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TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES, Petitioner, v. Docket No.: 26.43-102827JALTHEA BRADSHAW, Grievant

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BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION

TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES,	)	
	)	
Petitioner,	)	
v.	)	**Docket No.: 26.43-102827J**
	)	
ALTHEA BRADSHAW,	)	
	)	
GRIEVANT	)	

INITIAL ORDER

This case was heard on February 8, 2010, in Nashville, Tennessee, before Anthony Adgent, Administrative Judge, assigned by the Secretary of State, and sitting for the Civil Service Commission for the State of Tennessee. The Honorable Julie Randall Pablo represented The Tennessee Department of Children's Services (DCS). The Honorable Robert Barlowe represented Ms. Althea Bradshaw (Grievant). 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.

Upon consideration of the record, the evidence and the arguments submitted by the parties, it is determined that the Petitioner's termination of the Grievant was not justified based upon the Grievant's actions. This determination is based on the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Grievant was an experienced Case Manager, and had worked for the Department for three-plus years as a Case Manager 2 (hereinafter referred to as "CM2"). It is the Department's position Grievant violated Tenn. Code Ann. §37-1-403, and [Rule

1120-10-.06, TENN. COMP. R. & REGS] for her negligence in failing to timely report an allegation of child sexual abuse.

2. During a face-to-face home visit, a young child, A.M. (hereinafter referred to "A.M."), reported she had been inappropriately touched by her mother's boyfriend.
3. It is the Department's contention Grievant's failure to timely report the sexual abuse allegation to the Central Intake Hotline (hereinafter referred to as "Central Intake"), rose to the level of negligence.
4. Grievant, as the Case Manager 2 for A.M., had a legal duty to report the abuse immediately.
5. Grievant's alleged failure to report led to her arrest.
6. The Department took disciplinary action, and in this case, because the seriousness of the Grievant's alleged failure to to act, she was terminated.
7. Grievant subsequently appealed her termination.

CONCLUSIONS OF LAW AND ANALYSIS

1. Althea Bradshaw at all relevant times was classed as a Case Manager 2, and had been employed with the DCS for three plus years.
2. Althea Bradshaw was a Child and Family case manager, also called a Family Services Worker (FSW), for the Department of Children's Services (hereinafter the Department) in September 2007.
3. She had recently been reassigned the case of AM, who was on a 90-day trial home visit with her grandmother.
4. On September, 26, 2007, Ms. Bradshaw conducted the last home visit before AM left custody accompanied by a student intern.

5. AM disclosed allegations of sexual abuse. According to the allegations, the abuse occurred several years before and the perpetrator was currently incarcerated.
6. Ms. Bradshaw discussed the disclosure with AM's custodian while at the visit.
7. Ms. Bradshaw then reported the disclosure to her supervisor, Lawanda Christmon.
8. Ms. Christmon directed Ms. Bradshaw to call in a referral to Central Intake.
9. Ms. Bradshaw testified that she completed case recordings, also called TNKids notes, regarding the disclosure and included in those notes in a plan to make a referral- a formal report of the alleged incident to Central Intake.
10. Shortly thereafter, Ms. Christmon approved closure of the case without ensuring that the referral had actually been made or received by the appropriate persons.
11. In May 2008, a Clarksville Police Detective Ginger Fitting began investigating the allegations and discovered the TNKids recording for September 26, 2007, but did not find the referral. Det. Fitting then arrested Ms. Bradshaw for violating T.C.A 37-1-403 (3) on May 15, 2008. The local news networks discovered the story and reported on it.
12. The charges were dismissed.
13. The Department initiated an internal investigation, conducted by Ronald Morris. On June 20, 2008.
14. Mr. Morris submitted an investigative summary which concluded that Ms. Bradshaw had violated T.C.A. 37-1-403 (3) and several Tennessee Department of Personnel Rules and Regulations under 1120-10.06.
15. After review and approval by David Shoemaker, Director of Internal Affairs, Mr. Morris' investigative findings were forwarded to Marion Biggs.

16. Ms. Biggs is Team Coordinator for the Houston and Montgomery County offices of the Department of Children's Services and Ms. Christmon's direct supervisor.
17. Mr. Morris' investigation did not reveal any referrals by Lawanda Christmon or Intern Rice.
18. On September 19, 2008 Ms. Biggs delivered a Recommendation for Disciplinary Action- Termination to Ms. Bradshaw.
19. On October 31, 2008, Viola Miller, Commissioner of the Department of Children's Services, delivered a Termination to Ms. Bradshaw. Neither Lawanda Christmon nor Intern Rice (who had subsequently been hired by the Department) received any disciplinary action.

ANALYSIS

At hearing on February 8, 2010 testimony was taken from Mr. Ronald Morris and Ms. Marion Biggs. Additionally, the following exhibits were admitted: 1) the relevant statutory language under T.C.A. 37-1-401 through 403 and 37-1-605, 2) Mr. Morris' investigative summary, 3) an email from Mr. Morris to Joseph Saladino dated June 17, 2008 and 4) TNKids recordings regarding AM by Ms. Bradshaw of events that occurred on September 26, 2007 and recorded on September 28, 2007.

Mr. Morris testified that his investigation revealed that Ms. Bradshaw had been arrested and that the arrest was reported by the news through no action of Ms. Bradshaw. Ms. Bradshaw's caseload had to be redistributed when she was temporarily reassigned to new duties by Ms. Biggs. He reported that his investigation did not discover any record of a referral made by Ms. Bradshw regarding AM.

He testified that Ms. Bradshaw reported calling in a referral, but she could not remember the date she called it in. She reported that Central Intake asked her if she wanted a letter confirming her referral, to which she replied yes. He reported that he asked Mr. Joseph Saladino, Director of CPS Central Intake, to search for referrals on September 27-28, 2007, but Mr. Saladino searched for referrals on September 27-28, 2008 and none were found. He also admitted that Ms. Bradshaw's TNKids notes indicated that on September 28, 2007 she had not yet made the referral, but still intended to do so.

Mr. Morris testified that at the time of his investigation he was not aware of the outcome of the criminal charges and that if he had learned that the charges had bee dismissed it would have affected his investigative findings. He also acknowledged that the publicity created by the arrest was beyond Bradshaw’s control.

Ms. Marion Biggs, Team Coordinator for Houston/Montgomery counties testified that she began working in that position in June 2007. Ms Biggs explained that she is responsible for 9 teams and her team leaders supervise the staff. She was Ms. Christmon's supervisor and Ms. Christmon had direct supervision over Ms. Bradshaw. She admitted that she had ultimate responsibility for the offices she supervises.

Ms. Biggs testified that she had previously worked in Child Protective Services (CPS) and therefore she interpreted the reporting statutes, T.C.A. 37-1-403 (3) and 37-1-605, in light of her experience in CPS, specifically regarding deadlines for investigative action. She acknowledged that Ms. Bradshaw had not worked in CPS, but in foster care, and was not familiar with CPS' priority systems and related deadlines.

She admitted that although neither the reporting statutes nor DCS policy require a report to Central Intake, she expected DCS employees to make reports to Central Intake. Everyone is subject to the reporting statute and everyone who knew about the allegations had a duty to report. She acknowledges that neither Ms. Rice nor Ms. Christmon, who were both under her supervision when she discovered the facts of this case, was disciplined for failing to report.

Ms Biggs believes that DCS employees have a “higher duty” than ordinary citizens and later admitted that if Ms. Bradshaw's duty was higher that Ms. Christmon's duty was even higher. However, although she admitted that Ms. Christmon had violated every subject rule that Ms.Bradshaw allegedly violated, Ms. Christmon was not disciplined in any manner.

Regarding her own obligations under the policy, she believes that she had the same responsibility to call in a referral to Central Intake. Ms. Biggs alleges she made a referral, but acknowledges that there is no record of her referral in the system. She could not explain why her referral could not be found.

Ms. Biggs acknowledged that despite the alleged policy violation, there was no evidence that this incident actually adversely affected the Department's work. She admitted that the office has frequent staff turnover requiring reassigning casework to other case managers. In fact, Ms. Bradshaw was assigned the case of AM as a result of employee turnover. Further, Ms. Biggs made the decision to change Ms. Bradshaw's duties; it was not a necessary consequence of her alleged wrongs.

Further, Ms. Biggs testified that she was already aware of DCS' reputation in the community and throughout the state and could not identify any specific injury to that

reputation as a result of Ms. Bradshaw's arrest and publicity. She could not identify any negative impact on the relationship with any external agency as a result of Ms. Bradshaw's arrest.

Ms. Biggs admitted that child did not suffer any further abuse or neglect as a result of Ms. Bradshaw's conduct. The caretaker was aware of the allegations and was prepared to protect the child from any future harm The child received no services from the Department and no court action was taken as a result of the investigation in to the allegations.

Based upon credible testimony offered by Ms.Bradshaw she did comply with the reporting statute in that she reported the allegation to her supervisor Lawanda Christmon and noted the allegations in TNKids. T.C.A 37-1-403(a)(3) and 37-1-605 do not require a referral to Central Intake.

Testimony also shows that Lawanda Christmon, Ms. Rice, and Marion Biggs all had a

duty to report these allegations of abuse. There is no evidence that Ms. Christmon or Ms. Rice made any report to anyone and Ms. Biggs testified that she made a referral to Central Intake, but, again, there is no record of that referral in the TNKids system. Although Ms. Christmon's and Ms. Biggs' conduct was virtually identical to Ms. Bradshaw's, no disciplinary action was taken.Tthe arrest and subsequent publicity were beyond Ms. Bradshaw's control and the dismissal of the charges is indicative that the charges were without merit. Ms. Bradshaw's arrest did not adversely affect the reputation of the Department, the Montgomery County office, nor did interfere with harmonious working relationships with the public.No harm or appreciable risk of harm resulted from

Ms. Bradshaw's actions because the alleged perpetrator was and remains incarcerated and AM's caregiver was always prepared to protect the child.

Conclusions of Law

Based upon the evidence presented at hearing this court finds as follows: The Petitioner has failed to carry the burden of proof in this matter.

Therefore it is **ORDERED** that the termination of the Respondent be reversed.

It is **FURTHER ORDERED** she be returned to her previous job title of Case Manager 2.

It is **FURTHER ORDERED** that she be awarded back pay and benefits from the date of her termination and that the Petitioner shall pay all costs associated with this action including appropriate attorney's fees.

It is so **ORDERED** this the _____ day of _____, 2010.

_____
Anthony Adgent
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this 24th day of May, 2010.

_____
Thomas Stovall, Director
Administrative Procedures Division