



10-29-2009

DEPARTMENT OF CHILDREN'S SERVICES,
Petitioner, vs. Docket No.: 26.43-100298J Docket
No.: 26.43-103645J Docket No.:
26.43-100903J WILMA WILEY, Grievant

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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

**DEPARTMENT OF CHILDREN'S
SERVICES,**)
)
)
Petitioner,)
)
v.)
)
WILMA WILEY,)
)
Grievant.)

Docket No.: 26.43-100298J
Docket No.: 26.43-103645J
Docket No.: 26.43-100903J

AMENDED INITIAL ORDER

This matter was heard on October 27, 28, and 29, 2009, in Chattanooga, Tennessee, before Judge John Hicks, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Children's Services. Attorneys Julie Pablo and Kristi Faulkner represent the Petitioner, and Grievant is represented by attorney James Anderson of Chattanooga.

ISSUES FOR DETERMINATION

1. Did Grievant fail to report the arrest of an insubordinate to DCS's central office in violation of DCS Policy 4.12, and if so, was a three day suspension appropriate disciplinary action?
2. Did Grievant fail to insure that she and her subordinates act in accordance with DCS Policy 31.2 concerning absconders, and if so, was a four day suspension appropriate disciplinary action?

3. Did Grievant fail to insure that permanency plans for her client children were completed in compliance with DCS Policy 16.31, and if so, was a demotion from Case Manager 4 to Case Manager 2 appropriate disciplinary action?

PRELIMINARY ISSUES

As noted above, these cases were heard by Administrative Law Judge John G. Hicks. Judge Hicks is on medical leave and is not able to complete the Initial Order. Pursuant to T.C.A. §§ 4-5-302 and 4-55-314 (e), Administrative Law Judge Steve R. Darnell has been designated to prepare the Initial Order from the record created by Judge Hicks.

By preliminary order docket numbers 26.43-100298J and 26.43-100903J were consolidated for all purposes. However, docket number 26.43-103645J does not appear to have been consolidated with these other matters. All issues involved in these three docket numbers were heard as if they were consolidated. To resolve potential confusion, cases numbers 26.43-100298J, 26.43-100903J and 26.43-103645J are hereby consolidated for all purposes.

During the testimony of Elleni Dimopulos, and at other times during the hearing, Grievant asked the ALJ to draw an “adverse inference” towards the Petitioner’s case for its failure to respond to Grievant’s interrogatories. It is not argued that Petitioner provided untruthful or inadequate response, but that Petitioner objected on various grounds to Grievant’s interrogatories. Grievant apparently believes that Petitioner’s objections were insincere. The proper procedure to resolve an objection to any discovery or compel compliance with the rules of discovery is to bring the matter before the ALJ by motion prior to the hearing. The undersigned is unaware of any procedure of drawing an “adverse inference” towards a party’s case in lieu of resolving the objection by motion prior to hearing. Grievant’s motion is denied.

Grievant objected to any witness testifying about the contents of any document unless the document was also introduced into evidence. There is no rule of evidence or procedure that requires this method concerning documents¹. Grievant's motion on this issue is denied.

The investigative reports of DCS were admitted into evidence without objection of the Grievant. Although certain parts of the report are hearsay, those portions which are not hearsay, such as Grievant's statements, will be considered.

SUMMARY OF DETERMINATION

It is **DETERMINED** that Grievant's three-day and four-day suspensions were proper and are upheld. Petitioner also showed, by a preponderance of the evidence, that Petitioner was either unable or unwilling to fulfill her duties as a Case Manager 4, and that demotion was proper. However, Petitioner failed to show, by a preponderance of the evidence, that demotion to Case Manager 2 was appropriate. Petitioner should have been demoted to Case Manger 3. Grievant's discipline is modified accordingly.

FINDINGS OF FACT

1. The Grievant has worked for the state for twenty-four years and had been in a supervisory position for the last eight years. She has received "superior" job performance ratings the entire time she has been in a management position. However, her recent evaluations were below "superior" and challenged by Grievant. Petitioner modified her evaluations to a

¹ This issue is not controlled by Rules 1001-1008 of the Rules of Evidence as argued by Grievant. What is often referred to as the best evidence or original writing rule is applicable only when there is an attempt to recreate the contents of a writing that is controlling in the litigation. This rule is generally summed up as: "where the terms are material, the **original writing** must be produced unless it is shown to be unavailable for some reason other than the serious fault of the proponent." **Tennessee Law of Evidence**, 4th Edition, Paine, et al., §10.01, quoting **McCormick on Evidence**.

