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TENNESSEE DEPARTMENT OF
MENTALHEALTH AND
DEVELOPMENTALDISABILITIES, Petitioner,
vs. Docket No.: 26.15-096344JJudge Jay
ReynoldsGEORGIA DAVIS, Grievant

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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

**TENNESSEE DEPARTMENT OF MENTAL
HEALTH AND DEVELOPMENTAL
DISABILITIES,**

Petitioner,

v.

**Docket No.: 26.15-096344J
Judge Jay Reynolds**

GEORGIA DAVIS,

Grievant.

INITIAL ORDER

THIS CONTESTED Level Five Civil Service case came to be heard on December 12, 2008 and January 16, 2009, at Bolivar, Tennessee, before Administrative Judge William Jay Reynolds, presiding on behalf of the Tennessee Civil Service Commission. The Petitioner, the Tennessee Department of Mental Health and Developmental Disabilities, was represented by the Honorable Lorenzo Derek Renfroe. The Grievant, Georgia Davis was represented by the Honorable Robert A. O'Connell. Ms. Davis was present, as was the Department's representative, Mr. Ronald Bruce, Assistant Superintendent of Western Mental Health Institute (WMHI). The subject of the hearing was Georgia Davis' grievance regarding her December 6, 2006 demotion from Telephone Operations Supervisor to Telephone Operator 1, for her alleged violation of Tennessee Department of Personnel Rules, Chapter 1120-10-.06(1), "inefficiency of incompetence in the performance of her duties" and (4), "failure to maintain satisfactory and harmonious relationships with the public and fellow employees".

After due consideration of the testimony and other evidence presented, the Administrative Judge has determined that the Grievant's demotion must be reversed and replaced with a written warning and additional training. This determination is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Grievant, Georgia Davis, has been employed with the Tennessee Department of Mental Health and Developmental Disabilities at the Western Mental Health Institute in Bolivar, Tennessee for forty-four (44) years, i.e. since her date of hire, April 1, 1965.
2. After working at the facility as a Telephone Operator for nearly ten (10) years, she was promoted to Supervising Telephone Operator on February 1, 1975. Three years later, on December 1, 1978, she was promoted again to Facility Communications Supervisor. She served in that capacity for twenty-eight (28) years, until she was demoted to Telephone Operator on December 6, 2006.
3. During the Grievant's forty-four (44) year work history with the Respondent, she has never received an annual performance evaluation grade below a "4" ("superior"). For each of the last twenty years, she has received the highest possible annual evaluation grade, "5" ("exceptional").
4. During the Grievant's forty-four (44) years of employment with the Respondent, she has never received any disciplinary action of any

kind, with the exception of the demotion which is the subject of her grievance.

5. On December 6, 2006, the Grievant received a letter from Western Mental Health Institute's Chief Executive Officer, Roger Pursley, demoting her from her position of Telephone Operations Supervisor (salary grade 15) to the position of Telephone Operator 1 (salary grade 11).
6. In the demotion letter, the Grievant was charged with violating "Rules of Tennessee Department of Personnel, Chapter 1120-10-.06(1) inefficiency or incompetence in the performance of your duties and (4) failure to maintain satisfactory and harmonious working relationships with the public and fellow employees." Specifically, the following allegations were made:
 - a. The Grievant made disparaging remarks regarding disabled Telephone Operators working with her on the Switchboard resulting in the creation of a hostile work environment.
 - b. The Grievant used her service longevity and position as Telephone Operator Supervisor to manipulate schedules to her benefit.
 - c. The Grievant often made implied threats toward co-workers in the switchboard to report them to management in order to reinforce (her) authority over them.

- d. An investigation revealed a complete feeling of no confidence or trust by (her) co-workers (persons she supervised) in (her) management of the department.
7. Regarding the first allegations, that the Grievant made “disparaging remarks regarding disabled Telephone Operators working with her on the Switchboard resulting in the creation of a hostile work environment”, these facts emerged from the hearing on the matter:
 - a. In further detailing this accusation in the demotion letter. Mr. Hurley made reference to an August 17, 2006 meeting of the Telephone Switchboard staff with the Grievant’s supervisor, Cynthia Hazelwood.
 - b. At that meeting, Ms. Davis was upset because the employees, she supervised, had called her supervisor, Ms. Hazelwood; and asked for a meeting regarding scheduling of the telephone operators, without coming to her first with the problem.
 - c. Ms. Hazelwood had devised a new schedule for the workers, without Ms. Davis’ input, and presented it at the meeting, for the approval of the operators.
 - d. At the meeting, Ms. Hazelwood pointed out that Mr. Hurley had conducted a survey of the state’s other mental health institutes and developmental centers. She stated that the other facilities had

been able to handle scheduling of the telephone operators without the same need for overtime.

- e. In response, Ms. Davis asked if any of the other facilities had two handicapped operators.
 - f. One of the persons present at the meeting, Lynda Crisp, a telephone operator, is blind. She took offense to Ms. Davis' remark and left the meeting.
 - g. When Ms. Davis asked if the other facilities had two handicapped operators, she was referring to the fact that she had been instructed by her supervisors to accommodate the disability of at least one of her operators, Lynda Crisp, by assigning her only to third shift.
 - h. Although Ms. Davis' remark was apparently not intended to be hurtful to anyone present at the meeting or insensitive to anyone's disabling condition, it did, in fact, have that effect on at least one person, Lynda Crisp. Ms. Davis ought to have been more careful with her choice of words. Her insensitivity in that regard warrants some moderate level of disciplinary action and sensitivity training.
8. Regarding the second allegation, that the Grievant "used her service longevity and position as Telephone Operator Supervisor to manipulate schedules to her benefit", these facts emerged from the hearing in the matter:

- a. One of the Grievant's responsibilities was to create the working schedule for the telephone operators under her supervision.
 - b. The switchboard at WMHI was a 24 hour, 7 days-a-week operation. This made scheduling difficult and resulted in frequent schedule changes.
 - c. The Grievant made scheduling changes to accommodate illness, deaths in families, and requests for vacation time and annual days made by her various employees.
 - d. The Grievant also made scheduling changes to accommodate her own desire to take annual time for various purposes or to take necessary sick time.
 - e. Although the Grievant may have changed schedules more frequently or more abruptly than she should have, there is no credible evidence that she "manipulated the schedule" to favor herself more frequently than she made changes to accommodate the employees she supervised.
9. The third allegation, that the Grievant "often made implied threats toward co-workers (persons she supervised) in the switchboard to report them to management in order to reinforce (her) authority over them" is a puzzling accusation. It is difficult to imagine a more appropriate use of a supervisor's authority than to issue a warning to a

person being supervised that if he/she fails to conform his/her performance or conduct to the Department's expectations and requirements that such failure will be brought to the attention of higher levels of management. The fact that this allegation is included in the disciplinary letter suggests problems with supervision at WMHI at levels higher than that of the Grievant.

10. The fourth allegation, that the Grievant's supervisors had "no confidence or trust" in her management of the switchboard is also unusual and more than a little odd. Although there is no requirement that a supervisor maintains popularity with those she supervises or inspires their "confidence", it is certainly necessary for that supervisor to demonstrate to her own supervisors that she is competent and efficient in carrying out her job responsibilities. There can be no doubt that the Grievant's long uninterrupted history of decades of the highest possible performance evaluations from her various supervisors indicates that she had the "confidence and trust" of those whose job it was to evaluate her performance.

CONCLUSIONS OF LAW

1. The only credible evidence of wrongdoing by the Grievant presented by the Department at the hearing in this matter involved the insensitivity the Grievant displayed toward fellow employees with handicapping conditions, particularly as that insensitivity was in evidence at the August 17, 2006 meeting. Although it is apparent that

the Grievant did not intend her remarks to be hurtful to anyone present, in fact, they were.

2. When management discovers evidence of this sort of problem in the conduct of an employee, it has a responsibility to attempt to correct the problem through one or both of the following avenues:

- a. The Performance Evaluation System:

The Performance Evaluation System afforded management the opportunity to sit down with the employee and describe how he/she is failing to meet a particular requirement of the job. The reviewer has the duty to describe to the employee what he/she must do or refrain from doing to meet expectations. As the record clearly reflects, no such effort was made by management. Right up to the day of her demotion she continued to receive the highest possible performance evaluation scores, with no mention of any “insensitivity problem” or any other problem, for that matter.

- b. Progressive Discipline:

The second avenue available to management to correct undesirable conduct by an employee is progressive discipline. Management can issue an oral or a written warning (or in very serious cases, a suspension) to an errant employee in an attempt to get his/her attention and to convince him/her to conform his/her behavior to management’s expectations. In the

present case, management seemed entirely ignorant of the existence of this tool and the requirement that it be used. There is no proof in the record that an oral or written warning would have been ineffective to correct the problem in this case. We will never know, as management inappropriately skipped directly to a demotion, completely disregarding the requirements of progressive discipline.

3. Management failed to attempt to correct the problem it perceived in the conduct of the Grievant (insensitivity to the handicapping condition of a fellow employee) through the use of an appropriate tool, the performance evaluation system and/or progressive discipline. As a result, the penalty assessed was too harsh. The Grievant's demotion must be reversed and replaced with an appropriate discipline, in this case, a written warning.

IT IS THEREFORE ORDERED THAT:

1. The Grievant shall be immediately restored to her position as a Telephone Operations Supervisor at the salary she would have been making had she not been demoted.
2. The Grievant shall receive a written warning, dated December 1, 2006, the date of the original disciplinary letter. By operation of law, the written warning shall not be placed in her personnel record, as the

required two-year statutory period for removal of the warning has passed.

3. The Department shall immediately enroll the Grievant in sensitivity training regarding the use of appropriate language, behavior, and respect towards persons with disabilities.
4. The Department shall pay the Grievant full back pay and benefits, within 30 days of the effective date of this order.
5. The Department shall pay the Grievant's reasonable attorneys fees and costs.

This Initial Order entered and effective this 29th day of April, 2009.

WILLIAM JAY REYNOLDS
ADMINISTRATIVE JUDGE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 29th day of April, 2009.

THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION