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7-27-2011

DEPARTMENT OF CHILDREN'S SERVICES vs. RODERICK HOLMES

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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

IN THE MATTER OF:)
)
DEPARTMENT OF CHILDREN’S SERVICES)
) DOCKET NO. 26.43-111709J
v.)
)
RODERICK HOLMES)

INITIAL ORDER

This matter came to be heard on July 27th and August 5th, 2011, before Rob Wilson, Administrative Judge, sitting for the Tennessee Civil Service Commission in Memphis, Tennessee. Ms. Kristi Faulkner, Assistant General Counsel with the Department of Children’s Services (DCS) represented the State. The Grievant, Roderick Holmes, was present and represented by his Counsel, Mr. W. Erik Haas. This matter became ready for consideration upon submission of the parties’ proposed findings of fact and conclusion of law.

PROCEDURAL HISTORY

The contested case hearing of this matter commenced on July 27, 2011. A Continuance was granted on that day after it was determined that Counsel for DCS had not provided Counsel for Mr. Holmes with copies of the video recordings from the night in question. The case was rescheduled to be heard on August 5, 2011. On July 28, 2011, Counsel for DCS filed a Motion to Dismiss, which was denied on August 5, 2011 because it was not timely filed.

The subject of this hearing was the Grievant's appeal of his termination of employment by DCS for alleged negligence in the performance of duties, gross misconduct or conduct unbecoming an employee in the State service, participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, or department, acts that would endanger the lives and property of others, and falsification of an official document. After consideration of the record in this matter it is determined that the termination should be **SET ASIDE** and the Grievant should be reinstated to his former position with an award of full back pay, benefits and attorney's fees. This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Prior to his termination, Mr. Holmes spent two years as a Children's Services Officer at Wilder Youth Development Center. Mr. Holmes has been employed in the mental health service industry for a total of nineteen years.

2. On December 4, 2010, Respondent was terminated from his position as a Children's Services Officer at Wilder Youth Development Center for an incident arising from events in July 2010.

3. On the evening of July 6, 2010, until the early morning of July 7, 2010, Mr. Holmes was assigned to third shift work in Dormitory Six of the Wilder Youth

Development Center. Shaunte Howard, another Children's Service Officer, was also on the same shift as Mr. Holmes.

4. Mr. Holmes received no notice of prior complaints or incidents from the prior shift, and made routine checks of the dormitories every fifteen to thirty minutes according to his post orders.

5. Upon completion of each routine check of the dormitory, Mr. Holmes made the appropriate documentation in the log book as required by his post orders.

6. At approximately 5:39 a.m. on July 7, 2010, ZB, a youth housed within dormitory six, was discovered by Shaunte Howard after an attempted suicide. A "code blue" was immediately called and Officer Charles Woods responded and arrived at ZB's room moments later.

7. Mr. Holmes was accused of not making the required room checks and a subsequent child abuse investigation was conducted by Child Protective Services. The investigation was conducted by April Smith, Case Manager III with the Special Investigations Unit, and Linda Powell, Internal Affairs Investigator.

8. As part of the investigation each investigator reviewed video footage from the evening. The cameras that recorded the video are motion activated, and there are eight cameras in dormitory six.

9. Ms. Smith and Ms. Powell each reviewed a different camera video which covered the area around ZB's dorm room. However, each video produced different results regarding periods of activity within the same area of dormitory six. Furthermore,

the video provided to Mr. Holmes and his Counsel for review produced another view and different results, but was never reviewed as part of the investigation.

10. After reviewing the two different videos, Ms. Smith and Ms. Powell determined that the logbook entries did not match either of their reviews of the video footage and concluded that the logbooks must have been falsified. Neither investigator reviewed all of the video recordings that were available from the night in question.

11. Mr. Holmes testified that he made his rounds as he was supposed to do, and that his logbook entries were true and accurate.

12. Charles Woods, Third Shift Officer and Complex Coordinator, testified that during his rounds on the evening in question he visited dormitory six at 11:20pm, 12:20am, 1:20am, 2:30am, and 3:40am. Officer Woods stated that the logbooks were filled out correctly on every occasion during the night in question.

13. ZB suffered no physical harm and was released back to Wilder Youth Development Center the same day as the incident. Mr. Holmes continued working at Wilder Youth Development Center for another five months before he was terminated.

14. Of all the witnesses who testified in this matter, besides Mr. Holmes, Officer Woods was the only person who was present at the facility on the night in question.

CONCLUSIONS OF LAW

1. Department of Personnel Rule No. 1120-10-.06 sets forth a list of offenses for which an employee may be disciplined. At issue in this case are:

(2) Negligence in the performance of duties

(8) Gross misconduct or conduct unbecoming an employee in the State service.

(12) Participation in any action that would in any way seriously disturb or disrupt the normal operation of the agency, institution, department or any 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

2. DCS policy #4.9, Employee Disciplinary Actions, E, Grounds for disciplinary action provides:

b) Falsification of any official document.

3. The State has failed to carry its burden of proof by a preponderance of the evidence that the Mr. Holmes did not perform his room checks as required. There is no evidence in the record which can conclusively prove that Mr. Holmes violated any Department of Children's Services or Department of Human Resources Rules. Mr. Holmes testified that he performed his room checks as required, and Mr. Woods' testimony established that Mr. Holmes filled out the log book correctly.

4. The Department of Children's Services has failed to prove by a preponderance of the evidence that Mr. Holmes committed any acts that would rise to the indication of child abuse. ZB was released and returned on the same day and did not suffer any physical or long term harm. Mr. Holmes followed correct procedures once ZB was discovered and also followed his outlined post orders throughout the evening.

5. The State offered no witnesses that had first-hand knowledge of the events of the evening in question, nor did they offer any witness who could explain why all available video recordings were not reviewed.

6. Based upon the foregoing, it is hereby **ORDERED** that the Grievant's termination should be **SET ASIDE** and the Grievant should be **REINSTATED** to his former position. Pursuant to Tenn. Code Ann. §8-30-328(e), the Grievant shall be reinstated to his position with full back pay and benefits. This award of back pay shall be off-set by any unemployment compensation or other wages as required by law. The Grievant shall also receive an award of attorney's fees attorney and costs in accordance with the provisions of Tenn. Code Ann. §8-30-328(f).

This Initial Order entered and effective this 13 day of February, 2012

Thomas G. Stovall Director