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Cassandra Y. Murphy

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**STATE OF TENNESSEE
CIVIL SERVICE COMMISSION**

IN THE MATTER OF:

Cassandra Y. Murphy

DOCKET NO: 26.05-099374J

INITIAL ORDER

This matter came to be heard on the 27th day of March, 2009, before Rob Wilson, Administrative Law Judge, sitting for the Tennessee Civil Service Commission. The State of Tennessee was represented by attorney Bryce Coatney. The Grievant was represented by attorney Robert O'Connell.

Grievant, an employee of the State of Tennessee, Department of Corrections, is contesting a five day suspension for an alleged violation of Tennessee Department of Correction (TDOC) policy 506.07, *Use of Force/Security Devices*. Specifically, it is alleged that Grievant used excessive force toward inmate Renee Bishop. As a result of the violation Grievant was originally given a ten day suspension and reclassified from a correctional clerical officer to a correctional officer. After reviewing the grievance file the Department of Corrections Commissioner reduced the ten day suspension to a five day suspension. Grievant properly appealed this disciplinary action, and this hearing constituted Grievant's 5th step hearing before the Civil Service Commission.

After due consideration of the evidence and the record as a whole it is **DETERMINED** Grievant was improperly suspended for five days, and the Petitioner has failed to prove by a preponderance of the evidence that any violation of TDOC policies occurred.

This determination is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Cassandra Murphy has been employed for twelve years as a correctional officer and a correctional clerical officer at the Mark Luttrell Correctional Center. She has generally had high performance evaluations, although there has been one previous "Use of Force" violation.
2. On February 12, 2008, at approximately 12:30 pm, there was an incident where Cassandra Murphy noticed inmate Renee Bishop banging on a glass window near the cafeteria. Inmate Bishop was working in the cafeteria and she was banging on the window to get the attention of another inmate, Teresa Ladd.
3. Inmates Bishop and Ladd are friends. Two days prior to the incident on February 12th, Cassandra Murphy issued a disciplinary action for possession of tobacco to Teresa Ladd. The disciplinary hearing for the tobacco infraction was held on February 12th. Apparently Ms. Bishop was either trying to find out, or had already found out the results of the tobacco disciplinary hearing.
4. Cassandra Murphy told inmate Bishop to get back to her post. Ms. Bishop refused, saying that she *was* at her post. Inmate Bishop continued banging on the window, and Cassandra Murphy again told inmate Bishop to stop banging on the window and return to the kitchen. Ms. Bishop again refused and continued her disruptive behavior.
5. Cassandra Murphy then grabbed inmate Bishop by the right shirt sleeve and escorted her out of the dining room to Operations.
6. As a result of this incident, Cassandra Murphy was charged with violating TDOC Policy 506.07, Use of Force/Security Devices.

7. A due process hearing was held on February 28, 2008. On March 10, 2008, Acting Warden Dwight Barbee upheld the allegation and suspended Cassandra Murphy for ten days. Additionally, Warden Barbee re-classified Cassandra Murphy from a Correctional Clerical Officer to a Correctional Officer.

8. By letter dated May 6, 2008, Corrections Commissioner George M. Little reduced the ten day suspension to a five day suspension, stating that a five day suspension was more appropriate.

9. Ms. Murphy subsequently requested a level five hearing.

CONCLUSIONS OF LAW

1. In a fifth step level hearing, an administrative law judge presides to take proof and render an initial order which is subject to review by the Civil Service Commission. T.C.A. §4-5-301.

2. It is a de novo proceeding, and no presumption of correctness attaches to the action of the agency. Big Fork Mining Co. v. Tennessee Water Quality Control Board, 620 S.W. 2d 515, at 521 (Tenn. App. 1981).

3. The burden of proof rests with the agency and the agency must prove by a preponderance of the evidence that 1) the Grievant acted or failed to act as the agency alleges; 2) the Grievant's action constitutes a disciplinary offense; and 3) the recommended discipline is appropriate for the given offense. Id. at 520.

4. The Department of Corrections bears the burden of proof in this case. The standard of proof is a preponderance of the evidence. TN. Department of State, Administrative Procedures Division, Rule 1360-4-1-.02(3)(7).

5. Preponderance of the evidence simply 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.” Id.

6. **TDOC Policy 506.07, *Use of Force/Security Devices.***

V. POLICY: The use of physical force shall be restricted to instances of justifiable self-defense, protection of others, protection of property, prevention of escapes, and to ensure compliance with lawful orders, and then only as a last resort and in accordance with procedures outlined in this policy.

