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Pertrina F. Williams

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STATE OF TENNESSEE
CIVIL SERVICE COMMISSION

IN THE MATTER OF:	
Pertrina F. Williams	**DOCKET NO: 26.15-107462J**

INITIAL ORDER

This matter came to be heard on July 21, 2010, before Rob Wilson, Administrative Law Judge, sitting for the Tennessee Civil Service Commission. The Department of Mental Health & Developmental Disabilities Services (Department) was represented by Theresa C. Sloan, Esq. Ms. Pertrina F. Williams (hereinafter "Grievant") was present for the hearing, but not represented by counsel.

Grievant, an employee of the Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) Services is contesting a one (1) day suspension for alleged insubordination by failing to properly screen telephone calls. 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** that TDMHDD properly suspended Grievant for one (1) day and its decision is **UPHELD**.

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

FINDINGS OF FACTS

1. Grievant has worked as an administrative secretary for TDMHDD since September of 2008.

2. On December 10, 2009, DCS gave Grievant a one-day suspension for insubordination pertaining to the screening of telephone calls. Phil Brown, Grievant's supervisor, determined that Grievant violated Tennessee Department of Human Resources Rule 1120-10-.06 (18) Refusal to accept a reasonable and proper assignment from an authorized supervisor.

3. Specifically, Mr. Brown stated that Grievant, on more than one occasion, failed to find out who was calling before she transferred the caller to Mr. Brown's direct line. On December 4, 2009, Grievant received a written waning for excessive lateness, refusal to submit a time sheet, failure to screen telephone calls, and refusing to clock in on the time clock. [*see exhibit #9*]

4. On December 1, 2009, Grievant sent an email to her supervisor, Mr. Brown, stating the following:

> On last Tuesday, you stood at my desk and made a FALSE accusation about my lunch hour on 11/17. You, then proceeded to write what you believed to be correct on it. Moreover you insisted that I sign a time sheet that had false information on it even though it wasn't the end of the pay period. Your behavior was so out of order and you have made me completely uncomfortable. Your behavior is manic and obsessive. I have no objection using the time clock, however I am not comfortable coming into your office to do so. I am offended by all the negative actions you have taken against me. Melisssa Harper has a copy of my time sheet.
>
> [*see exhibit 6*]

5. Grievant stated that she was not insubordinate, and that the one day suspension she received was retaliation due to her filing of an EEOC claim. Mr. Brown stated that he was not aware of Grievant's EEOC claim at the time he suggested Grievant's one day suspension.

6. It is Grievant's position that she was not the only person who answered the phones, and also that she does not have to ask a caller to identify themselves because she frequently knows who is calling without having to ask the caller's name.

CONCLUSIONS OF LAW and ANALYSIS

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. TDMHDD 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. POLICY (Rule1120-10-.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.

7. MINIMUM DUE PROCESS (Rule1120-10-.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. 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.

10. 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.

The record contains substantial and material evidence that Grievant failed to properly screen calls, even after receiving a written warning. Furthermore, the Grievant's email to Mr. Brown on December 1, 2009 shows a total lack of respect along with further insubordination by stating that she was not willing to follow timecard procedures.

TDMHDD has shown that progressive discipline was followed in this matter. Grievant first received an oral warning, followed by a written warning, followed by a one day suspension without pay. Further, TDMHDD has shown that the one (1) day suspension, although very lenient, was appropriate.

IT IS DETERMINED that TDMHDD's finding that Grievant was insubordinate in her duties by failing to properly screen incoming phone calls even after being told multiple times to do so is affirmed. It is CONCLUDED that TDMHDD's imposition of a one (1) day suspension without pay for Grievant's conduct is **UPHELD.**

This Initial Order entered and effective this 21st day of September, 2010.

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Rob Wilson
Administrative Judge

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

Thomas G. Stovall, Director
Administrative Procedures Division