration of the Initial Order is **DENIED**; the Initial Order is **AFFIRMED.**

This Reconsideration Order entered and effective this the ___ day of __June___, 2011.

Mattielyn B. Williams
Administrative Judge