



6-10-2011

TENNESSEE DEPARTMENT OF
CHILDREN'S SERVICES, Petitioner, v. NANCY
BETH KASCH, Grievant

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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

TENNESSEE DEPARTMENT OF)
CHILDREN’S SERVICES,)
)
Petitioner,)
)
v.)
)
NANCY BETH KASCH,)
)
Grievant)

Docket No.: 26.43-107246J

INITIAL ORDER

This matter came before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, sitting for the Tennessee Civil Service Commission, on June 10, 2011. Assistant General Counsel Marjorie A. Bristol, of the Tennessee Department of Children’s Services, represented the State. Grievant Nancy Beth Kasch was represented by Attorney Jonathan Stephens of the Nashville bar.

The subject of this appeal is whether or not Grievant Kasch’s one (1) day suspension was proper.

After due consideration of the record and arguments of the parties, it is **DETERMINED** that a written warning is the proper discipline for the Grievant’s conduct.

This decision is based on the following:

FINDINGS OF FACT

1. Grievant Nancy Beth Kasch has worked for the Tennessee Department of Children's Services (DCS) for over twenty-five (25) years. Kasch is presently employed as Program Director I in the Office of Child Permanency in DCS' Central Office. Kasch leads all efforts to recruit, retain and support resource parents. Resource homes/parents are foster homes/parents.

2. Grievant Kasch holds an undergraduate degree in criminal justice and has completed some graduate work in the same field. Prior to the instant matter, Grievant Kasch had never been disciplined.

3. Grievant was charged with:

A. Failure to update the spreadsheet on the 22 cases subject to the Corrective Action Plan (CAP) for the Commissioner, by February 6, 2009,

B. Failure to be able to articulate the status of the 22 CAP cases for the Commissioner on February 6, 2009,

C. Failure to complete a significant portion of the underlying work on the 22 CAP cases by February 6, 2009.

4. On August 6, 2008, Kasch began working in the Davidson County Region's DCS office as Program Director of the Resource Parent Support Unit (RPSU). Kasch's immediate supervisor was Ms. Tiwana Gorrell, Deputy Regional Administrator. Complaints had been lodged against the RPSU, prior to Grievant Kasch's arrival.

5. At the time of the incident which gave rise to discipline, Grievant Kasch had multiple assignments. First, Kasch was asked to supervise the RPSU. Second, Kasch and her unit were to bring current approximately ninety-six (96) deficient resource home files. Kasch understood that the 96 files had not been brought into compliance following a similar file review approximately two (2) years earlier.

6. Third, on January 27, 2009, DCS prepared a Corrective Action Plan (CAP) that required Kasch and her team to correct all of the deficiencies in twenty-two (22) files by February 6, 2009 (a date ten (10) days away) because the Commissioner would be meeting with them. Fourth, the Corrective Action Plan (CAP) required Grievant Kasch to prepare and/or update a spreadsheet based upon the information in the 22 files.

7. Bringing the files current meant tasks such as making sure each file contained a current copy of the resource parents' training records, driver's licenses, auto insurance, criminal background checks, home study, etc., etc. When files were missing documents, DCS staff was required to seek out the information. For instance, if the home study had been done more than a year before the file review, then a new home study would have to be performed.

8. DCS considered these documents important because they relate to the safety and well-being of children in foster care.

9. Adding to the work load during the ten (10) day focus period for the CAP 22 files, one (1) of Grievant Kasch's Team Leaders, Ms. Katherine Stern, was asked to work on an unrelated task, two (2) days per week. In addition, Administrator Gorrell

changed the working hours for one (1) of Grievant Kasch's case managers, making it more difficult for that manager to conduct home studies.

10. Finally, the case managers assigned to Grievant Kasch's team to complete the file review also had other ongoing responsibilities such as working with families going through PATH training which required the case managers' physical presence with the families in the training. The problems in obtaining information and reduction in work force in effect adversely affected the ability of Grievant Kasch's staff to complete the file review on the ninety-six (96) cases assigned on August 2008 and, specifically, the twenty-two (22) cases assigned as part of the Corrective Action Plan on Tuesday, January 27th.

11. Grievant Kasch found it difficult to obtain information from various state or other governmental agencies to update the files and bring them into compliance. Specifically, drivers' license information was not available¹ until June 2009 so no files had current drivers' license information in them when Grievant Kasch began her review in August 2008. Grievant Kasch found that there were "years of deficiencies in those files" but that most of them were corrected by her team.