“superior” rating with noted issues of concern. At all times relevant to this case, Grievant served as a Case Manager 4 for DCS.

2. As a Case Manager 4, Grievant, under general supervision, is responsible for professional case management supervisory work of average difficulty; and performs related work as required.

DISTINGUISHING FEATURES: This is the first full supervisory class in the DCS Case Manager job series. An employee in this class is responsible for the supervision of staff who are providing case management services for children under the State's supervision, in State custody, or at risk of State custody, and their families. This class differs from DCS Case Manager 3 in that an incumbent of the latter performs lead level case management work. This class differs from DACES Team Coordinator in that an incumbent of the latter is responsible for managing operations and programs in a regional or field office or multiple/large residential programs and supervises members of this class. (emphasis added).

Examples of Duties and Responsibilities:

1. Assigns, trains, supervises, and evaluates case managers and clerical staff in a field or regional office: assigns case loads to case managers and makes other staff assignments; coordinates the training of new staff; monitors work activities and reviews work products to ensure quality and conformance to policies, procedures, and standards; develops job plans; holds periodic conferences with staff to provide guidance and advice relevant to job performance; conducts interim and annual performance evaluations.

2. Supervises case management services for children and families: reviews case information provided by court liaison or other referral source; assigns cases to case managers based on type of case (i.e., juvenile justice, child welfare, or crisis intervention) and current work load of case managers; monitors case management activities to ensure adherence to established policies, procedures, and guidelines; recommends techniques/methods to case managers for handling problems and issues relevant to assigned cases; reviews narrative reports of case activities to ensure they contain complete and accurate descriptions of events, clear linkage of documented evidence to legal regulation or agency policy, accurate responses to court and agency inquiries, and conform to agency policy.

3. Supervises case managers investigating suspected cases of child abuse or neglect: establishes a child abuse review team comprised of law enforcement, medical, psychiatric, and school personnel; reviews all cases indicating child abuse/neglect; monitors investigative activities to be sure they are carried out according to established policies and laws; determines if abuse or neglect has occurred, who the abuser is, the level of risk or harm to the child, and the need for a safety plan; makes recommendations as to whether the child should remain in the home.

4. Coordinates adoption services: establishes foster care review board; directs and reviews the work of case managers in the areas of adoptive and foster parent recruitment and training; assures that foster care reviews are done appropriately; compares child's needs to family's capabilities to appropriately match a child with a family; assists child in preparing for adoptive placement; completes all paperwork regarding adoption and foster care and ensures that foster care/adoption files have proper documentation as mandated by law; negotiates financial adoption assistance agreements; places child in adoptive or foster home; monitors adoptive and foster families to check the compatibility of the child with the family; resolves conflicts with adoptive and foster placement to ensure permanency of placement; regularly reviews financial adoption assistance agreements to determine the necessity of their continuation.

5. Performs community liaison work for the Department of Children's Services, representing the department in a variety of formal and informal contacts: works with courts and governmental organizations concerning social, treatment, educational, and juvenile justice programs; addresses civic, professional, school groups and others regarding the Children's Services programs and related issues.

6. Writes policies and procedures and reviews policy drafts for compliance with agency standards; totals caseload activities and prepares monthly or office composite reports.

3. There is testimony in the record that the Grievant's particular work unit was strained and not properly staffed. However, the proof is not sufficient to show, by a preponderance of the evidence, that Grievant was laboring under any extraordinary conditions than what is typically experienced by DACES. Accordingly, no finding of such facts is made.

4. The Grievant received an oral warning in January of 2007 for negligence in the performance of duties for failing to ensure that a case worker which she supervised followed DCS's absconder policy. Grievant received a written warning in June of 2007 for negligence in the performance of duties and inefficiency in the performance of duties for not having proper documentation completed.

