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Civil Service Commission vs. SHAWN VALENTINE

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**BEFORE THE
TENNESSEE CIVIL SERVICE COMMISSION**

IN THE MATTER OF:

SHAWN VALENTINE

DOCKET NO: 26.43-102892J

INITIAL ORDER

This contested case came to be heard on September 30, 2009 in Nashville, Tennessee, before Administrative Judge Margaret R. Robertson, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Civil Service Commission. Julie Randall Pablo, Assistant General Counsel, Department of Children's Services, represented the State. The Grievant, Shawn Valentine, was present and was represented by Leroy Cain, Jr. of the Nashville Bar.

The subject of this hearing was Petitioner's appeal of termination for allegedly violating the following Tennessee Department of Human Resources Rules: 1120-10-.06, subsections (1) inefficiency or incompetence in the performance of duties; (2) negligence in the performance of duties; (8) gross misconduct or conduct unbecoming an employee in state service; (12) participation in any action that would seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the state service or that would interfere with the ability of management to manage; (15) acts that would endanger the lives and property of others; and (18) refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination). Also charged

were violations of Tennessee Department of Children's Services Policy Index 27.35: Use of Mechanical Restraints; and Woodland Hills Youth Development Center (WHYDC) Local Policy and Procedures: Transportation Officers: Item 5, which addresses required use of the mechanical restraints policy by transportation officers when transporting WHYDC students to and from the facility.

After consideration of the testimony and evidence presented, the arguments of counsel and the entire record in this matter, it is determined that the Grievant's performance of his duties was negligent and incompetent, and resulted in disruption to the operation of the agency and in danger to the lives of the student involved and the public.

FINDINGS OF FACT

1. Shawn Valentine became employed as a security officer with the Department of Children's Services (DCS) at WHYDC in November of 2004. He attended the pre-service training for security officers at the Correction Academy in Tullahoma before assuming duties with DCS as a security officer. Each year he attended additional in-service classes. His first duty assignment was as a security officer in the dorms at WHYDC. In the spring of 2008, he received a new assignment to work as a transportation security officer at Woodland Hills YDC facility. He received additional training at Woodland Hills in the security procedures he would be charged with carrying out in his position as transportation security officer there. His duties as a transportation

security officer involved transporting students from the facility to outside destinations and back.

2. Woodland Hills YDC is one of five state hardware-secured residential facilities that provide treatment programs for delinquent youth aged twelve to nineteen. The typical student at a YDC is likely to be there as a result of having committed a violent offense toward another person, and may have mental health problems or other specialized needs. All YDC students are subject to the same universal regulations and procedures concerning security measures when being taken out of the facility

3. The POST orders for transportation security officers, including Mr. Valentine, require them to comply with Woodland Hills YDC written local procedure (WHYDC Policy Item 5.) when transporting students. Transportation is only to occur in secure vehicles. The transportation officer is expected to be flexible to adjust his schedule to meet the needs of the institution. Although the POST Order states that the transportation officer “shall use discretion in determining the need to use mechanical restraints,” it decrees that the use of discretion be in accordance with DCS policy 27.35: Use of Mechanical Restraints. The POST Order specifically states in bold print that “no student will exit the institution without being properly searched, cuffed and shackled unless going to a release or step-down placement; restraints will not be removed until the student is returned and inside the secure area, unless absolutely medically necessary and so stated by the physician, or officially ordered to be removed by a presiding judge while in court. The transportation officer is declared to be responsible for the security of the student in his charge.”

4. On November 4, 2008, Mr. Valentine was instructed to transport student R.R. from the Woodland Hills YDC to the Juvenile Court in Lebanon, Tennessee. Only Mr. Valentine and R.R. took this journey. When they left Woodland Hills, R.R. was properly restrained with handcuffs, shackles and a belly chain. Mr. Valentine should also have carried a face sheet with identifying information about the student he was transporting, but he did not have the face sheet. He was originally assigned to take a different student to Dickson, Tennessee, but exchanged assignments with another security officer because he had not been to Dickson, and was already familiar with Juvenile Court in Lebanon. Because the change of assignments occurred at the time he needed to depart, Mr. Valentine made an assumption that everything he would need was already done or in the van. The student was properly secured for leaving the facility, but no face sheet had been obtained.