12. DCS alleged that Grievant Kasch was aware that the spreadsheet, regarding the status of the 22 cases referenced in Corrective Action Plan, was to be presented to the Commissioner at a meeting on February 6, 2009 at 3:00 p.m. However, at 9:00 a.m. on Friday, February 6, 2009, Grievant Kasch met with Ms. Odessa Krech, Program Director,

¹ On-line sharing perhaps?

and Administrator Gorrell (Grievant's Supervisor) in preparation for the meeting with the Commissioner. It is undisputed that Grievant Kasch informed them that she had not completed the spreadsheet.

13. Although the Corrective Action Plan assigned the creation and/or updating of a spreadsheet to Grievant Kasch, there is no notation on the Corrective Action Plan regarding for whom the spreadsheet is intended. Grievant Kasch testified that she thought that the spreadsheet was for Ms. Krech's 9 AM visit and not for the Commissioner.

14. Grievant Kasch testified:

My understanding of the spreadsheet was to show Odessa [Krech] the work that had been done. At that point, Odessa was there and I didn't have a spreadsheet, and I had lost. Had Tiwana turned around and said well we need to get this for the Commissioner this afternoon, by God, I would have been in there all over it. But, you're the first person who has suggested that maybe this was really for the Commissioner Friday afternoon. ...

And if you know our Commissioner, well, our previous Commissioner, if it was expected for her, I would have spent all day Friday getting it ready.

15. Ms. Gorrell gave contradictory testimony on this point, but it is **DETERMINED** that Administrator Gorrell never told Grievant Kasch, the morning of February 6, 2009, that Grievant Kasch must do whatever she could to prepare the spreadsheet for the meeting with the Commissioner that afternoon.

16. The note on the Corrective Action Plan regarding the level of compliance of the 22 cases assigned to Grievant Kasch's team is, "minimal progress made." Grievant

Kasch disagreed with this characterization and termed the progress made on the 22 files as “significant.”

17. Oddly, as of the date of the hearing, neither party had calculated statistics on work done January 27th to February 6th or calculated statistics on work remaining to be done. Therefore, it is **DETERMINED** that the Undersigned is unable to render an independent opinion as to whether the work completed was minimal v. significant.

18. Administrator Gorrell testified that she was not aware when the 22 files were last audited or reviewed.

19. Administrator Gorrell alleged that Grievant Kasch was not prepared to respond to questions from the Commissioner at the meeting on February 6, 2009. In contrast, Grievant Kasch testified that she prepared a memorandum regarding the status of the 22 cases and provided it to Ms. Odessa Krech and Administrator Gorrell. Furthermore, Grievant Kasch considered herself able to provide detailed information on the status of the files because she had been reviewing them personally.

20. Grievant Kasch recalled that the Commissioner only asked her about a spreadsheet created by a person in another region. At the hearing, Administrator Gorrell agreed that the Commissioner did not ask Grievant Kasch any questions that she was not able to answer.

21. Administrator Gorrell testified that Grievant Kasch violated DCS Policies 16.4 and 16.23, Administrative Policies and Procedures, Resource Home Approval and Resource Home Case Files; however, Gorrell did not provide specific examples of policy

violations in the files or state the number of files in which DCS alleged non-compliance with the policy by Grievant Kasch's team. Rather, Administrator Gorrell simply responded in vague generalities regarding the numbers of files that she believed were not in compliance. Gorrell could only describe the alleged non-compliance as "a theme that the documentation was not there."

22. Administrator Gorrell testified on direct examination that either she or the Commissioner asked Grievant Kasch to provide an oral report on the status of the 22 files on the Corrective Action Plan. In contrast, upon further examination, Administrator Gorrell testified that the Commissioner did not ask Grievant Kasch any detailed questions about the 22 files.

23. Administrator Gorrell testified that "there was no preparing a spreadsheet on Friday" because the records were not in the file folders, despite having the authority as Grievant Kasch's supervisor to order her to prepare the spreadsheet. In contrast, upon further examination, Administrator Gorrell testified that she told Grievant Kasch on Friday, February 6, 2009 at 9:00 a.m. to prepare the spreadsheet for the meeting with the Commissioner.

24. Administrator Gorrell initially testified, regarding the one day suspension that DCS gave Grievant Kasch in this matter that, "I don't agree," but then later testified that, "I mean I don't disagree with the discipline that was given." Then later, Gorrell stated, "I agree that a one-day suspension was warranted for Grievant Kasch's actions."

25. Given the lack of clarity/changes in answer in Administrator Gorrell's testimony, one wonders whether a genuine misunderstanding simply occurred between Administrator Gorrell and Grievant Kasch.