5. In August of 2007 Grievant was advised by a subordinate that he had been arrested for domestic assault. DCS's Policy 4.12 required Grievant to immediately notify DACES central office of the arrest so it could address the issue. Grievant recognized the significance of this

arrest because she consulted the Tennessee Department of Personnel's policies on arrest of employees. She erroneously determined that no further action was required on her part. She failed to know of or discover that DACES had a specific policy noted above. Grievant failed to report the matter to the central office or her supervisor. The employee continued to work directly with DCS's client children and families until the matter was discovered during an investigation. There was no attempt to conceal the arrest or protect Grievant's subordinate. Grievant simply failed to comply with DACES Policy 4.12.

6. Grievant is obligated to learn and know the policies and procedures of DACES in order to carry out her job as Case Manager 4. Since Grievant had held the Case Manger 4 position for approximately eight years, her claim of lack of knowledge and training is not credible. Grievant was properly given a three-day suspension in June of 2008 as a result of failing to report the arrest of her subordinate.

7. On August 20, 2008, Grievant was given a four-day suspension for failing to properly supervise her staff as it pertained to runaways/absconders, as well as for failing to conduct bi-weekly conferences to develop strategies to locate absconders. DACES Policy 31.2 mandates that "[t]he team leader [Grievant in this case] or team coordinator will conduct biweekly conferences with the family service worker and discuss strategies likely to result in the apprehension of all the runaways."

8. Grievant failed to follow DACES Policy 31.2 relating to four different children. One of the children on the Grievant's subordinate's caseload was missing for twenty-five days and neither a checklist was filled-out, nor was notification of the missing child made to the absconder unit as required by DACES policy. A second child was missing for one day, and the Grievant again failed to ensure her subordinate made notification of the missing child. The third child was

missing for five days and the Grievant failed to ensure that notification was made. The fourth child was missing for thirty-one days, and the Grievant again failed to ensure notification was made in accordance with mandated policy.

9. Grievant had received training on DCS's runaway/absconder policy, but she did not attend all the training available to her. However, these incidents arose over a four month period, October, November, December of 2007, and February of 2008. According to its notated history, DCS's Policy 31.2 it has been in effect in some form since 1998. Any claim by Grievant that she did not know of or was not adequately trained on DCS's Policy 31.2 is just not credible. As a 24 year veteran of DACES, she should have been well aware of this policy. In fact, Grievant admitted to a DACES investigator that she had been ignoring DCS's absconder policies and did not attend the absconder training conducted.

10. On February 8, 2009, the Grievant was demoted to Case Manager 2 for not ensuring permanency plans were done timely, as well as for not conducting three-month reviews & child and family team meetings, and for failing to properly supervise staff. The investigation of Grievant's job performance was prompted by an incident wherein a DACES client child drank cleaning fluid at the facility where he resided.

11. It appears that the child consumed the cleaning fluid as a direct result of not receiving his medication.

12. The particular child did not receive his psychotropic medication or a follow up medical appointment. This was a direct result of his Family Service Worker's negligence, but timely reviews and adequate supervision of the Family Service Worker by Grievant could have discovered and prevented these lapses.

13. There is no allegation that Grievant was directly responsible for the incident with the child. However, during the investigation into the occurrence, it became clear that Grievant failed to properly supervise her subordinate who was directly responsible for the child's actions. Further, Grievant failed to comply with numerous DACES policies that are designed to prevent such occurrence.

14. Grievant failed to timely complete the permanency plan for the above referenced child. DACES Policy 16.31 requires: "Permanency plans shall be updated no less often than annually. However, it is preferable to achieve permanency in less time whenever possible. Permanency plans must be reviewed during the quarterly review process so the opportunity to update and define activities out to be revisited on a regular basis." This child's permanency plan should have been updated on August 8, 2008, but was not updated until October 10, 2008.

15. This policy also requires that the child's permanency plan be reviewed in the context of a child and family team meeting (CFTM) every three months. Grievant failed to conduct CFTM reviews in violation of DCS's policies. Grievant's failure to timely review this child's permanency plan led to his placement in an inappropriate facility for three months.

16. Grievant testified that she felt responsible as a supervisor for the permanency plan not being properly completed.

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. Some instances of misconduct require an elevated level of discipline, even if the employee has no history of prior disciplinary action. Berning v. State, 996 S.W.2d 828, 830 (Tenn. App. 1999).

4. The Department of Children's Services 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. **PURPOSE (Rule 1120-10-.01)**

To establish standards for the application of disciplinary procedures which will assure fairness and uniformity among agencies and institutions subject to the provisions of these rules.

7. **POLICY (Rule 1120-10-.02)**

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, but must be in compliance with the intent of the provisions of this rule and the Act. An executive service employee serves at the pleasure of the appointing authority.

8. **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.

9. **EXCEPTION TO MINIMUM DUE PROCESS (Rule 1120-10-.04)**

When an employee is acting in a dangerous or otherwise threatening manner and must be removed from the workplace immediately, it is not necessary to provide "minimum due process" prior to removal. Minimum due process must be provided after removal as soon as practicable. The employee, in this case, may be placed on leave or on immediate suspension without pay.

10. **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.

11. **EXAMPLES OF DISCIPLINARY OFFENSES (Rule 1120-10-.06)**

The following causes are examples of those considered for disciplinary action and should not be considered the only causes of action.

(1) Inefficiency or incompetency in the performance of duties.

- (2) Negligence in the performance of duties.
- (3) Careless, negligent or improper use of State property or equipment.
- (4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees.
- (5) Habitual improper use of sick leave privileges.
- (6) Habitual pattern of failure to report for duty at the assigned time and place.
- (7) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment.
- (8) Gross misconduct or conduct unbecoming an employee in the State service.
- (9) Conviction of a felony.

- (10) Willful abuse or misappropriation of State funds, property or equipment.
- (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.
- (13) Trespassing on the property of any State officer or employee for the purpose of harassment.
- (14) Damage or destruction of State property.
- (15) Acts that would endanger the lives and property of others.
- (16) Possession of unauthorized firearms, lethal weapons, alcohol or illegal drugs on the job.
- (17) Brutality in the performance of duties.
- (18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).
- (19) Reporting to work under the influence of alcohol or illegal drugs, or partaking of such on the job.
- (20) Sleeping or failure to remain alert during duty hours.
- (21) Betrayal of confidential information.
- (22) Garnishment of wages for more than one indebtedness.
- (23) Political activity prohibited by T.C.A. Title 2, Chapter 19 (The Little Hatch Act)
- (24) For the good of the service as outlined in T.C.A. 8-30-326. (Emphasis added).

12. PROGRESSIVE DISCIPLINARY ACTION (Rule 1120-10-.07)

- (1) The supervisor is responsible for maintaining the proper performance level, conduct and discipline of the employees under his supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the appropriate step as described.
- (2) Oral Warning. The supervisor will meet privately with the employee to:
 - (a) Review with the employee exactly what is expected on the job and why.
 - (b) Explain to the employee how he has not met requirements and why present conduct or performance is unacceptable.
 - (c) Allow the employee to give reasons for his actions or failure.
 - (d) Make suggestions for correction.
 - (e) Record the date of the discussion and other necessary information for future reference.
 - (f) Written follow-up to the discussion may be forwarded to the employee but is not required. Written follow-up to an oral warning should not be construed as a written warning as described below and will not become part of the employee's official personnel file.
- (3) Written Warning. The supervisor will meet with the employee and:
 - (a) Review the points covered in the oral warning, if an oral warning(s) was administered. The employee will be told that a significant change in his present conduct or performance must be made.
 - (b) Tell the employee he will receive a letter covering the significant points of the discussion to include:
 - 1. What has been expected and how these expectations have not been met.
 - 2. Suggestions for improvement.
 - 3. Indication that failure to improve will lead to further disciplinary action.
 - (c) Review with the organizational unit head the contents of the letter prior to its delivery to the employee by the supervisor.

(d) A copy of the written warning may be placed in the employee's official personnel file in the agency personnel office at the discretion of the appointing authority. Any written warning which has been issued to an employee shall be automatically expunged from the employee's personnel file after a period of two (2) years from the date of the letter; provided, that the employee has had no further disciplinary actions with respect to the same area of performance, conduct, and discipline.

(4) Suspension Without Pay.

(a) After minimum due process is provided, a suspension without pay may be issued by the appointing authority for one (1) to thirty (30) days. No employee may be suspended without pay for disciplinary purposes for more than thirty (30) days in any consecutive twelve (12) month period. Suspensions with or without pay of more than thirty (30) days may be issued pending the outcome of an investigation or legal action with approval of the Commissioner.

(b) Before issuance, a written notice of the suspension without pay will be prepared. The notice will contain an account of the circumstances which led to the decision to issue the suspension, the beginning and ending dates of the suspension and information to the employee concerning his rights of appeal as outlined in Chapter 1120-11 of these rules. A copy of the notice will be placed in the employee's official personnel file and a copy will be sent to the Department.

(5) Dismissal.

(a) After minimum due process is provided, an employee may be dismissed by the appointing authority from his position for unacceptable conduct or performance of duties.

(b) Before an employee is dismissed, a written notification detailing the circumstances leading to the decision to dismiss will be prepared. The notice will indicate the effective date and inform the employee of his rights to appeal as outlined in Chapter 1120-11 of these rules. A copy of the notice will be placed in the employee's official personnel file and a copy will be sent to the Department.

(c) Before an employee can be dismissed, he must be given ten (10) calendar days paid notice. During the notice period an employee will not be required to report for duty. The employee's accumulated annual leave balance may be used during this notice period only if dismissal was for gross misconduct.

(6) Transfer or Demotion. If it is determined by the appointing authority that an employee's ability to satisfactorily perform his duties is beyond the capabilities of the employee or the employee has been compromised by notorious conduct to the extent that he is ineffective in his position, the employee may be demoted or transferred to a position that is more appropriate after minimum due process has been provided.

13. GRIEVANCE/PURPOSE (Rule 1120-11-.01)

To provide clear, orderly and expedient procedures through which all career or permanent employees of the State service may process bona fide complaints or grievances.

14. GRIEVANCE/POLICY (Rule 1120-11-.02)

(1) Career and permanent employees will be given every opportunity to resolve bona fide complaints or grievances through established procedures. Every reasonable effort will be made to resolve complaints at the lowest possible step in the procedure.

(2) Employees using this procedure will be entitled to process their complaints or grievances without fear, interference, discrimination, or reprisal.

15. GRIEVANCE/RESPONSIBILITY (Rule 1120-11-.03)

(1) The Commissioner will be responsible for providing and maintaining the basic standards and guidelines for implementing this rule chapter.

(2) Appointing authorities will be responsible for the proper effectuation of this rule chapter throughout their respective agencies. Modification of these procedures may be made in order to satisfy unusual circumstances within an agency if such modification is approved by the Commissioner.

(3) Appointing authorities will be responsible for ensuring that all employees and supervisory personnel are aware of the provisions of this rule chapter.

16. GRIEVANCE/BASIC STANDARDS (Rule 1120-11-.04)

(1) A complaint or grievance must be filed at the appropriate step in the grievance procedure within fifteen (15) workdays (Monday - Friday, 8:00 a.m. - 4:30 p.m.) of the action which is the basis for the grievance, otherwise it will be considered untimely and invalid.

(2) Although no standard grievance forms are provided, agencies may develop and make available such forms to employees. No grievance may be denied because a standard form adopted by an agency has not been used.

(3) A grievant may represent himself at any step in the procedure.

(4) At the informal hearing before the appointing authority, an attorney or a representative of an employee may speak on behalf of the employee.

(5) Legal counsel may represent a grievant before the Civil Service Commission, which is the final step of this procedure. The grievant and the agency may have counsel present at discussions prior to the final step. The presence of other observers at discussions prior to the final step of this procedure is at the discretion of the manager or supervisor in charge of that discussion.

(6) Grievants may present grievances during business hours or other mutually agreeable hours as work situations may require. Grievance discussions held during the scheduled off-duty hours for a grievant, witness, or representative will be considered the same as overtime work. Grievants or employees who are required to appear as witnesses or representatives will not be required to use leave for such periods and shall be reimbursed for travel and other expenses in accordance with the comprehensive travel regulations.

(7) Grievances concerning suspension without pay must be appealed to the lowest management level in the organization with authority to overturn the suspension.

(8) Grievances concerning dismissal should be appealed directly to the appointing authority, warden, or superintendent.

(9) Grievances concerning alleged discrimination prohibited by T.C.A. 8-50-103 or T.C.A. 4-21-401 may be appealed directly to the appointing authority, warden, or superintendent through this procedure. If the aggrieved is unsatisfied with the decision, the grievance and the appointing authority's response may be appealed to the Commission within thirty (30) days or the Tennessee Human Rights Commission as provided in T.C.A. 8-50-103(b).

(10) Grievance decisions should be communicated in writing directly to the grievant in a timely manner as outlined in Chapter 1120-11-.05. Certified or registered mail is mandatory if a decision must be mailed. Hand delivered grievance decisions should include a written heading indicating "Hand Delivered" with a place for a signature.

(11) Grievances must be expressed in reasonable terms. Each grievance submitted should contain:

- (a) the basis for the grievance;
- (b) the settlement or corrective action desired by grievant; and
- (c) sufficient facts or other information to begin an investigation.

17. **GRIEVANCE/PROCEDURES (Rule 1120-11-.05)**

The appropriate entrance step is determined by the grievant's relative level in the organization. Procedures shall not be more than five (5) steps to finality as follows:

- (1) Step I - Grievant's immediate Supervisor (verbal)
 - (a) Verbal discussion with supervisor within fifteen (15) workdays of cause.
 - (b) Supervisory investigation and fact finding.
 - (c) Decision clearly communicated to grievant within five (5) workdays of discussion.
- (2) Step II - Next Appropriate Higher Level of Management (written)
 - (a) Written grievance submitted to appropriate manager within ten (10) workdays of receipt of Step I decision.
 - (b) Informal discussion or hearing of facts and allegations.
 - (c) Investigation, fact finding, and written decision communicated to grievant within ten (10) workdays of discussion.
- (3) Step III - Next Appropriate Higher Level of Management (written)
 - (a) Written grievance and prior step decision submitted to next appropriate manager within ten (10) workdays of receipt of decision from Step II.
 - (b) Informal discussion or hearing of facts and allegations with witnesses and documentation.
 - (c) Investigation, fact finding, and written decision clearly communicated to grievant within ten (10) workdays of discussion.
- (4) Step IV (written)
 - (a) Written grievance and prior step decision submitted to the appointing authority or designee within ten (10) workdays of receipt of decision from Step III.
 - (b) Informal discussion or hearing of facts, allegations, and testimony by appropriate witnesses as determined by the appointing authority or designated representative as soon as practical. Whenever possible, the fourth step hearing shall be conducted by a manager who had no input to or involvement in the original decision to discipline.
 - (c) Investigation, fact finding, and written final agency decision communicated to grievant within ten (10) workdays of discussion.
 - (d) The appointing authority shall have full authority to overturn, reduce, or alter any disciplinary action based on information gathered at the step IV hearing including reinstatement of leave and awards of backpay, if appropriate, which may be offset by income earned from alternative employment or unemployment insurance payment received.
- (5) Step V (Formal - Career Employee only)
 - (a) Written grievance and all relevant documentation shall be submitted within thirty (30) days of receipt of decision from Step IV to:
 - Secretary, Civil Service Commission
 - Tennessee Department of Personnel
 - Second Floor, James K. Polk Building

Nashville, TN 37243-0635

(b) Hearings will be held pursuant to T.C.A. §8-30-328 and the Uniform Administrative Procedures Act.

(6) The time limits set herein may be extended not in excess of six (6) months by written agreement between the manager involved and the employee. Failure of management to proceed within established time limits entitles the grievant to proceed to the next step in this procedure.

(7) Hearings conducted at Step V will conform to the model rules of the Secretary of State for contested cases and the Department hereby adopts Secretary of State Rule 1360-4-1 in statutory compliance.

18. GRIEVANCE/SCOPE OF PROCEDURE (Rule 1120-11-.06)

(1) The Commission will serve as the final step for all grievances by career employees.

(2) The agency appointing authority will serve as the final step for all grievances by permanent employees.

19. 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.

20. GRIEVANCE/EXCEPTIONS & NON-GRIEVABLE MATTERS (Rule 1120-11-.08)

(1) Actions that affect employees who are not career or permanent employees.

(2) Actions that affect an employee serving an initial probationary period.

(3) Normal supervisory counseling.

(4) Non-selection for promotion when the appointment was in compliance with these rules and the Act.

(5) Verbal and written reprimands.

(6) Performance award decisions.

(7) Actions resulting from suggestions adopted by the State Employee Suggestion Award Board.

(8) Actions resulting from reductions in force when an approved reduction in force plan was followed.

(9) Shift, post, and overtime assignments.

(10) Reasonable work assignments outside those normally associated with the employee's assigned job classification.

(11) Salary range assigned to classification.

(12) Classification of position.

(13) Denial of leave requests except as provided for in T.C.A. §§8-50-801 and T.C.A. 8-50-110.

- (14) Matters relating to internal agency or program management which are based on discretionary decision making.
- (15) Demotions during subsequent probation, if such demotion is to the job classification from which the employee was promoted and at a salary rate no lower than the salary rate had the promotion not occurred.
- (16) Agency rules or policies which do not conflict with statutes or rules of the Department of Personnel.
- (17) Any other matter over which an appointing authority or the Commission has no control or jurisdiction or is without the authority to grant requested relief.

21. GRIEVANCE/TECHNICAL ADVICE AND ASSISTANCE (Rule 1120-11-.09)

- (1) Technical questions regarding this rule may be resolved by referring questions to the agency personnel section.
- (2) Unresolved technical questions to an agency personnel section may be resolved by referring such to the Department of Personnel, Employee Relations Division.
- (3) Disputes over grievability may be resolved by an agency's appointing authority or by the Commissioner. The Civil Service Commission may review such determinations and, at its discretion, take whatever action it deems appropriate.
- (4) The intent of this policy is to legally, efficiently, and fairly resolve bona fide complaints, and grievances. The initiation of a grievance should not be considered as a negative reflection against an employee, supervisor, or agency management, but should be considered as an effort to communicate and seek resolution of work related problems.
- (5) Management should consider grievances objectively, fairly, and expeditiously while maintaining a helpful, cordial, and professional attitude throughout the process of redress.

22. DCS's Policy 4.12 concerning Suspension/Termination of Staff for Alleged Criminal Acts is found in its entirety at Exhibit 1 of the record. DCS's Policy 31.2 concerning Responsibilities Regarding Runaways, Absconders and Escapees is found in its entirety at Exhibit 2 of the record. DCS's Policy 16.31 concerning Permanency Planning for Children/Youth in the Department of Children's Services Custody is found in its entirety at Exhibit 3 of the record.

DISCUSSION

DACES has shown by a preponderance of the evidence that Grievant's three-day suspension and four-day suspension were proper and are upheld. Grievant has previously received an oral warning for similar conduct. Progressive discipline necessitates suspensions

since this is a continuation of the same or very similar conduct which prompted Grievant's oral and written warnings. Grievant does not dispute that the conduct occurred which brought about her suspensions. She does assert that she should not be held responsible for various reasons as noted. But her explanations and excuses are either not credible or simply inadequate.

The hearing record and Grievant's prior disciplinary actions demonstrate that Grievant has had difficulty in acting in a supervisory capacity. It is acknowledged that she has been a valuable career employee to DACES, and it is for that reason that demotion was selected as an alternative to termination. Under the circumstances, and in conformance with the progressive discipline policy, demotion was the next appropriate step in the discipline process. However, DACES does not offer compelling proof of why it chose to demote Grievant from Case Manager 4 to a Case Manager 2 position. The job descriptions for Case Manager 2 and Case Manager 3 (of which the undersigned takes official notice of) are very similar except that Case Manager 3 has a potential for minimal supervisory duties. Presumably, this potential for a supervisory role dissuaded DACES from placing Grievant in a Case Manager 3 position. This decision is not supported by the record.

As a 24-year "superior" career employee with eight previous years in a supervisory position, there is no reason to believe that Grievant cannot fulfill the job requirements of a Case Manager 3. DCS's decision to demote Grievant to Case Manager 2 is not supported by the record and is reversed. Grievant should have been demoted to Case Manager 3 on February 8, 2009.

IT IS THEREFORE ORDERED that the Department of Children's Services' decisions to suspend Grievant for three (3) days in case number 26.43-100298J and four (4) days in case number 26.43-100903J are **UPHELD**. DCS's decision to demote Grievant is upheld, but its

decision to demote her to Case Manager 2 is not supported by the record and is reversed. In case 26.43-103645J, Grievant is demoted to Case Manager 3 effective March 1, 2009. Pursuant to T.C.A. §8-30-328, Grievant is to be made whole without loss of benefits.

Entered this the _____ day of _____, 2010.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 21st day of May, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division