



2-23-2009

TENNESSEE DEPARTMENT OF
CHILDREN'S SERVICES Department/,
Petitioner, vs. Docket No.:
26.43-099580JTAMARA LOVE, Grievant/,
Respondent.

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BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION

IN THE MATTER OF:)	
)	
TENNESSEE DEPARTMENT OF)	
CHILDREN’S SERVICES,)	
<i>Department/Petitioner,</i>)	
v.)	Docket No.: 26.43-099580J
)	
TAMARA LOVE,)	
<i>Grievant/Respondent.</i>)	

INITIAL ORDER

This contested administrative case was heard in Nashville, Tennessee, on February 23, 2009, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, and sitting for the Tennessee Civil Service Commission. Ms. Julie Randall Pablo, Assistant General Counsel, represented the Department of Children’s Services (“the Department” or “DCS”). The Grievant, Tamara Love, appeared *pro se*. At the conclusion of the hearing, the matter was taken under advisement, pending submission of the parties’ Proposed Findings of Fact and Conclusions of Law. On April 29, 2009, the final post-hearing pleading was filed, and the matter was declared ready for consideration.

This fifth-step disciplinary hearing was convened at the Grievant’s request, to consider her appeal from the disciplinary sanction imposed by the Commissioner of Children’s Services. The Commissioner determined that the Grievant was guilty of inefficiency, incompetence, and negligence in the performance of her assigned duties, and imposed a thirty (30) day suspension as a disciplinary sanction. The Grievant appealed that decision, leading to the instant hearing. Upon consideration of all the evidence, arguments of counsel, and the entire record in this matter, it is determined that the disciplinary action taken in this case was appropriate, and should be upheld. This determination is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACTS

1. The Department of Children's Services is the State's public child welfare agency. It maintains offices throughout the state. The Grievant worked in the Department's Shelby County office.

2. The Grievant has been employed by the Department for about fifteen (15) years, and served as both a Case Manager and a Team Leader before becoming a Team Coordinator. She has been a Child Protective Service ("CPS") Team Coordinator ("TC") since 2003. CPS Teams are charged with the duty to investigate allegations of child abuse and neglect, and to resolve those allegations in a way that provides for the safety and welfare of the children involved, pursuant to procedures established by the Department. Each CPS Team is comprised of Case Managers ("CM") and Investigators who are supervised by a Team Leader ("TL").

3. CPS Team Coordinators supervise a number of CPS Teams.¹ Additionally, when, for any reason, a Team Leader is not available to supervise his/her team, the TC provides the necessary direct supervision for that team in the TL's absence. During at least a portion of the time involved in this case, one of the TL's supervised by the Grievant was out of the office on active military duty overseas, and the Grievant was providing direct supervision for the members of his team.

4. In late 2005 and early 2006, the Grievant supervised a team that was assigned to handle a report of sexual abuse of a child under the age of six (6) years. The report alleged that she was being abused by her grandmother's husband, Sherman Butler ("Butler"), with the knowledge of her grandmother, an allegation that should have alerted the Grievant and her team to be especially vigilant.

5. When the investigation began, no one on the Grievant's team accessed prior Departmental records related to the child or her family. The first step in a competent abuse investigation is to conduct a historical search of the Department's records, to reveal the Department's past contacts with the family. Had they done so in this case, the

¹ In Shelby County that number is around five (5). In the rest of the State, it is closer to ten (10).

Grievant and her team would have discovered several similar reports related to physical and sexual abuse of the child and her sister over the previous years.²

6. During the course of the investigation, the child reported that Butler had, in fact, touched her inappropriately, and that her grandmother was aware of it. She also told the investigators that her grandmother had “coached” her to deny that Butler had touched her. The child and her sister were living in the home of their grandmother and Butler.

7. Despite the child’s disclosures, the responsible team members did not recommend a finding that sexual abuse had occurred. Based on the flawed investigation, and without checking to see whether proper procedures had been followed, the Grievant agreed to allow the child’s grandmother to take her home, under an Immediate Protection Agreement (“IPA”). IPAs require coordination with the Department’s Legal office, which has attorneys available at all times for consultation with CPS Team members. In this case, however, the Grievant implemented the agreement without consulting the Department’s Legal Counsel.

8. Shortly after the child went home with her grandmother, without notice to DCS, she was taken out of the State by her grandmother and Butler, and her whereabouts were unknown for the next year. When a child leaves the jurisdiction under such circumstances, Departmental policy requires that her name and other relevant information be reported to the National Crime Information Center (“NCIC”), so that law enforcement and child welfare agencies across the nation are alerted to watch for the child, and can notify the Department if she is located. Despite the seriousness of the allegations, and the nature of the abuse revealed by the child, when she was removed from the State, neither the Grievant nor any member of her team reported the case to the NCIC.

9. In early 2007, the Department received information that the child and her grandmother and Butler had been living in Illinois, and that the abuse had continued while there. The child was returned to the Department’s custody in Tennessee, and she was placed in a safe foster home.

² A number of those earlier reports resulted in incomplete, late, or otherwise insufficient investigations under the Grievant’s supervision,

10. Based on an investigation conducted by the Department, the Commissioner found that the Grievant was inefficient, ineffective and negligent in the performance of her duties, and imposed a thirty (30) day suspension as a disciplinary sanction. The Grievant filed an appeal of that decision, resulting in the scheduling of this hearing.

CONCLUSIONS OF LAW and ANALYSIS

1. The Department of Children’s Services is the Petitioner in this matter, the party that initiated the proceedings, and as such, it is assigned the “burden of proof.” The burden of proof is the duty imposed upon a party to establish, by a preponderance of the evidence, that an allegation is true, or that an issue should be resolved in favor of that party. A “preponderance of the evidence” means the “greater weight of the evidence,” or “the more probable conclusion, based on the evidence presented.” The burden of proof is generally assigned to the party seeking to change the present state of affairs with regard to any issue. Rule 1360-4-1-.02(7), TENN. COMP. R. & REGS. In the instant case, that means that the Department of Children’s Services must prove, by a preponderance of the evidence, that the Grievant was inefficient, incompetent or negligent in the performance of her duties, as set out in State statutes, and Departmental Rules, Regulations and Policies.

2. Thus, the issues presented for consideration in this case are (1) whether the Petitioner has proven, by a preponderance of the evidence, that the Grievant was inefficient, incompetent or negligent in the performance of her duties, as alleged; and (2) if so, whether the sanction imposed by the Commissioner was appropriate. With respect to both issues, the Department has met its burden of proof.

3. Rule 1120-10-.06, TENN. COMP. R. & REGS, provides as follows:

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.

- (1) Inefficiency and incompetence in the performance of duties
- (2) Negligence in the performance of duties

* * *

The terms “inefficiency,” “incompetence” and “negligence,” are used in this Rule as they are in common daily usage. Webster’s New World Dictionary of the American Language equates “inefficiency” and “incompetence” with “ineffectiveness” and “failing to meet requirements.” It defines “negligence” as the “habitual failure to do the required thing; carelessness [or] indifference.”

4. As a Child Protective Services Team Coordinator, the Grievant was responsible for supervising and guiding CPS teams as they opened new cases, processed and investigated those cases, implemented resolutions, reported the results, and closed those files. Part of her supervisory duties included ensuring that all Departmental policies and procedures were followed throughout the CPS team’s contact with the case.

5. In the instant case, however, the Grievant failed at the outset to ensure that the Case Managers and Investigators initiated a Departmental records search of the child and her family when the case referral was received. If such a search is not independently initiated by the case worker, it is the Team Coordinator’s job to do it. Such a search would have revealed frequent contact with the family over the previous years, and would have raised “red flags” concerning the past allegations of physical and sexual abuse in the child’s home. The Grievant, herself, said that, had she known of the prior family history, she would have handled the case differently.

6. If the Grievant had been as involved in the case as she should have been, she would have been aware that the child had confirmed to DCS investigators that she was sexually abused by the grandmother’s husband, that her grandmother was aware of the abuse, and that her grandmother had coached her to lie to investigators. Such knowledge would likely have persuaded the Grievant not to approve the Immediate Protection Agreement that returned the child to the grandmother’s abusive home.