5. Upon arrival at the Lebanon Juvenile Court, Mr. Valentine removed the handcuffs and belly chain at the request of the Lebanon Judge hearing student R.R.'s case. When the hearing was over, R.R. had private conversation with family members and his attorney before Mr. Valentine collected him to return to Nashville.

6. By his own admission, Mr. Valentine violated proper procedure by failing to secure the handcuffs and belly chains to student R.R. prior to beginning the return trip from the Lebanon Courthouse to Woodland Hills. Mr. Valentine explained this lapse alternatively by saying that he forgot, or that when he was in the company of a supervising officer, he observed that the supervising officer did not trouble to do so, leading Mr. Valentine to conclude that it was not necessary to comply with this

regulation. Mr. Valentine also testified “It (reapplying the belly chain and handcuffs) just slipped my mind because I knew I was going to stop and get something to eat and I knew he can’t eat from that position.”

7. On the way back to Nashville and Woodland Hills, Mr. Valentine stopped, as he indicated he had always intended to do, at the Lebanon Burger King Restaurant to get something to eat for himself and his charge. Because the drive-through window was crowded, he made the further decision to go into the restaurant with the student instead of waiting in the car to be served through the drive-through window. He allowed student R.R. to exit the vehicle without being properly secured by all of the required mechanical restraints (belly chain and handcuffs) and to go with him into the restaurant.¹

8. Mr. Valentine testified that he had stopped to eat food in a restaurant in the past when he was with a supervising transportation officer and a student, and at other times when he transported a student alone. He had observed when with a supervisor, and had himself practiced in the past, taking the student into a public eating place without belly chain and handcuffs. He has submitted the food receipts for reimbursement and received reimbursement without comment. Mr. Valentine admitted that he did not arrange for or obtain prior approval to stop at the Lebanon Burger King with R.R. He interpreted past agency reimbursement of the cost to mean that it was in his discretion to stop during the trip and take the student in to eat. Regarding the failure to use mechanical restraints when taking the student into the restaurant, he maintained that a student with

¹ The regulations prohibit leaving the student alone in the vehicle. Policy 27.35 requires that the youth must remain under constant visual supervision of a staff member.

belly chain and handcuffs would be unable to bring his hands to his mouth to eat. Therefore, he felt entitled to use discretion in leaving the restraints off when they went inside.

9. In the incident at hand, once they had received their food, he and the student made their way back toward their vehicle. He was following a few feet behind R.R., who was within his sight. Suddenly, a gold Dodge Intrepid pulled up next to R.R. with the passenger door behind the driver open, followed by an older model blue Buick. Student R.R. quickly got into the Intrepid, which then sped out of the Burger King Restaurant parking lot. The blue Buick stayed back, blocking Mr. Valentine's vehicle. Mr. Valentine believes it also remained to observe his actions. Once he got into his vehicle, the Buick left the scene. Mr. Valentine immediately reported the escape to Woodland Hills YDC by telephone and then returned promptly to the Lebanon Court House to report R.R.'s escape.

10. Mr. Valentine admitted in testimony that he has been lax in having students' restraints checked before taking them out of the WHYDC if no supervisor was conveniently at hand when he was leaving, and having students' restraints properly checked when returning from a transport trip if no officer was standing there to check. He stated 'I knew the rule but thought it was relaxed because I saw others remove restraints with no discipline' that I knew about.

11. Mr. Valentine had received three oral warnings and one written warning prior to this incident. The oral warnings were given for an attendance violation, for not

properly securing students in the dormitory, and for misuse of equipment (leaving his radio lying about where it could be taken and abused by a student).

12. The written warning concerned Grievant's role in the theft by another security officer of a television belonging to the facility. The other officer asked the Grievant to monitor the other officer's responsibility for students. The other officer then took a television belonging to the facility and placed it in his car to take home. When the theft was discovered, Grievant was questioned. At first he denied any knowledge of the event. Later he acknowledged having watched the other officer's charges for him in his unauthorized absence. The language of the written warning attributes to Grievant admission that he knew of the other officer's theft prior to the first inquiry into his own involvement in the incident. Grievant denied this interpretation at the instant hearing but did not dispute the language of the warning letter at the time it was issued. Whatever actually happened, Grievant did not challenge the conclusion in the written warning that he had prior knowledge of the other officer's intentions, aided him in his action by watching the students under his supervision and then withheld information when questioned the first time. The written warning letter states: "You are hereby warned that further actions upon your part, such as those indicated in this memorandum, cannot and will not be tolerated. If additional such actions should occur, you may receive disciplinary action up to and including termination. * * * If there is no further disciplinary action for the same performance or conduct, this written warning and your response will be removed two (2) years from the date of the letter." The letter was dated

April 3, 2007. The incident which is the subject of this proceeding occurred on November 4, 2008, well within the two-year time frame.

