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Stephen Wade Byford

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BEFORE THE COMMISSIONER OF THE

IN THE MATTER OF:

Stephen Wade Byford

DOCKET NO: 26.11-104374J

INITIAL ORDER

This matter was heard on November 13, 2009, 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. James L. Allan, Staff Attorney, represented the Tennessee Department of Human Services (hereinafter referred to as the “Department”). Stephen Byford (hereinafter referred to as “Grievant”) represented himself.

The issue in this hearing is whether the State carried its burden of proof of preponderance of evidence that Grievant’s conduct warranted his termination with the Department of Human Services, Division of Rehabilitation Services.

Grievant properly appealed this disciplinary action, and this hearing constituted Grievant’s 5th step hearing before the Civil Service Commission.

After consideration of all of the evidence, arguments of counsel and the entire record in this matter, it is **determined** that Grievant’s termination is **proper** and should be **UPHELD**.

This decision is based upon the following:

PROCEDURAL HISTORY

Respondent was employed at Tennessee Rehabilitation Center (hereinafter referred to as TRC) in the Groundskeeping Maintenance Program. TRC is a comprehensive State operated rehabilitation facility, which operates under the Division of Rehabilitation Services, Department of Human Services. TRC is residential and serves approximately 160 students. Their goal is to prepare the students for jobs and to live as independently as possible.

The students at TRC receive a wide variety of services, from vocational evaluation to pre-vocational services, and are taught work behaviors to occupational skills training. TRC offers traumatic brain injury services, services for the blind and visually impaired, and services for individuals with physical impairments, quadriplegic, and individuals paralyzed from the neck down.

TRC has a **very vulnerable population**. The majority of the students fall within the diagnosis of mental retardation, and within the 40 to 50 IQ range. TRC has clients who have a diagnosis of mental illness who are on psychotropic medications.

Because of its vulnerable population, TRC has to make sure that there is a **very structured environment**, that there are staff in place 24-hours a day, 7 days a week to help **monitor behaviors** and work with the students. TRC is very conscientious about making sure they know what the clients are doing and where they are at all times.

On March 2, 2009, Grievant attended a student problem solving meeting with other TRC staff and a student at TRC. Grievant appeared to be sleeping during that meeting because his head was tilted back and his eyes were closed.

Later, it came to management's attention that some students had been talking about Grievant sleeping during class. TRC has a no tolerance policy regarding sleeping during work shifts because of the significance of the disabilities of the students at TRC.

FINDINGS OF FACT

1. Grievant was a Rehabilitation Assistant at TRC. He had been employed there two years at the time of his termination. His job responsibilities required him to **work closely** with students in the Building Maintenance and Groundskeeping vocational training programs.
2. In some of the training programs, Rehabilitation Assistants help the primary vocational training instructor in the classroom. Grievant was to assist in the training of the students in the Maintenance and Groundskeeping Program.
3. Grievant was responsible for supervising and instructing students in learning and practicing maintenance and groundskeeping skills. Grievant had direct contact with the students on a daily basis.
4. The students operate mowing and grass trimming equipment and utilize numerous construction and repair tools and equipment in performing maintenance activities of plumbing, electrical work and hanging drywall.
5. Primarily, Grievant would take a work crew out, instruct them in mowing, trimming, landscaping and keeping up the grounds as part of their overall maintenance program. Grievant also assisted the instructor in the classroom with other duties.
6. **Safety is critical** and requires the instructors and their assistants to **closely supervise** and observe student training activities. Staff must be **alert** and **attentive** at all times during their work shifts.

7. In order to ensure the **appropriate attention** is provided the students at TRC as to their **health, safety and welfare**, staff members are to **remain alert** and **able to respond** to emergency situations **anytime** during the scheduled work shift.
8. Employees have in-service training twice a year, where they review procedures that are pertinent to the students, such as safety, welfare and behavioral education issues.
9. It was recommended in March 2009 that Grievant be dismissed due to sleeping on the job, or failure to remain alert, incompetency and inefficiency in the performance of duties.
10. In August 2008, Grievant received a written warning for improper use of State equipment. He brought a rifle shell into the classroom area during lunch time and proceeded to drill a hole through the actual lead bullet, apparently for the purpose of putting it on a key chain. Although it was found that there was no powder in the bullet, this was inappropriate and Grievant used State equipment for personal means.
11. On October 17, 2008, Grievant received an oral warning for inefficiency in the performance of duties. He had been responsible for getting a piece of rental equipment, a rototiller, to do some work. Grievant forgot to return this equipment timely to the rental agency, which resulted in TRC getting a large bill because the rental agency kept charging TRC rent over the agreed upon one week. Fortunately, Grievant's supervisor was able to negotiate with the owner for TRC to pay the original price.
12. Leading to the actual dismissal, on March 2, 2009, Grievant attended a Problem Solving Meeting on one of his students. The purpose was to bring pertinent people and the student together to discuss the problem.
13. During the meeting, Grievant was observed with his eyes closed and appeared to be not attentive. When the chairperson called his name, Grievant then became alert. Toward the end of

the meeting, the chairperson heard what she described as Grievant **snoring**, again with his eyes closed. Grievant **admitted** that he could have dozed off.

14. On March 6, 2009, Grievant was assigned to supervise and monitor the Warehouse Training students. These students observed Grievant in the warehouse classroom, in the instructor's office, asleep, head down, eyes closed and not moving. One student used his cell phone to take a still picture of Grievant in that position. Another student took a video of Grievant in that position.

15. The students reported two locations where Grievant was observed sleeping: one was in the Warehouse Training classroom where he was watching the class that day, and the other was when Grievant had taken the students to his classroom in the Groundskeeping Program later in the evening to see a movie. Grievant later admitted "I'm almost asleep."

16. During the time Grievant was supposed to be supervising the students, he instead was sleeping, and **anything could have happened** with the students. This is a **vulnerable** population. **Grievant's behavior put vulnerable students at risk of harm and danger.**

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. The Department bears the burden of proof, which is a preponderance of the evidence standard, to show that Grievant's termination was proper.

3. Rules of the Department of Human Resources, **Chapter 1120-10-.06: Examples of Disciplinary Offenses:**

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

(20) Sleeping or failure to remain alert during duty hours.

ANALYSIS

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 proved**, by a preponderance of the evidence, that Grievant's conduct warranted his **termination**.

Grievant was a Rehabilitation Assistant at TRC, a facility that serves vulnerable individuals. His job required him to work closely with the students. In order to ensure the appropriate attention is provided to the students' health, safety and welfare, employees must remain alert, vigilant and attentive to the students during their scheduled work shift.

Grievant slept at times during his work shift, which put the safety and welfare of vulnerable individuals at risk. His behavior was **negligent** and **irresponsible**. Grievant was required to have in-service training twice a year, and should have been aware of behavior and procedures that are pertinent to the students' safety, welfare and behavior.

CONCLUSIONS OF LAW

1. It is **concluded** that the Department has 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.

(20) Sleeping or failure to remain alert during duty hours.

2. Based on the above, it is determined that Grievant's **termination** for policy violations was **proper**.

3. Therefore, it is **ORDERED** that Grievant's **termination** is **UPHELD**.

This Initial Order entered and effective this 3rd day of February, 2010.

Joyce Carter-Ball
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 3rd day of February, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division