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Marsha Luttrell

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

IN THE MATTER OF:

Marsha Luttrell

DOCKET NO: 26.43-107072J

INITIAL ORDER

This matter was heard on August 19, 2011 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. Marjorie Bristol, Attorney for the Department of Children's Services (hereinafter referred to as "the Department") represented the Petitioner. Marsha Luttrell (hereinafter referred to as "Grievant") was represented by her legal counsel, Jonathan R. Stephens. This matter was heard via video conference between Nashville and Knoxville.

The issue presented for consideration is whether the State carried its burden of proof of preponderance of evidence that Grievant's conduct warranted her 10-day suspension without pay. Upon conclusion of the hearing, the matter was taken under advisement pending submission of the parties' Proposed Findings of Fact and Conclusions of Law.

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 without pay should be **REVERSED**. However, Grievant's 10-day suspension should be reduced to a **3-day suspension**.

This decision is based upon the following:

PROCEDURAL HISTORY

Grievant has been an employee of the Tennessee Department of Children's Services ("DCS") for over 12 years. As a Child Protective Services (CPS) Team Leader, Grievant is charged with the supervision of subordinate staff whose responsibility it is to ensure the safety and well-being of the children on their caseloads. As their direct supervisor, Grievant is required to work very closely with her staff in order to assist them in making important, difficult decisions regarding children who have been abused or severely neglected, and their families, who are generally in crisis. Petitioner is required to give appropriate guidance, and she must see to it that this guidance is followed through in a timely manner.

The Department contends that Grievant violated TDHR rules and DCS policies, in that Grievant did not properly supervise the case of Child (B.P.) during the latter part of 2007 and early 2008. Grievant was suspended for ten (10) days without pay.

FINDINGS OF FACT

1. Grievant is a Child Protective Services (CPS) Team Leader with the Department.
2. Team Leaders in CPS are responsible for reviewing cases with Case Managers and insuring that TNKids case recordings include all details and information required.
3. The IAD report focused on the disclosure made by the child B.P., on December 7, 2007. The case was assigned at that time to Case Manager Anissa Garrett.
4. In the December 7, 2007 disclosure, the child stated the father raped her when she was four years old. Ms. Garrett, in a written statement to the IAD investigators, stated that the child told her the alleged rape occurred in Indiana. Ms. Garrett further stated that she made no referral to Indiana regarding the alleged rape, and that she was not instructed to make such a referral to Indiana.

5. Upon receiving a report of suspected child sexual abuse, the Case Manager, according to DCS Policy, should convene a Child Protective Investigative Team (“CPIT”) meeting “immediately,” to review the allegations and to guarantee that no contact occurs between the alleged perpetrator and the victim.
6. The IAD investigation also found that a Child Protective Investigative Team meeting regarding this allegation was not held until April 2008. A referral to Indiana regarding the alleged rape was not made until October 2008, after Ms. Garrett discussed the case with a TBI agent and a law enforcement officer.
7. In her written statement, Ms. Garrett said this case was “never formally staffed or an administrative review done,” that she was the only Team Leader (available) and that she spent the majority of her time staffing with two other workers.
8. Grievant admitted that she did not make entries in TNKids regarding the verbal staffings she held with Ms. Garrett. Grievant stated that she was not aware that administrative reviews were required to be entered into TNKids on every case at the time of the incident.
9. The only documentation reflecting Grievant’s meetings with Ms. Garrett regarding B.P.’s case consisted of brief, handwritten notes taken on January 3, 2008.
10. Ms. Garrett did not enter any information about B.P.’s case into TNKids until March 4, 2008. As a result, Grievant had no documentation or information to reflect the case’s status until March 4, 2008.
11. Once Ms. Garrett entered the information into TNKids – three (3) months late – Grievant admitted the notes were deficient, in that they lacked dates and even details about specific events.

12. Grievant's failure to follow up with Ms. Garrett about the jurisdiction of the rape delayed the investigation of the crime for at least four (4) more months. Grievant was aware that Ms. Garrett was known for poor TNKids documentation.