7. And, had the Grievant followed proper Departmental procedure, she would not have approved the Immediate Protection Agreement without first seeking consultation with, and approval of the Department’s Legal Counsel. By cutting the legal office out of the IPA discussions, she not only violated protocol, but neglected to consider the valuable

advice that a lawyer could have provided about the potential legal impact of returning the child to the perpetrator's home. It goes without saying that, if the child had not been returned to her grandmother at that time, she may not have been removed to another State and suffered additional months of victimization at the hands of her grandmother's husband.

8. And, finally, even after the child was secretly taken away, the Grievant still had one last chance to try to reduce the length of her absence and continued abuse, by following the Department's requirement that she report the information to the NCIC. Such a report would have effectively alerted law enforcement and welfare personnel, nation-wide, to the child's plight. Any contact with those agencies would have triggered notification of her whereabouts to the Department. She failed to notify the NCIC.

9. As indicated, the investigation and handling of this case provided numerous chances for the Grievant to actively supervise members of her team and to intervene on behalf of the child, to secure her safety and welfare. Instead, from the initial referral through the child's removal from the jurisdiction by the perpetrator, the Grievant ignored established Departmental procedures and policies, and created one opportunity after another for the child to be harmed. The chronology of this case, as set out above, is replete with examples of the Grievant's inefficiency, incompetence, and negligence in the performance of her duties.

10. Having concluded that the Department has established its factual allegations against the Grievant, the question becomes, "What is the proper disciplinary sanction for such misconduct?" The law provides that: "A career employee may be warned, suspended, demoted or dismissed by his appointing authority whenever just or legal cause exists. The degree and kind of action is at the discretion of the appointing authority. . ." Rule 1120-10-.02, TENN. COMP. R. & REGS. Although the law prescribes implementation of progressive discipline for State employees, it also provides that disciplinary action must be administered at the step which is most appropriate for the misconduct. (*See*, TENN. CODE ANN., Sec. 8-30-330; and Rule 1120-10-.07, TENN. COMP. R. & REGS.) As the courts have recognized in other cases dealing with these provisions,

“ . . . the key word in the statute is ‘appropriate.’ . . . (T)he language of these provisions does not mandate application of discipline in a routine fashion without regard to the nature or severity of the behavior it is intended to address. The supervisor has discretion to determine what punishment fits the offense.”

Berning v. State, 996 S.W.2d 828, 830 (Tenn. App. 1999).

Clearly, some cases are so egregious, given the harmful impact of the employee’s actions or omissions, that they support a decision to skip over lesser sanctions, like oral and written warnings, and short suspensions, in favor of more severe sanctions, up to and including separation from state employment.

11. When the Commissioner considered the issue of punishment in this case, she had a wide range of options at her disposal. *See*, Rule 1120-10-.07, TENN. COMP. R. & REGS. The seriousness of the Grievant's failures, including her failure to provide proper oversight to her team, her failure to properly classify the child’s case as abuse, her failure to follow Departmental procedures related to consultation with the legal office, and her failure to alert the NCIC of the child’s status, all weigh heavily in favor of a severe sanction. In mitigation, however, are the many years of good and faithful service that the Grievant has given to the Department, and the absence of prior disciplinary actions from her record. Upon due consideration of all these factors, it is concluded that the Commissioner’s decision to impose a thirty (30) day suspension was appropriate.

Accordingly, based on these findings, conclusions and analysis, and upon full consideration of the pleadings, hearing testimony and other evidence, and the entire record, it is concluded and determined that the Tennessee Department of Children’s Services has met its burden of proof, and has established by a preponderance of the evidence that the Grievant, Tamara Love, acted with inefficiency, incompetence and negligence in the performance of her duties, as alleged, and that a thirty (30) day suspension, is the appropriate disciplinary sanction for that conduct.

IT IS THEREFORE ORDERED that the Commissioner's sanction of a thirty (30) day suspension is UPHELD, and the Grievant's Fifth Step Civil Service Appeal of the Commissioner's decision is hereby DISMISSED.

Entered and effective this 9th day of June, 2009.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 9th day of June, 2009.



Thomas G. Stovall, Director
Administrative Procedures Division