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Darrell Taylor

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**BEFORE THE CIVIL SERVICE COMMISSION OF THE
STATE OF TENNESSEE**

IN THE MATTER OF:

Darrell Taylor

**DOCKET NO: 26.43-100624J
26.43-099373J**

INITIAL ORDER

This matter was heard on August 18, 2009, October 27, 2009 and April 21 and April 22, 2010, July 19, 2010 and July 26, 2010 in Nashville, Tennessee, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State to sit for the Civil Service Commission of the State of Tennessee. Dana Schmidt and Jeanne C. Schuller, Staff Attorneys, represented the Tennessee Department of Children’s Services (hereinafter referred to as the “Department”). Darrell Taylor (hereinafter referred to as “Grievant”) was represented by his legal counsel, Lorraine Wade.

The issue in this hearing is whether the Department carried its burden of proof of preponderance of evidence that Grievant’s conduct warranted his 10-day suspension and termination from the Department of Children’s Services.

Grievant properly appealed these disciplinary actions. He requested that a review of his termination be consolidated with a review of his 10-day suspension and a consolidated 5th step Civil Service Hearing was held.

After consideration of all of the evidence, arguments of counsel and the entire record in this matter, it is **determined** that Grievant’s **10-day suspension** and his **termination** should be **REVERSED**.

This decision is based upon the following:

PROCEDURAL HISTORY

Grievant was the Security Manager for New Visions Youth Development Center (NVYDC). Grievant was given a 30-day disciplinary suspension without pay based upon his alleged failure to report a subordinate's arrest as required by policy and because Grievant allegedly allowed two NVYDC staff to leave their assigned security posts and use a State vehicle to leave the facility to pick up lunch for other NVYDC staff.

A Level IV Grievance hearing was held on May 13, 2008. It was determined that there was insufficient evidence to support Grievant's 30-day suspension without pay. However, it was determined that sufficient evidence was presented to support a 10-day disciplinary suspension without pay.

A Level IV Grievance was conducted on June 18, 2008 and September 16, 2008. Grievant was terminated based on an allegation of favoritism and his alleged refusal to take a drug test. Grievant properly appealed both disciplinary actions.

FINDINGS OF FACT

1. Grievant was employed as the Security Manager at New Visions Youth Development Center prior to his termination from the Department of Children's Services.
2. New Visions Youth Development Center is a facility that the Department of Children's Services uses to place teenage girls to be rehabilitated in order to be placed back into the community.
3. On or about October 4, 2007 the Department's Internal Affairs Division began an investigation into allegations that Grievant had shown favoritism and unfair treatment to some of his staff.

4. On or about July 25, 2007, Greta Ireland, a former Children's Services Corporal at New Visions Youth Development Center, observed CSO Cassandra Knowles sleeping in the classroom. Ms. Ireland **does not remember reporting this incident to the Grievant, nor speaking with him at any time about Ms. Knowles being asleep in the classroom.** Ms. Ireland was Ms. Knowles' supervisor on that day.

5. Ms. Knowles was later disciplined for sleeping in the classroom.

6. The State vehicle was used to pick up lunch for staff at New Visions Youth Development Center. Several witnesses testified that Grievant did not give them express permission to take the State vehicle to get lunch for the staff.

7. Prior to Grievant's employment with the Department, Grievant pled guilty to misdemeanor possession of marijuana.

8. **Grievant passed a drug screen** given by a certified screening company contracted by the Department. The evidence does not show that the Department **expressly** asked Grievant to take another drug test.

9. **There are no Departmental policies in place** that prohibit Grievant from serving as Security Manager because he has a misdemeanor conviction.

10. The Department provided no proof, circumstantially or directly, that Grievant was engaged in illicit drug use while employed at New Visions Youth Development Center.

APPLICABLE LAW

1. In a fifth step level hearing, an administrative law judge presides to take proof and render an initial order which is subject to review by the Civil Service Commission.

2. As the Petitioner, the Department bears the burden of proof, which is a preponderance of the evidence standard, to show that Grievant's 10-day suspension and subsequent termination were warranted.

3. **Tennessee Department of Human Resources Rule 1120-10-.06:**

- (1) Inefficiency or incompetency in the performance of duties.
- (2) Negligence in the performance of duties.
- (3) Careless, negligent or improper use of State property or equipment.
- (4) Willful abuse or misappropriation of State funds, property or equipment.

4. Tennessee Department of Children's Services Administrative Policy:

- (1) Index 1.4 - Incident Reporting
- (2) Index 30.05 – Use, Maintenance and Responsibilities of Operating State Vehicles

5. Tennessee Department of General Services DMV Policy 2 Utilization 2: Utilization of Vehicles and Equipment: Misuse 2.5.3: Use of a State owned Vehicle or Equipment for Personal Business

ANALYSIS

The Department alleges that Ms. Wade was acting as Grievant's agent when she purportedly refused to allow him to take the drug test. The Department's drug policy makes no reference to drug testing or to random drug testing. No evidence was presented to show that Grievant had a drug or criminal conviction **during** his employment with the Department. The Drug Screen Consent/Refusal Form was signed by Grievant and witnessed on January 10, 2004. Grievant passed the drug screening and was hired.