26. Administrator Gorrell was Grievant Kasch's supervisor, but was not disciplined for her role in this incident.

27. Grievant Kasch admitted at the Level V hearing that she would accept a written warning as discipline.

CONCLUSIONS OF LAW

1. As the Petitioner, the Tennessee Department of Children's Services bears the burden to show, by a preponderance of the evidence, that the Grievant violated DCS and/or Civil Service policies and that a one day suspension is proper for such violation(s).

2. Tennessee Department of Human Resources (TDHR) Rule 1120-10-.06(1) forbids inefficiency or incompetency in the performance of duties. TDHR Rule 1120-10-.06(2) forbids negligence in the performance of duties. TDHR Rule 1120-10-.06(18) forbids refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

3. DCS Policy 16.4 concerns Resource Home Approval. DCS Policy 16.23 concerns Resource Home Case Files.

4. In Kelly v. Tennessee Civil Service Commission, 1999 WL 1072566 (Tenn. Ct. App. Nov. 30, 1999), the Tennessee Court of Appeals clarified the

requirements of progressive discipline under T.C.A. § 8-30-330, which provides that “supervisors are expected to administer discipline beginning at the lowest appropriate step.” Id. at *4. The Court explained that:

“[p]rogressive discipline does not require a supervisor to begin at the lowest level of discipline regardless of the nature of the employee’s conduct. It simply means that the supervisor should impose the lowest appropriate punishment taking into account the nature of severity of the employee’s behavior.” Id. In addition, “supervisors have the discretion to determine what punishment fits the offense.” Id.

5. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the lowest appropriate step for each area of misconduct. T.C.A. 8-30-330(a).

6. It is **CONCLUDED** that Grievant Kasch’s demeanor of face and voice was one of certainty about the events that transpired; further, Grievant Kasch’s testimony did not contain contradictions.

7. It is **CONCLUDED** that Administrator Gorrell’s demeanor was candid, but that she struggled to respond consistently to detailed questions. Administrator Gorrell’s testimony was inconsistent on critical points such as:

A. When and whether Grievant Kasch was informed that the spreadsheet was for the Commissioner,

B. Whether or not she (Gorrell) determined at 9 AM on that Friday that the spreadsheet could not be prepared v. whether she directed Grievant Kasch to prepare the spreadsheet for the 3 pm meeting that Friday at 9 AM, and

C. Whether or not the Commissioner asked Grievant Kasch for an oral report on the 22 files and whether the Grievant was able to respond to all questions asked by the Commissioner.

8. It is **CONCLUDED** that her (Gorrell's) testimony was generalized, vague and uncertain because she did not provide specific examples of non-compliance in the files in question attributed to Grievant Kasch. Administrator Gorrell did not offer as evidence any documentation showing the alleged deficiencies in the files. Additionally, Administrator Gorrell could not even provide this Tribunal with the number of files that were not in compliance. Rather, Administrator Gorrell merely relied on her position that there was a "theme" of non-compliance. Such testimony is not a proper basis for finding of a significant policy violation by Grievant Kasch.

9. On the other hand, it is also **CONCLUDED** that Grievant Kasch never testified that all of the twenty-two (22) files were complete and current. To the extent that not all of the 22 files were current and complete, some degree of negligence² or incompetence³ must have occurred.

10. It is **CONCLUDED** that, though sincere, Administrator Gorrell's testimony is not sufficient evidence to support significant discipline against Grievant Kasch in this matter.

² The Undersigned assumes that over-time or compensatory time was available for Grievant Kasch's team to have completed the assigned task.

³ Failure to determine accurately and allocate the number of human resource hours necessary to complete the assigned task on time.

11. It is **CONCLUDED** that DCS just barely carried its burden of proof regarding alleged violations of DCS Policy 16.4 and 16.23 and TDHR Rules 1120-10-.06(1) and (2). Administrator Gorrell's testimony provided the sole proof of the alleged policy violations.

12. In light of the inconsistencies in Ms. Gorrell's testimony, it is **NOT CONCLUDED** that Grievant Kasch engaged in insubordination, pursuant to TDHR Rule 1120-10-.06(18).

13. Based on the above, it is **CONCLUDED** that the appropriate discipline for Grievant Kasch's conduct is a **WRITTEN WARNING**.

14. Grievant is to be reimbursed for any and all lost wages, leave, and/or other compensation as a result of the one (1) day suspension assessed of her. As a successfully appealing employee, Grievant's attorney fees and costs are to be paid.

This Initial Order entered and effective this the ___ day of ___October/November___, 2011.

Mattielyn B. Williams
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State
this 1st day of November, 2011.

Thomas G. Stovall, Director
Administrative Procedures Division