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TENNESSEE DEPARTMENT OF CORRECTION v. JOE KPANA-QUAMOH, Grievant

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BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION

IN THE MATTER OF: **TENNESSEE DEPARTMENT OF CORRECTION,** **v.** **JOE KPANA-QUAMOH,** ***Grievant.***	**DOCKET NO: 26.05-109826J**

INITIAL ORDER

This contested case was heard in person in Nashville on July 19, 2011, by Administrative Judge Margaret Robertson, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Tennessee Civil Service Commission. Ms. Teresa S. Thomas, Staff Attorney, represented the Department of Correction (the "Department") in this matter. The Respondent was represented at the hearing by Mr. Terry R. Clayton, Esq. By order dated January 25, 2012, this matter was transferred to Administrative Judge Kim Summers for disposition.

The issue in this matter is whether to uphold the Department's decision to suspend the Grievant for one day without pay for inefficiency or incompetency in the performance of his duties. After consideration of the entire record and the testimony of the parties, it is determined that Grievant was not appropriately suspended. This determination is based upon the following.

SUMMARY OF EVIDENCE

Two witnesses testified on behalf of the Petitioner: Charles Simmons, Deputy Warden, Charles B. Bass Correctional Complex; and Dwight Barbee, Warden, Charles B. Bass Correctional Complex. Joe Kpana-Quamoh testified on his own behalf. The following seven exhibits were entered into evidence: Exhibit 1, Job Specifications for a Correctional Unit Manage; Exhibit 2, a November 3, 2009 written warning from Mr. Simmons to Mr. Kpana-Quamoh; Exhibit 3, a December 3, 2009 notice of Intent to take Disciplinary Action from Mr. Simmons to Mr. Kpana-Quamoh; Exhibit 4, a March 11, 2010 notice of one-day suspension from Mr. Barbee to Mr. Kpana-Quamoh; Exhibit 5, Inspection Instrument Treatment 1; Exhibit 6, the Department's Policy No. 508.05 on Counseling Services; and Exhibit 7, the August 26, 2010 letter from Commissioner Gayle Ray upholding the suspension at the Level IV Grievance Hearing.

FINDINGS OF FACT

1. Mr. Kpana-Quamoh began his employment with the Department in 1974 as a youth development officer.

2. Mr. Kpana-Quamoh began his employment at the Charles B. Bass Correctional Complex, previously known as the Middle Tennessee Reception Center, in 1987.

3. Mr. Kpana-Quamoh became the Unit Manager of the Genesis Program at the Charles B. Bass Correctional Complex in 2006, which is responsible for helping inmates transition to employment upon release from prison.

4. The job specifications for Correctional Unit Manager require, among other things, the employee to "coordinate[] the maintenance of the buildings assigned to the unit; ensure[] that enough supplies and personnel are in each building to maintain a high level of sanitation."

5. A requirement of the Genesis Program for the inmates is self discipline, which includes sanitation and cleanliness of self and the living area.

6. The Genesis Program is housed in the Annex of the correctional complex also known as Site 2). Oversight of the Annex is shared between Mr. Kpana-Quamoh and another Unit Manager, Mr. Rivers Perry.

7. Mr. Perry has authority over eight inmate units housed at the Annex and general authority over the entire Annex facility and its staff, except for Mr. Kpana-Quamoh and the other individuals specifically assigned to work with the Genesis Program.

8. Mr. Kpana-Quamoh had authority over the other two inmate units at the Annex and the staff of the Genesis Program, which included four or five counselors / case managers and a correctional clerical officer.

10. Inmates from Mr. Kpana-Quamoh's two units were housed within two guilds at the Annex, including Guild 21, which would house inmates from other units as needed.

11. Mr. Perry is considered to be ultimately responsible for the sanitation and cleanliness of his eight units, and Mr. Kpana-Quamoh is considered to be ultimately responsible for the sanitation and cleanliness of his two units.

12. The Charles B. Bass Correctional Complex employs a sanitation officer that oversees the sanitation of the entire facility, including the Annex.

13. The inmates at the correctional complex are directly responsible for tending to the sanitation and cleanliness of the facility under the oversight of the Inmate Relation Coordinators.

14. The Unit Sergeant, under the direct supervision of Mr. Perry, reviews the work of the inmates and the Inmate Relation Coordinators (IRCs) and prepares a report at the end of each shift.

16. Mr. Kpana-Quamoh has been thoroughly instructed on the expectations regarding the sanitation and cleanliness of the Annex.

15. Mr. Kpana-Quamoh was authorized to issue directives to the staff at the Annex responsible for overseeing the sanitation of his two inmate units, but these officers were under the supervision of Mr. Perry, not Mr. Kpana-Quamoh.

17. Any issues or needs with respect to the sanitation and cleanliness of the facility of which Mr. Kpana-Quamoh was aware were reported to Mr. Perry, not addressed directly with the specific Unit Sergeant in charge.

18. Inspections of the Annex by Mr. Simmons and Warden Barbee were coordinated with Mr. Perry, not with Mr. Kpana-Quamoh.

19. Inspections of the Annex by Mr. Simmons and Mr. Barbee would reveal that five or six of the Annex units were not clean to the level of expectations.