It is stated on the form: "I understand that this is the only opportunity I will be granted for blood to be drawn or urine to be collected prior to possible disciplinary proceedings. I further

understand that, if I refuse, this refusal may be considered in the disciplinary proceedings.” **It is reasonable to conclude that this statement is date specific, and at no other time will blood be drawn or urine collected.** No other Drug Screen Consent/Refusal Form was provided as evidence. No policy on the **use** of the form or on **drug screening** was provided.

The letter dated February 12, 2008 to Lorraine Wade from Dana Schmidt offered settlements in statements 1-4. Statement #5 also offered to withdraw the pending disciplinary action against Grievant: “This action is in regards to an internal investigation that has found your client practiced favoritism when he did not discipline a subordinate staff member in an appropriate and timely manner.” **No request was made for Grievant to submit to a drug test in this correspondence.**

In the letter dated February 19, 2008 from Lorraine Wade to Dana Schmidt, Ms. Wade rejected the offer from Ms. Schmidt. Ms. Wade did acknowledge that the Department wanted Grievant to take a drug test, however she did not identify how she acquired that knowledge. She did not state in this correspondence that the Department had requested that Grievant submit to a drug test. **Neither did she indicate that she would advise her client to refuse a drug test.** She did state that in her opinion the Department’s concerns were baseless.

In a letter to Grievant from Commissioner Miller dated February 22, 2008, Commissioner Miller indicates that Grievant’s effective date of dismissal was February 28, 2008. The letter details that a Due Process Hearing was held on January 28, 2008. In the letter the issue of **favoritism was limited to only the sleeping incident of July 25, 2007 involving Officer Knowles.**

The letter further addressed the drug conviction on December 1, 2004 prior to Grievant’s employment with the Department. It states that Grievant was requested to take a drug test on

February 19, 2008 but refused to do so. **There is no documentation of the request or refusal, i.e. Drug Consent/Refusal Form.**

Commissioner Miller's letter further states that at the **Due Process Hearing on January 28, 2008** Grievant presented no mitigating or extenuating circumstances to dispute the allegations. If one of the allegations relates to refusal to submit to a drug test, the alleged request was not made until February 19, 2008, according to Commissioner Miller's letter. That was **three weeks after the Due Process Hearing.**

Having considered and reviewed the entire record in this case, and having carefully evaluated the testimony of each and every witness, it is determined that the Department **has not proved**, by a preponderance of the evidence, that Grievant's conduct warranted his **suspension** or his **termination**.

Grievant passed the drug test after the Department learned of the conviction, which **annulled** any reason to believe that Grievant was using drugs four years later. **There are no Departmental policies in place that prohibit Grievant from serving in his position because he has a misdemeanor. There was no direct or circumstantial proof that Grievant engaged in illicit drug use while employed at New Visions Youth Development Center.**

Phil Elis, Superintendent at Mountain Youth Development Center, testified that he has no knowledge of a policy that says if you hire somebody with a misdemeanor conviction, you have to tell your supervisor. (161)

The evidence shows that permission to use the State vehicle comes from the Transportation Officer, if they're on duty. If the Transportation Officer is not on duty, the Shift Lieutenant is authorized to give permission. If the Shift Lieutenant is not on duty, the Security Manager is authorized to give permission. It is concluded that the Department has not proved by

a preponderance of the evidence that Grievant had **actual knowledge** that the State vehicle was used to get lunch for New Visions Youth Development Center staff, or that he gave **express permission** for the State vehicle to be used to get lunch for the staff.

Greta Ireland, a former Children's Services Corporal at New Visions Youth Development Center, observed CSO Cassandra Knowles sleeping in class, however Ms. Ireland **does not remember reporting this incident to the Grievant, nor speaking with him at any time about Ms. Knowles being asleep in the classroom.** Ms. Ireland was Ms. Knowles' supervisor on that day.

Ms. Ireland testified that if Ms. Knowles had to be disciplined, Ms. Ireland would have had to get the order from Lieutenant Warren, and not from the Grievant. Ms. Ireland testified that she does not recall if Lieutenant Warren was disciplined for not disciplining Ms. Knowles.

It is certainly **critical** for the **Security Manager** of a facility for teenagers to be a **credible** person, someone **not involved in using drugs**, someone who cares about protecting State resources and property, someone who has the **best interest of the children** at heart. However, the Department has the **burden** of proving, by a preponderance of the evidence, that the Grievant was negligent and incompetent in performing his responsibilities to the children under his care, and to the Department.

CONCLUSIONS OF LAW

1. It is **concluded** that the Department **has not proved** by a preponderance of the evidence that Grievant **violated** rules of the Department of Human Resources, **Chapter 1120-10-.06:**

(1) Inefficiency or incompetency in the performance of duties.

(2) Negligence in the performance of duties.

2. It is determined that the evidence has not shown that Grievant's **10-day suspension** and subsequent **termination** for policy violations were warranted.

3. Based on the above, it is **ORDERED** that Grievant's **10-day suspension** and subsequent **termination** of his employment with the Department of Children's Services be **REVERSED**.

4. It is further **ORDERED** that Grievant be **REINSTATED and receive the benefits he would have been entitled to had he not been suspended or terminated**.

This Initial Order entered and effective this 28th day of March, 2011.

Joyce Carter-Ball
Administrative Judge