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4-7-2010

DIVISION OF INTELLECTUAL
DISABILITIES SERVICES, Petitioner, vs.
SYLVERE KARURANGA, Grievant

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BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION

IN THE MATTER OF:)
)
DIVISION OF INTELLECTUAL)
DISABILITIES SERVICES)
)
Petitioner) **Docket No. 26.45-104278J**
V.)
)
SYLVERE KARURANGA)
)
Grievant)

INITIAL ORDER

This matter came to be heard on April 7, 2010, before Thomas G. Stovall, Administrative Judge, sitting for the Tennessee Civil Service Commission in Nashville, Tennessee. The Division of Intellectual Disabilities (Division) was represented by Ms. Marilyn Tucker, Assistant General Counsel. The Grievant was present and not represented by counsel.

The subject of this hearing was the grievance filed by the Grievant as a result of the termination of his employment by the Division. After consideration of the entire record in this matter it is determined that the Grievant's termination should be **UPHELD**. This decision is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Grievant had been employed by the Division since 2002 as a Developmental Technician at Clover Bottom Developmental Center until his termination effective April 29, 2009. Clover Bottom is a long term residential facility for the treatment of adults with severe mental health disorders.

2. On April 3, 2009, the Grievant was working in the day room of the Magnolia Building when resident Michael urinated on himself and then sat down in a cloth covered chair.

Pam Evans, another Developmental Technician, got Michael to stand up and she took the chair outside to dry. She instructed the Grievant to help Michael change his clothes. After Ms. Evans left the building, the Grievant slapped Michael on each side of Michael's face. As Michael put his hands on the sides of his face and bent over, the Grievant kicked him on the backside knocking his head into the back of a couch.

3. Andre Love is a custodian who was present in the day room and witnessed the incident. Mr. Love immediately went to the Grievant and asked him why he had hit and kicked Michael. Mr. Love told him the residents should not be treated in that manner. Mr. Love stated that the Grievant admitted to him that his conduct was inappropriate.

4. Ms. Evans returned to the day room after the incident was over. Ms. Evans overheard the conversation between Mr. Love and the Grievant and she heard the Grievant respond to Mr. Love that he did not know why he had acted as he did.

5. Mr. Love immediately reported the incident to Angela Baird, the Assistant Chief Officer for Residential Services at Clover Bottom. Ms. Baird referred the matter to the facility investigator and a full investigation was conducted. Based upon the results of the investigation it was determined by the Chief Officer Dr. Levi Harris that the Grievant had abused Michael and the decision was made to terminate his employment.

6. The Grievant has a long history of prior disciplinary infractions.¹ It should be noted that none of the infractions involved abuse of residents.

¹ Exhibit 15

RELEVANT LEGAL AUTHORITY

1. **Department of Human Resources Rule 1120-10-.06(8):** Gross misconduct or conduct unbecoming an employee in the State Service.
4. **Division of Mental Retardation Services (now DIDS) Policy #06-07-201:** Protection From Harm For DMRS Developmental Centers
5. **Clover Bottom Developmental Center Policy #111:** Protection From Harm

CONCLUSIONS OF LAW

1. The Division has carried its burden of proof by a preponderance of the evidence that the Grievant's conduct constitutes unbecoming an employee in the State service in violation of Rule 1120-10-.06(8), as well as physical abuse as defined by DIDS Policy #06-07-201(C)(1)(b) and Clover Bottom Developmental Center Policy #111 (IV)(H)(b).

2. The evidence presented in this case clearly established that on April 3, 2009, the Grievant slapped and kicked a resident of Clover Bottom. This constitutes the physical abuse of a resident in violation of DIDS and Clover Bottom policy and conduct unbecoming an employee in State service. The Grievant's misconduct when coupled with his prior disciplinary history justifies the discipline imposed by the Division.

3. Based upon the foregoing, it is hereby **ORDERED** that the termination of the Grievant's employment by the Division be **UPHELD**.

This Initial Order entered and effective this 5th day of May, 2010.

Thomas G. Stovall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 5th day of
May, 2010.

Thomas G. Stovall, Director
Administrative Procedures Division