VI. PROCEDURES:

A. Physical Handling

1. The first level of force available to a correctional officer is the employment of his/her hands. Physical handling is justified to subdue unruly inmates, to separate participants in a fight, to engage in self-defense, and to defend staff, inmates, or other persons. **It may also be employed to move inmates who fail to comply with lawful orders.**
[Emphasis added]

2. As with the use of any type of force, the amount of physical handling shall only be as much as is reasonable and necessary under the circumstances.

7. **MINIMUM DUE PROCESS (Rule 1120-10-.03)**

(1) Career employees have a "property right" to a position in the classification in which they currently hold career status. Therefore, no suspension, demotion, dismissal or any other action which deprives a regular (career) employee of his "property right" will become effective until minimum due process is provided as outlined below.

(2) Minimum due process consists of the following:

(a) The employee shall be notified of the charges against him. Such notification shall detail times, places, and other pertinent facts concerning the charges and should be in writing.

(b) The notification will provide for the employee to have a predecision discussion with an appropriate manager and will state the mechanism through

which such a discussion may be arranged. The employee should be given a reasonable period of time to prepare to answer charges and present information which might influence the manager's decision.

(c) The manager conducting such discussions must be an appointing authority or manager who has direct access to an appointing authority for this purpose.

(d) The meeting outlined above shall be for the purpose of allowing the employee to present information to the manager regarding the disciplinary action under consideration.

(e) The discussion shall be informal. The employees shall have the right to present written statements of witnesses or any other information with regard to the charges. Attendance and participation by persons other than the manager and the employee shall be at the discretion of the manager.

(f) If the employee declines the opportunity to have the discussion or present information, the provisions of this section are deemed to have been met.

(3) The commission shall determine as a preliminary matter to the merits of a grievance, a Grievant's allegation that he or she was denied minimum due process.

8. CAUSES FOR DISCIPLINARY ACTION (Rule 1120-10-.05)

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.

9. GRIEVANCE/GRIEVABLE MATTERS (Rule 1120-11-.07)

(1) Disciplinary suspension or demotion.

(2) Disciplinary dismissal.

(3) Involuntary geographical transfer of an employee or official duty station more than fifty (50) miles. Distance will be determined by drawing a circle, with a 50 mile radius, centered on the previous official duty station.

(4) Non-compliance with an approved reduction in force plan by an appointing authority.

(5) Prohibited political activity as outlined in T.C.A. Title 2, Chapter 19 ("The Little Hatch Act").

(6) Coercion of an employee to "waive" his right to consideration on a certificate of eligibles.

(7) Performance evaluations under certain circumstances to the fourth step.

(8) Other matters within the discretion or control of the appointing authority or the Commission.

ANALYSIS

Surprisingly, there is very little difference in each side's testimony. Every witness gave a similar account of the events that transpired on the date in question. It was plainly established that Inmate Renee Bishop started causing a disturbance by pounding on the glass. Cassandra Murphy, who was in the vicinity, ordered Inmate Bishop to stop pounding on the window and go back to the kitchen. Inmate Bishop refused. Cassandra Murphy again asked Inmate Bishop to stop what she was doing, and Inmate Bishop again refused. After Inmate Bishop refused to comply with two lawful orders from Cassandra Murphy, Cassandra Murphy grabbed Inmate Bishop by the shirt sleeve and pulled her toward the direction of Operations. That's the entire incident. Any further elaboration, embellishment, or interpretation of the incident is based on speculation or personal opinion. The TDOC Policy concerning this matter clearly and unambiguously states, "It (physical handling) may also be employed to move inmates who fail to comply with lawful orders." Inmate Bishop failed to comply with the order "Go back to the kitchen." At that very moment, according to the clear wording of the Policy, Cassandra Murphy was justified in using force to move an inmate who refused to comply with a lawful order. Obviously she had several other choices, but she chose to move the non-compliant inmate toward the direction of Operations... a choice clearly spelled out for her in TDOC Policy 506.07.

The Petitioner has failed to prove by a preponderance of the evidence that any violation of TDOC Policies occurred. Accordingly, Grievant's five day suspension is **REVERSED**, the disciplinary report shall be removed from her record, and she shall be restored back to the Correctional Clerical Office position she held before the February 12th, 2008 incident.

Additionally, Ms. Murphy shall receive back-pay for the five day suspension, as well as applicable attorney's fees.

IT IS SO ORDERED.

This Initial Order entered and effective this 15th day of May, 2009.

Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 15th day of May, 2009.



Thomas G. Stovall, Director
Administrative Procedures Division