13. When Grievant assigned Ms. Garrett the B.P case, Grievant knew that a previous incident of sexual abuse towards B.P. had occurred in Indiana.

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, as the party that initiated these proceedings, is the Petitioner and has the burden of proving this matter to a "preponderance of the evidence." A "preponderance of the evidence" means the "greater weight of the evidence, or the more probable conclusion, based on the evidence presented. Rule 1360-4-1-.02(7), Tenn. Comp. R. & Regs. (1999).

3. The burden of proof is usually assigned to the party seeking a change of the status quo. Rule 1360-4-1-.02(7), Tenn.Comp. R. & Regs. (1999).

4. Tennessee Department of Human Resources Rule 1120-10.06, articles:

- (1) Inefficiency or Incompetence in the performance of duties.*
- (2) Negligence in the performance of duties...*

5. DCS Administrative Policy 31.14: Documentation of TNKids Case Recordings:

1. Supervisory Responsibility:

- (1) When supervisory staff directs case management staff regarding a specific action to be taken (or not taken) related to a case, that conversation will be entered by the supervisor as a TNKids case recording.*
- (2) Supervisors will review child welfare data system case recordings using the appropriate case file review tool for cases assigned under their supervision to ensure that appropriate casework and documentation are occurring.*

ANALYSIS

The Department in Hamblen County had worked with B.P. before, and Grievant knew that B.P.'s father was a risk and a concern. Grievant also knew that some of father's inappropriate interaction with B.P. occurred in Indiana. Because **Grievant knew of a previous incident in Indiana**, she should have asked Ms. Garrett directly about jurisdiction.

DCS policy requires **immediate** action to be taken on cases involving child sexual abuse. Unfortunately, B.P.'s case lay dormant for over two months after B.P. made the disclosure. **When an investigation against an alleged perpetrator is delayed, other children with whom the accused could come into contact are at risk of harm.**

In January 2007, the Team Coordinator, Joan Davis, provided Team Leaders with a Monthly Performance Briefing for team leaders to record staffings. Ms. Davis told Team Leaders to use the form to document face to face staffing with case managers. Both Grievant and the assigned case manager signed the form to verify that a discussion took place about the specific case. The Team Coordinator did not require the Team Leaders to input an entry regarding the staffing into TNKids.

There was testimony that Grievant was under a heavy workload at the time of this incident, however, that does not excuse the fact that a child was abused, and the **investigation** against the alleged perpetrator was **delayed**. Despite the serious nature of B.P.'s disclosure and DCS Policy requiring "immediate" action in cases of sexual abuse, the CPIT was not convened regarding B.P. until April 2008. Furthermore, B.P. was not physically examined by a doctor until March 2008.

The Department is responsible for the safety and well-being of the children in its custody. As Ms. Garrett's supervisor, Grievant should have provided Ms. Garrett with guidance, action

steps and feedback, because Grievant was aware that this was the **second referral** regarding B.P. Originally, the case involved the allegation that B.P.'s father had inappropriately exposed her to pornography.

CONCLUSIONS OF LAW

1. It is **determined** that Grievant's suspension of her employment with the Department for violation of TDHR rules and DCS policies was warranted. However, it is **determined** that a 10-day suspension is **excessive**.
2. The Team Coordinator did not require Team Leaders to input an entry regarding the staffing into TNKids. Grievant believed she was complying with DCS policy regarding documenting the staffing at that time. However, Grievant did not provide Ms. Garrett with guidance, nor did she monitor the quality and timeliness of Ms. Garrett's case recordings. Consequently, the investigation into allegations of child abuse was **delayed**.
3. It is **ORDERED** that Grievant's **10-day suspension** be **REVERSED**. However, some discipline is warranted. Therefore, based on the above, it is **ORDERED** that Grievant's 10-day suspension be reduced **to a three (3) day-suspension**.
4. Grievant is entitled to reasonable attorney's fees and costs, and all other general relief to which she may be entitled.

This Initial Order entered and effective this 28 day of October, 2011

Joyce Carter-Ball
Administrative Judge