20. A Written Warning was issued to Mr. Kpana-Quamoh by Mr. Simmons on November 3, 2009, for failure to comply with an issued directive and non-performance of assigned duties. This Written Warning pertained to lack of noticeable improvement in the cleanliness and sanitation of all areas of the Annex during a November 2, 2009 inspection.

21. A similar written warning was also issued to Mr. Perry.

22. Mr. Kpana-Quamoh was issued a notice of Intent to take Disciplinary Action on December 3, 2009, following a November 30, 2009 inspection of the Annex during which the facility, specifically Guild 21, was found, again, not to meet expectations. The notice specified the reason for the requested disciplinary action as “inefficiency and incompetency in the performance of duties.”

23. For these reasons, a one-day suspension was issued on March 11, 2010, following a due process hearing before Warden Barbee.

24. An annual audit revealed non-compliance with all requirements for transitional assessment plans (TAP) for all inmates at the Annex as specified by departmental policies 508.04 and 513.04. The findings revealed repetitive deficiencies.

25. It was the responsibility of Mr. Kpana-Quamoh to ensure that the counselors in his unit were complying with TAP requirements on all inmates.

26. The audit report, referred to as Inspection Instrument Treatment 1, did not specify in which units of the Annex the TAP deficiencies had occurred.

27. Both the December 3, 2009 notice of Intent to take Disciplinary Action and the March 11, 2010 notice of the one-day suspension included reference to non-compliance with policies 508.04 and 513.04.

28. A letter from Commissioner Gayle Ray was sent to Mr. Kpana-Quamoh on August 26, 1020, upholding his one-day suspension following a Level IV Grievance Hearing.

29. On October 7, 2010, Mr. Kpana-Quamoh requested a hearing before the Tennessee Civil Service Commission.

APPLICABLE LAW

1. Department of Human Resources Rule 1120-10-.05[1] provides that causes for disciplinary action fall into two categories:

(1) Causes relating to performance of duties.

(2) Causes relating to conduct which may affect an employee's ability to successfully fulfill the requirements of the job.

[1] The Department cited Department of Personnel Rule 1120-10-06(1) in support of this request, however, the current citation is 1120-10-.05(1).

2. The Department charged Mr. Kpana-Quamoh with "Inefficiency and incompetency in the performance of duties" pursuant to Department of Personnel Rule 1120-10-.06.

3. Department of Personnel Rule 1120-10-.02 provides as follows:

> A career [civil service] employee may be warned, suspended, demoted or dismissed by his appointing authority whenever legal or just cause exists. The degree and kind of action is at the discretion of the appointing authority, but must be in compliance with the intent of the provisions of this rule and the Act. An executive employee serves at the pleasure of the appointing authority.

4. The Department of Correction bears the burden of proof in this matter to show, by a preponderance of the evidence, that Mr. Kpana-Quamoh committed the alleged infractions and that the Department imposed the appropriate discipline based on those infractions. *See Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies.*

5. As defined by the *Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies,* Rule 1360-4-1-.02(7), "preponderance of the evidence" means the greater weight of the evidence, or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion.

ANALYSIS and CONCLUSIONS OF LAW

1. Although Mr. Perry and Mr. Kpana-Quamoh were both in a Unit Manager position, it is clear that Mr. Perry had broader authority than Mr. Kpana-Quamoh over the Annex and its personnel.

2. Although Mr. Kpana-Quamoh was a Unit Manager and was responsible for the oversight of two inmate units, he had limited authority over the sanitation officer, the IRCs, or the Unit Sergeants that were directly responsible for ordering supplies and overseeing the cleaning and sanitation efforts of all the inmates at the Annex.

3. It was, apparently, Mr. Kpana-Quamoh's practice to defer to the authority of Mr. Perry when utilizing / addressing the staff under Mr. Perry's supervision.

4. The job specification for a Correctional Unit Manager which requires "that enough supplies and personnel are in each building to maintain a high level of sanitation" appears more applicable to Mr. Perry's general oversight of the Annex and its staff than it does to Mr. Kpana-Quamoh's much more limited role with respect to the Genesis Program.

5. Accordingly, the Department has not shown by a preponderance of the evidence that Mr. Kpana-Quamoh was the Unit Manager responsible for overseeing the ordering of supplies or the placement of sufficient personnel in the Annex in order to maintain the expected level of cleanliness and sanitation.

6. Notwithstanding the findings with respect to Guild 21 from the inspection conducted by Warden Barbee and Mr. Simmons on November 30, 2009, the Department has not shown by a preponderance of the evidence that the two inmate units at the Annex that were actually under the control of Mr. Kpana-Quamoh generally failed to comply with the Department's cleanliness and sanitation requirements.

7. The Department has not shown by a preponderance of the evidence that the violations of policies 508.04 and 513.04 indicated in Inspection Instrument Treatment 1 were found to exist in the two units at the Annex under the control of Mr. Kpana-Quamoh rather than the eight units under the control of Mr. Perry.

8. For all these reasons, the Department **HAS NOT** shown by a preponderance of the evidence that Mr. Kpana-Quamoh's actions amounted to inefficiency or incompetency in the performance of duties.

9. Based upon the foregoing, the Department's decision to suspend Grievant for one day is **OVERTURNED**, and Grievant's appeal of this decision is **GRANTED**.

10. The pay withheld from Mr. Kpana-Quamoh during his one-day suspension shall be restored.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the _____ day of _____ 2012.

_____
KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the _____ day of _____ 2012.

THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE