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BOARD OF PROBATION AND PAROLE, Agency v. KATHIE MOODY, Grievant

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BEFORE THE CIVIL SERVICE COMMISSION
FOR THE STATE OF TENNESSEE

IN THE MATTER OF: BOARD OF PROBATION AND PAROLE, Agency v. KATHIE MOODY, Grievant	DOCKET NO: 26.41-097704J

INITIAL ORDER

This Fifth-Step Civil Service administrative proceeding was heard on April 16, 2009 in Johnson City, Tennessee, before John Hicks, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Civil Service Commission. Karen D. Tolbert, Staff Attorney for the Tennessee Board of Probation and Parole (Board), represented the State. Grievant Kathie Moody (Grievant) was represented by D. Bruce Shine of Kingsport, Tennessee.

The subject of the hearing was the Board's one-day suspension of Grievant Kathie Moody.

After consideration of the record and argument of counsel, it is DETERMINED that the one-day suspension should be REVERSED. This determination is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Grievant Kathie Moody is a 28 year career service employee of the Tennessee Board of Probation and Parole.

2. In the 25 years in which the agency conducted performance reviews, Grievant received 23 *"Exceptional"* ratings – the highest level available – and two *"Superior"* ratings, the second highest rating in the State's evaluation process.

3. Prior to October 4, 2007, Grievant had never been disciplined by the Board for conduct arising out of or in the scope and course of her employment.

4. On August 31, 2007, the Board advised Grievant of the Board's intention to suspend Grievant for one day[1]. The suspension was pursuant to Department of Human Resources Rule 1120-10-06(4)(8)(12) and (18).

> (4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees;
> (8) Conduct unbecoming an employee in the State service;
> (12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the State service or that would interfere with ability of management to manage,
> (18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

5. The record of a one-day suspension remains in a state employee's personnel file for the minimum of two years.

6. The Board's correspondence of August 31, 2007 and October 4, 2007, charged Grievant with falsification of an official document relating to or affecting employment. The correspondence stated, "You contacted the Human Resources Division about your son's time. You indicated that you were inquiring about an employee you supervise. This was an untruth."

[1] The August 31, 2007 notice was modified on October 4, 2007, and the final notice was modified on December 7, 2007.

Subsequently this charge of uttering an *"untruth"* was deleted from the December 7, 2007 correspondence after the tape recording of the telephone message failed to support the allegation/change[2]. The Board dropped this charged during the Level IV Grievance hearing. The Board acknowledged that the evidence did not support its allegation of falsification of an official document relating to or affecting employment.

7. Board Director of Field Services Gary Tullock was the only supervisor called to testify. Board Director of Field Services Gary Tullock's testimony was relative to administrative matters only and did not address the facts that led to the Board's discipline of Grievant.

8. Board Director of Field Services Tullock was posed the following question upon cross-examination:

> *Q. So what you're really ending up with, the only allegation you have is that Ms. Moody somehow or another interfered and supervised her son during the 13 days he was officially employed and located in the Johnson City office?*
>
> *A. Right.*

9. Grievant's son Craig Moody was hired by the Board into a temporary six-month position. Grievant played no role in the Board's decision to hire her son.

10. District Director Danny McGinnis advised Board Director of Field Services Tullock that Craig Moody was probably the best person; the best interviewee.

11. Although, District Director Danny McGinnis and Grievant were the only witnesses to the incidences detailed in the Board's August 31, 2007 notice, the State did not call District Director Danny McGinnis as a witness during the hearing regarding the allegation that Grievant interfered with the supervision of her son.

12. Board Director of Field Services Tullock testified that he instructed District Director Danny McGinnis that Grievant could not have anything to do with her son's

[2] The text is set forth in paragraphs 35 and 36.

supervision; "I mean anything." There is no record evidence that Board District Director Danny McGinnis transmitted Board Director of Field Services Tullock's instructions to Grievant.

13. Craig Moody's first day of work with the Board was Friday, June 1, 2007.

14. Craig Moody voluntarily resigned on July 5, 2007 at 7:26 a.m.

15. Craig Moody attended the Board's Academy in Tullahoma during the entire week of June 4, 2007.

16. Craig Moody worked out of the Board's Johnson City office 13 days between his date of hire and his date of resignation. Of the 13 days Craig Moody worked out of the Board's Johnson City office, his immediate supervisor Margie Collins was on leave for four (4) of those days.

17. Craig Moody was under Margie Collins direct supervision for only 8 of his actual 13 working days at the Board. The 9th work day was the day Craig Moody resigned at 7:26 a.m.

18. On Friday, June 1, 2007, Craig Moody's supervisor Margie Collins was scheduled to be on annual leave.

19. Supervisor Margie Collins contends that she informed her assistant John Mashburn, Grievant Kathie Moody and her supervisor Board District Director Danny McGinnis that she had placed policy manuals in the office next to her office. Supervisor Margie Collins further contends and that she left instructions to have Craig Moody read the policy manuals on his first day of work.

20. Supervisor Margie Collins did not discuss Craig Moody' first day at work with John Mashburn or provide John Mashburn any work assignment for Craig Moody on his first day at work.

21. Board District Director Danny McGinnis did not provide Grievant with any instructions concerning her son's first day of work. Board District Director Danny McGinnis did

not relay any message to Grievant prior to supervisor Margie Collins taking leave on Friday, June 1, 2007.

22. Grievant also had new employee Marlys Tester scheduled to report for work on Friday, June 1, 2007. Grievant introduced Marlys Tester and her son Craig Moody to Board District Director Danny McGinnis and other employees at the Johnson City office.

23. Grievant was not advised by anyone that Craig Moody's assigned supervisor Margie Collins would not be present on Friday, June 1, 2007.

24. Craig Moody reported to the Board's Academy in Tullahoma on June 4, 2007 and returned to work at the Johnson City office on Monday, June 11, 2007. Grievant did not play any supervisory role in the day to day Board activities or work functions of her son during the weeks of June 11 or 18, 2007.

25. Grievant did not play any supervisory role in the day to day Board activities/work functions of her son during the week of June 25, 2007. Craig Moody was hospitalized on June 26, 2007.

26. On June 4, 2007, at 11:14 a.m., supervisor Margie Collins e-mailed Craig Moody at the Board's Academy in Tullahoma, stating, "I will have a notebook for you for your policies and manual." This statement refers to a future event and refutes her testimony that she had already placed the policy manuals in the office next door for Craig Moody's review on Friday, June 1, 2007. The record does not demonstrate whether Craig Moody had e-mail access at the Academy during the week of June 4, 2007.

27. On Friday, June 1, 2007, following lunch with her son, Grievant delivered files to the Board's Elizabethton office. Craig Moody was to be assigned to the Elizabethton office after returning from training at the Board's Academy in Tullahoma. Grievant wanted to show her son

the building in Elizabethton where he would be working after returning from the Academy. Grievant did not introduce her son to anyone at the Board's Elizabethton office.

28. At the hearing, supervisor Margie Collins offered hand written notes purporting to show her personal dissatisfaction with Grievant's interference with the supervision of Craig Moody. The notes appear to be in the future. The record does not demonstrate that the hand written notes were concurrently shared with Grievant or any Board supervisor.

29. The record does not demonstrate that Board District Director Danny McGinnis was dissatisfied with Grievant concerning the alleged supervision of her son Craig Moody.

30. Grievant's isolated inquiries concerning the issuance of a state ID card and future training does not constitute interference with the supervision of her son.

31. On the morning of Tuesday, June 26, 2007, Craig Moody attempted suicide and was hospitalized at Indian Path Hospital, in Kingsport. Craig Moody remained hospitalized until the afternoon of July 2, 2007.

32. Employees are allowed to request either compensatory time or overtime pay while at the Academy. To select either compensatory time or overtime pay employees must complete the "In Lieu of Cash Compensatory Overtime Request" form and forward the form to their immediate supervisor for approval. The immediate supervisor must forward the "In Lieu of Cash Compensatory Overtime Request" form to the Payroll Section in Nashville by a specified date.

33. On June 11, 2007, Craig Moody completed an "In Lieu of Cash Compensatory Overtime Request" form. On June 12, 2007, supervisor Margie Collins signed the "In Lieu of Cash Compensatory Overtime Request" form. The "In Lieu of Cash Compensatory Overtime Request" form had to be received in the Payroll Section in Nashville by June 20, 2007.

34. Supervisor Margie Collins was responsible to for timely filing the "In Lieu of Cash Compensatory Overtime Request" form with the Board's payroll office. Supervisor

Margie Collins was unable to explain why the "In Lieu of Cash Compensatory Overtime Request" form was not transmitted to and/or received by the Board's payroll office until June 22, 2007; two days late.

35. On the afternoon of July 2, 2007, after Greg Moody was released from Indian Path Hospital, Grievant drove him to a doctor's appointment. On the way to the doctor's appointment, Grievant called Brenda Osborne at the Board's Nashville payroll office. Unable to talk with Ms. Osborne, Grievant left the following tape recorded message:

> "Brenda, this is Kathie Moody, I'm sorry I missed your call. What I was calling about was Craig Moody one of our new employees. He had went to the academy after he started June the 1st. His paperwork he signed to get comp time instead of overtime. When they got their checks today, it was, he got paid for it but he needs that leave time for last week. I think they're doing his leave now in Johnson City. So if you could give me a call back 423-863-3246. Thank you."

36. On July 2, 2007 at 3:38 p.m., Brenda Osborne e-mailed, District Director Danny McGinnis and her supervisor, Bill Evans, as follows:

> Bill,
> I received a voice mail message from Cathy Moody this morning concerning Mr. Craig Moody. She said that she had an employee that had chose to receive Cash for any overtime that he works. He was paid cash for last pay period's overtime worked. I checked and he did not turn in the form requesting to be paid Comp until 6/22/07 last pay period. I returned Ms. Moody's phone call before I found out that this was not just an employee, but her son. I left her a message to call me back.

37. The e-mail is factually in error and blatantly misleading. "He was paid cash for last pay period's overtime worked. I checked and he did not turn in the form requesting to be paid Comp until 6/22/07 last pay period." Supervisor Margie Collins was responsible for forwarding the "In Lieu of Cash Compensatory Overtime Request" form to the Board's payroll office prior to June 20, 2007. Brenda Osborne was well aware that supervisor Margie Collins was responsible for forwarding the "In Lieu of Cash Compensatory Overtime Request" form to the Board's payroll office prior to June 20, 2007.

38. On July 2, 2007, Brenda Osborne notified supervisor Margie Collins of Grievant's call. Supervisor Margie Collins did nothing to correct her mistake or take responsibility for untimely filing the "In Lieu of Cash Compensatory Overtime Request" form.

39. On July 2, 2007, Brenda Osborne did not know that Craig Moody had just been released from a hospital and the call by Grievant (his mother) was made while she was taking her son to a physician's appointment. Brenda Osborne acted without determining the facts that led to Grievant's call and Brenda Osborne over emphasized the unacceptability of family members calling the payroll office to inquire about employee benefits. Brenda Osborne contradicted herself on cross examination. Grievant's call was appropriate under the circumstances in this matter.

40. Supervisor Margie Collins' failure to timely file the request for compensatory time in lieu of cash request created the need for Grievant to call Brenda Osborne on July 2, 2007. Brenda Osborne's actions partially attributed to the Boards over reaction in this matter.

41. Grievant's July 2, 2007 call to Brenda Osborne was proper and was motivated solely to correct an administrative failure which led to the denial of her son's request for compensatory time.

42. The record does not demonstrate that Grievant failed to maintain satisfactory and harmonious working relationships with the public and fellow employees.

43. The record does not demonstrate that Grievant engaged in conduct unbecoming an employee in State service.

44. The record does not demonstrate that Grievant engaged in any action that would seriously disrupt or disturb the normal operation of the agency or interfere with the ability of management to manage.

45. The record does not demonstrate that Grievant refused to accept a reasonable and proper assignment from an authorized supervisor.

46. The record does not demonstrate that Grievant interfered with the supervision of her son.

CONCLUSIONS OF LAW

1. Upon review of the record and argument of the parties, it is CONCLUDED that the Board failed to meet its burden of proof, by a preponderance of the evidence that Grievant Kathie Moody in any way violated any Board policy, rule, procedure or requirement that would justify any disciplinary action.

2. Board of Probation and Parole Policy 202.01 Code of Ethics: Section VI Standards of Conduct:

> "This policy shall be integrated and enforced to protect the public interest. It is intended that employees be prevented from unfairly benefiting from public employment. It is further intended that the public trust in the conduct of the Board and its employees be ensured by conduct being above reproach…(b) Any conduct that would create a justifiable impression in the public mind that the public trust is being violated is prohibited."

3. It is CONCLUDED that Grievant did not violate the Board's Code of Ethics. This allegation/charge is baseless and without merit. The record contains no credible evidence that Grievant unfairly benefited from public employment, that Grievant in any way impacted the public trust in the conduct of the Board, that Grievant's conduct in any way was not above reproach, or that Grievant's conduct created an impression in the public mind that the public trust was being violated. Board Director of Field Services Gary Tullock testimony concerning an alleged violation of ethics by Grievant was misplaced and without merit.

4. **1120-10-.06 EXAMPLES OF DISCIPLINARY OFFENSES**. The following causes are examples of those considered for disciplinary action and should not be considered the only causes of action.

> (4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees.
>
> (8) Gross misconduct or conduct unbecoming an employee in the State service.
>
> (11) Falsification of an official document relating to or affecting employment.
>
> (12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the State service or that would interfere with the ability of management to manage.
>
> (18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

5. It is CONCLUDED that Grievant maintained satisfactory and harmonious working relationships with the public and fellow employees. The record contains no credible evidence that would demonstrate that Grievant maintained unsatisfactory and unharmonious working relationships with the public or fellow employees.

6. It is CONCLUDED that Grievant's conduct was not gross misconduct or conduct unbecoming an employee in State service. The record contains no credible evidence that would demonstrate that Grievant's conduct was gross misconduct or conduct unbecoming an employee in State service.

7. It is CONCLUDED that Grievant did not falsify any official document relating to or affecting employment. The record contains no credible evidence that would demonstrate that Grievant falsified any official document relating to or affecting employment. Although, the

Board withdrew this allegation at Level 4 of the grievance process, the allegation demonstrates the Board's over reaction in this matter.

8. It is CONCLUDED that Grievant did not seriously disrupt the normal operation of the agency, institution, department or other segment of the State service or that would interfere with the ability of management to manage. The record contains no credible evidence that would demonstrate that Grievant seriously disrupted the normal operation of the agency, institution, department or other segment of the State service or that would interfered with the ability of management to manage.

9. It is CONCLUDED that Grievant did not refuse to accept a reasonable and proper assignment from an authorized supervisor (insubordination). The record contains no credible evidence that would demonstrate that Grievant acted in any insubordinate manner.

10. It is CONCLUDED that the testimony of Brenda Osborne is not credible. This conclusion is based on her demeanor, the self serving nature of her testimony and the contradictions in her testimony at the hearing and the contradictions in her testimony and the record exhibits[3]. Brenda Osborne's intent to infer that Craig Moody did not timely forward the "In Lieu of Cash Compensatory Overtime Request" form is blatantly misleading. Brenda Osborne was well aware that Craig Moody signed the form on June 11, 2007, that Craig Moody's immediate supervisor Margie Collins signed the form on June 12, 2007, that Margie Collins was responsible for filing the form on or before June 20, 2007 and that as a consequence of Margie Collins negligence the form was untimely filed on June 22, 2007.

11. It is CONCLUDED that the testimony of Board Director of Field Services Gary Tullock is not credible. This conclusion is based on his demeanor at the hearing, the self serving nature of his testimony, his lack of knowledge of the events leading to the Board's disciplinary

[3] Brenda Osborne testified by telephone.

action and that his testimony concerning any alleged violation of ethics was misplaced and without merit.

12. It is CONCLUDED that the testimony of Margie Collins (Craig Moody's immediate supervisor) is not credible. This conclusion is based on her demeanor at the hearing, the self serving nature of her testimony, the contradictions in her testimony and the contradictions between her testimony and the record exhibits.

13. It is CONCLUDED that the testimony of John Mashburn is credible. This conclusion is based on his demeanor at the hearing, the agreement of his testimony and other credited testimony and the agreement of his testimony and the record exhibits.

14. It is CONCLUDED that the testimony of Grievant is credible. This conclusion is based on her demeanor at the hearing, the agreement of her testimony and other credited testimony and the agreement of her testimony with the record exhibits.

15. It is CONCLUDED that the Board's action to suspend Grievant Kathie Moody for one day was arbitrary, capricious and without any legal or factual justification.

16. It is CONCLUDED that Grievant is entitled to all lost pay and benefits resulting from the Board's action to suspend her for one day.

17. It is CONCLUDED that Grievant is entitled to an award of attorney fees and costs. This conclusion is based on the circumstances of this case.

18. It is ORDERED that the one-day suspension of Grievant Kathie Moody is REVERSED.

19 It is ORDERED that the Board shall make Grievant whole for all lost pay and benefits resulting from the Board's suspension of Grievant Kathie Moody.

20. It is ORDERED that the Board shall remove any reference to the one-day suspension of Grievant Kathie Moody from employment records maintained by the Board and/or the State of Tennessee.

21. It is ORDERED that based upon the facts and circumstances of this case Grievant is entitled to an award of attorney fees and costs.

This Order entered and effective this 18th day of December, 2009.

_____
John Hicks
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the _____ day of _____ 2009.

Thomas G. Stovall, Director
Administrative Procedures Division