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5-14-2010

, Petitioner, v. Docket No.: 26.43-106287J JOHN NICHOLSON, Grievant.

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BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION

TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES,	)	
Petitioner,	)	
v.	)	**Docket No.: 26.43-106287J**
JOHN NICHOLSON,	)	
Grievant.	)	

:

INITIAL ORDER

This matter was heard on May 14, 2010, before the Honorable Anthony Adgent. The Department of Children's Services was represented by The Honorable Julie Randall-Pablo, Assistant General Counsel for DCS. The Grievant represented himself. The issues in this case are whether John Nicholson, (Grievant) violated Tennessee Department of Children's Services (DCS) Rules, specifically Tennessee Department of Human Resource Rule 1120.10.06, specifically subparts (1) Inefficiency and Incompetence in the Performance of Duties, (2) Negligence in the Performance of Duties, (4) Failure to Maintain Satisfactory and Harmonious Working Relationships with the Public and Fellow Employees, and (12) Participation in any act that would seriously disrupt or distort normal operation of the Agency, Institution, Department or any Segment of the State. The issue is whether a15-day suspension of the Grievant was appropriate.

FINDINGS OF FACT

1. In August 2009, the Grievant was employed with the DCS as a Team Leader.

2. In August of 2009 as a part of his duties the Grievant was asked to appear in Juvenile Court at a hearing regarding the placement of an adoptive child.

3. His superiors allege that he was not properly prepared for this hearing and his conduct resulted in embarrassment to DCS and delays in the child placement process.

4. Grievant denies any misconduct at the referenced Court hearing and that the subsequent 15 days suspension was unjustified.

5. Grievant has a history of disciplinary problems including suspensions.

CONCLUSIONS OF LAW AND ANALYSIS

1. This Level 5 hearing is conducted *DE NOVO.* It is the Petitioner's responsibility to prove its case by a preponderance of the evidence.

2. The alleged conduct for which the Grievant was suspended for 15 days revolves around an August, 2009 court hearing. DCS accuses the Grievant of being unprepared for the hearing and unable to answer questions presented by the judge at that hearing.

3. The State presented witnesses who testified to other aspects of his job performance which they did not like but none of these complaints (other than the incidents for which he has already been disciplined) are documented or were they deemed worthy of any type of disciplinary actions.

4. **NONE OF THE WITNESSES PRODUCED BY THE STATE WERE PRESENT AT THE COURT HEARING THAT RESULTED IN THE SUSPENSION**!!

5. **All of their evidentiary testimony was HEARSAY and THEY FAILED TO CALL THE ONE PERSON WHO WAS AT THE HEARING….THE DCS ATTORNEY!**

6. The only direct testimony offered by anyone who was actually at the court hearing in question was the Grievant, Mr. Nicholson.

7. Mr. Nicholson of course denies any allegations of misconduct and offers a completely different version of what happened at the hearing.

8. Mr. Nicholson testified that the DCS attorney did not prep him for the hearing. She never discussed the case with him prior to the hearing. She had a thirty minute discussion with the judge at his bench during which she never asked him (Grievant) if he could answer any of the judges questions which she could not.

9. There was no direct evidence offered to rebut Mr. Nicholson's testimony.

10. Based on the evidence presented it appears that the Grievant was not the one who was not prepared for the court hearing.

11. For all of the reasons stated above the State as failed to provide any material or substantial evidence to support the suspension of Mr. Nicholson. The State has failed to meet the burden of proof in this matter therefore Mr. Nicholson's 15 day suspension is ordered overturned.

It is so **ORDERED** this the _____ day of _____, 2010.

_____

Anthony Adgent
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this 17th day of August, 2010.

_____

Thomas Stovall, Director
Administrative Procedures Division