CONCLUSIONS OF LAW

1. The Department of Children's Services is the Petitioner in this matter, the party that initiated the proceedings, and as such, it is assigned the "burden of proof." The burden of proof is the duty imposed upon a party to establish, by a preponderance of the evidence, that an allegation is true, or that an issue should be resolved in favor of that party. A "preponderance of the evidence" means the "greater weight of the evidence," or "the more probable conclusion, based on the evidence presented." The burden of proof is generally assigned to the party seeking to change the present state of affairs with regard to any issue. Rule 1360-4-1-.02(7), TENN. COMP. R. & REGS.

2. In the instant case, that means that the Department of Children's Services must prove, by a preponderance of the evidence, that the Grievant was negligent, incompetent or insubordinate in the performance of his duties, and/or disrupted the operation of the agency and/or caused risk of danger to life or property of others, as set out in State statutes, and Departmental Rules, Regulations and Policies, and, if so, whether the disciplinary action of termination is appropriate. The Department has met its burden of proof.

3. Rule 1120-10-.06, TENN. COMP. R. & REGS, provides as follows:

EXAMPLES OF DISCIPLINARY OFFENSES. The following causes are examples of those considered for disciplinary action and should not be considered the only causes of action.

(1) Inefficiency and incompetence in the performance of duties;

* * *

(2) negligence in the performance of duties;

* * *

(8) gross misconduct or conduct unbecoming an employee in state service;

* * *

(12) participation in any action that would seriously disrupt or disturb the normal operation of the agency, institution of department or any other segment of the state service or that would interfere with the ability of management to manage;

* * *

(15) acts that would endanger the lives and property of others;

* * *

(18) refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination);

4. The terms “inefficiency” and “incompetence” are used in this Rule as they are in common daily usage. Webster’s New World Dictionary of the American Language equates “inefficiency” and “incompetence” with “ineffectiveness” and “failing to meet requirements.”

5. In addition to the disciplinary charges listed above, the Department also charged the Grievant with having violated DCS Policy Index 27.35, Use of Mechanical Restraints, and Woodland Hills YDC Local Policy and Procedures: Transportation Officers: Item 5, which controls use of mechanical restraints when escorting students from the Woodland Hills YDC and back.

6. Rule 1120-10.02 TENN. COMP. R. & REGS, provides as follows:

A career [civil service] employee may be warned, suspended, demoted or dismissed by his appointing authority *whenever legal or just cause exists*. The degree and kind of action is at the discretion of the appointing authority, but must be in compliance with the intent of the provisions of this rule and the Act.

7. The Department has met its burden to show by a preponderance of the evidence that Grievant Shawn Valentine was negligent and incompetent in the execution

of his duties and that his failure to execute his duties adequately caused an incident which interfered with the ability of the Department of Children's Services to operate properly, and caused risk to the safety of the student he was charged with transporting securely and to the safety of the general public. The record does not specifically substantiate charges of "gross" misconduct or of intentional insubordination, although the consequences of Grievant's negligent or incompetent conduct were certainly serious enough to merit termination.

8. Shawn Valentine was employed at the time of the incident as a security officer whose primary duties were to transport students from Woodland Hills Youth Development Center to and from approved appointments outside the secured facility. The students at Woodland Hills YDC are minors who primarily have committed violent offenses and, while being held in custody for their offenses, participate in an educational and rehabilitative program within the confines of the secured center.

9. Mr. Valentine received, and acknowledged having participated in, training in the regulations applicable to his job as a security officer each year since his initial employment at Woodland Hills YDC in November, 2004. Specifically, Mr. Valentine received training in the procedures for transportation and the use of mechanical restraints when transporting students within the facility, and to and from destinations outside the facility when his duties changed to those of a transportation security officer. The policy concerning use of mechanical restraints during transport, which he was expected to implement, was also posted at the doors through which one entered and exited the

facility. Mr. Valentine had also received specific training in the documentation procedures required for removing and returning secured students from the facility.

10. On November 4, 2008, while transporting a student back to the WHYDC from the Lebanon, Tennessee Juvenile Court, Mr. Valentine failed to have the student properly secured upon departure from Juvenile Court, chose to make a stop for food that had not been previously authorized, chose to go into the restaurant instead of waiting in his secured vehicle in the drive-through line, allowed the student to exit the secured vehicle and go into the restaurant still without all the proper restraints, and lost control and possession of the student before he could return the student to the secured vehicle. This behavior constituted negligence and incompetence in the performance of his duties, interference with the operations and responsibility of the department and endangering the lives of the student and the public. Grievant's failure to recognize the importance of complying with security procedures and regulations in the treatment of detainees from a secured facility after four years of service as a trained security officer, the risks to which he exposed the student and the public by his negligent and incompetent behavior in this transport incident (and possibly on other occasions in which the violation was not brought to notice), and the detriment his actions or failure to act properly in this incident caused the department are sufficient cause to find that Grievant is not a suitable employee in a security position in the department and should be terminated from his employment as a security/transport officer.

11. In his defense, Grievant argued that he was merely following the example of security transportation supervisors whom he had shadowed on prior transport trips as

part of his training, whose example he took to be evidence of acceptable discretionary latitude because he observed some supervisors leaving students not fully restrained on the return trip and taking them without full restraints to or into restaurants on the way back from a destination. Thus he recognized that what he observed was in conflict with what he had been taught he should do. Grievant also represented that had he been given a face page that specifically detailed the security concerns about this particular student, he would have recognized the need to adhere more closely to department transport policies and instructions in this case. Although he did not really know R.R., he testified that his favorable impression of R.R. on this and other trips influenced his decision to be lenient in the use of restraints. Also, Grievant argued that because, in another publicized escape, the employee was not terminated, his own termination after the escape was unduly harsh and discriminatory.

12. Grievant's arguments are without merit. Grievant participated in a number of training events in which the transportation policies and requirements for use of mechanical restraints were clearly explained to him. The essence of his job as a transportation security officer was to keep the student secure at all times during the transport to and from the facility. The requirements were posted above the door through which he and the student left. If he recognized that he had been in the company of employees who did not follow these rules, he had three options: to err on the side of caution by scrupulously following the rules, to inquire of some other superior for clarification of his understanding of the rules, or to risk consequences of disobedience to the rules because he thought departure from the rules might be condoned. Either he did

not really understand the essence of his job and the requirements by which he was to execute it, or he chose to act in violation of the security requirements because he thought they could be laxly applied.

13. The policy regarding use of mechanical restraints and the transportation policies of the facility require universal application in the case of transporting students from the facility unless a specific exception is carved out. The exceptions are limited. These primarily include the order of a doctor when the student visits as a patient, the order of a judge when the student appears before him in court, and those occasions when the student has prior approval to be exempt from restraint, as when the student is being released or going to a step-down placement.² The policy as posted above the doors of the facility and in the POST order clearly warns that the transportation officer is responsible for the security of the student. This means that the transportation officer is responsible for keeping the student secured for his own safety and that of others. Mr. Valentine failed in this responsibility, and as a result, a student escaped, the event and its publicity brought opprobrium on the department and its reputation, interfering with the ability of the department to fulfill its mission and to perform its duties, and the student and the public were put at risk for harm for a period of six weeks.

14. From his testimony and demeanor at the hearing, it is concluded by a preponderance of the evidence that Grievant was not intentionally blasé or indifferent to his responsibilities. Rather, it appears more likely that the Grievant did not fully grasp

² Another example was offered in testimony that students who have completed the program at the YDC and been approved to participate in either home-building or assisting at a nursing home have been approved as exceptions to mechanical restraint policy from a higher level than the YDC.

the essential purpose of his job or the importance of complying with the requirements and procedures on which he had been trained. Instead, he relied without question upon discrepant examples set by other employees. He may have been more unfortunate than other employees who also may not have complied with the requirements, in that a student managed to escape while he was responsible for transportation, his violation of the regulations became known, and he has suffered the consequences. His circumstances differ from those of the other escape described in the record, where the officer complied with all requirements, but when the student fled on foot from the door of the doctor's office, albeit shackled, she was unable to outrun him. In Grievant's case, his own ill-considered decision to allow the student, inadequately restrained, out of the secured vehicle at the Burger King gave the student the opportunity to escape. While driving through the Burger King might understandably have been considered to be condoned by the evidence of reimbursement for food for the student and himself on prior trips, allowing the student to exit the vehicle unsecured in a public place where he did not need to be was a serious violation of the regulations. In Grievant's accounts of observing superiors take this liberty, there were two transportation officers present, Grievant and his superior. While greater manpower does not excuse departure from the regulations, it does exemplify the further risk Grievant took removing the incompletely restrained student from the secured vehicle alone.

15. Grievant also argued that the regulations allow the transportation officer to exercise a measure of discretion, which he claims he was properly exercising when he and the student went into the Burger King. That Grievant makes this argument is further

evidence that, despite his training and experience as a security officer for Woodland Hills for four years and a transportation officer for nearly a year, he had not carefully read and understood the letter or the purpose of his responsibilities. According to WHYDC Local Policy and Procedures: Transportation Officers: Item 5, the only discretion a transportation officer has to depart from the requirement of keeping a student who is being taken away from the institution in full restraints according to DCS policy 27.35 is when release is “absolutely medically necessary for treatment per the physician or officially ordered to be removed by the presiding Judge while in court.” Despite what Grievant related had occurred while he shadowed other transportation officers, there was no evidence entered into the record that supports wider official discretion of transportation officers to remove the physical restraints in which the student left the institution while away from the institution. Grievant failed to act appropriately to carry out his essential responsibility, to keep the student properly secured and safe while he was being taken away from the secured facility.

16. In considering what discipline is appropriate in the circumstances of this case, both the circumstances of this incident and Grievant’s prior discipline were considered. Grievant’s oral warning for misuse of equipment and his written warning regarding his implication in the theft of a television are pertinent to this matter. In both incidents, Grievant failed to behave in a manner that would take into account the gravity of being responsible for security in a detention facility.

17. In the oral warning, Grievant’s carelessness or oversight in leaving his radio lying around where a student could take and use it was a breach of security that

fortunately did not have serious repercussions. Another security officer spotted and retrieved it before any damage occurred. The written warning involves a different situation. From the warning letter it appears that Grievant covered a colleague's responsibilities for him while the colleague stole a television belonging to the facility and placed it in his car. When Grievant was initially questioned about the incident, he denied knowledge. Later he acknowledged covering the colleague's responsibilities. The language of the warning letter suggests Grievant was knowingly complicit in the theft, an interpretation Grievant denied at the civil service hearing. We make no determination of what prior knowledge Grievant had of the theft when he watched the students assigned to his colleague. It is sufficient for our analysis here that Grievant was voluntarily or involuntarily led by another security officer to support an illegal activity.

18. Having been formally cautioned about his behavior through the oral and written warnings, Grievant was on notice to follow the rules and regulations explicitly. Yet in the present circumstances, Grievant substituted his own poor judgment and lax examples of peers instead of requesting clarification or following the plain language of the requirements he knew he had been directed to follow. The preponderance of the evidence, taken in the light most favorable to the Grievant, still leads to a determination that Grievant has repeatedly proved he cannot be relied upon to follow the regulations on which he was trained in an adequate manner to maintain the security it is his job to maintain. Termination is therefore the appropriate discipline in this case.

19. Grievant's counsel referred to a component of the Department's disciplinary decision that provided, although Grievant was to be terminated from

employment from state service, specifically with the Department of Children's Services at WHYDC, that the Grievant should be eligible for rehire by the State in other positions. The State's attorney did not challenge this assertion, although from which positions in state government the Grievant was proscribed and which could be made available for him to apply did not appear to be clarified in this record. As a result of this hearing, it is determined that Grievant should be precluded from hire as a security officer by the Department of Children's Services.

20. In fairness and in the interests of security, the testimony elicited in this case regarding the reputed lack of adherence of security officers to security regulations concerning restraints should at least lead to closer monitoring of compliance with security regulations and policy at WHYDC, and disciplinary action for violations when proven to be merited. As similar violations of security procedures by other officers were not within the scope of this hearing, they are not addressed here.

It is therefore Ordered that the Grievant's termination from his position as transportation security officer at WHYDC is hereby UPHELD and that he should not be eligible for rehire as a security officer by the Department of Children's Services.

This Initial Order entered and effective this 6th day of April, 2010.

Margaret R. Robertson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 6th day of April, 2010.

A handwritten signature in cursive script that reads "Thomas G. Stovall". The signature is written in black ink and is positioned above a horizontal line.

Thomas G. Stovall, Director
Administrative Procedures Division