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DIVISION OF INTELLECTUAL DISABILITIES SERVICES v. ANTOINE D. GLENN, SR., Grievant

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BEFORE THE CIVIL SERVICE COMMISSION
FOR THE STATE OF TENNESSEE

DIVISION OF INTELLECTUAL DISABILITIES SERVICES **v.** **ANTOINE D. GLENN, SR.** **Grievant**	**DOCKET NO: 26.09-106743J**

INITIAL ORDER

This matter came to be heard on July 28, 2010, before Leonard Pogue, Administrative Judge, sitting for the Tennessee Civil Service Commission in Nashville, Tennessee. Attorney Frederick Zimmermann represented the Division of Intellectual Disabilities Services ("DIDS"). Grievant Antoine Glenn, Sr. was present but not represented by counsel. This matter became ready for consideration upon the filing of the State's Proposed Initial Order on September 29, 2010. Respondent did not file Proposed Findings of Fact and Conclusions of Law.

The subject of the hearing was Grievant's appeal of his termination of employment by DIDS for abuse of a service recipient. After consideration of the record in this matter, it is determined that the termination should be **UPHELD**. This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Grievant was employed from August, 2004 until his termination in November, 2009 as a developmental technician at Clover Bottom Developmental Center (CBDC), a residential center managed by DIDS for individuals (service recipients) with intellectual disabilities. He became a supervisor after his third year of employment.

2. On October 15, 2009, Grievant was working at the Harold Jordan Center (HJC), located on the CBDC campus. The HJC is a facility for residents who have dual diagnoses of mental retardation and mental illness, who have been in trouble with the law and have been referred for determination of whether they are competent to stand trial. Persons housed at the HJC are not allowed to leave that facility except to go to the clinic areas located elsewhere on the CBDC campus. The HJC incorporates security measures, including fences, surveillance cameras and a metal detector. The surveillance cameras are not hidden, and staff is aware of the locations of the cameras.

3. Extensive training of staff in many areas, including what constitutes abuse, Professional Crisis Management (PCM), and individual rights, is required for new employees and current employees on an annual basis. Grievant's training record reflects that he received training regarding abuse, incident management, individual rights and PCM. Diane Brightwell, Chief Officer of CBDC, testified that a staff member is not allowed to strike, push, shove or throw a service recipient. A staff person may use response blocking to divert or block physical aggression by a service recipient. Backing away is the recommended course of action.

4. Joseph, the service recipient involved in this matter, was 23 years old at the time and was admitted to the HJC in October, 2006. He had a history of alleged physical and sexual aggression against adults and children and involvement with the criminal justice system.

5. On October 15, 2009, an incident occurred in the day room in a building at the HJC involving Joseph inappropriately touching another service recipient. After this occurrence, video then shows Joseph leaving the day room and entering a hallway. Joseph appears agitated and punches a door three times. Soon thereafter, Grievant approaches while talking on a phone to Joseph's behavior analyst and hands the phone to Joseph. As Joseph is talking on the phone and walking toward the dayroom, Grievant places his arm in front of Joseph several times, blocking Joseph's path. Joseph then backs up toward the end of the hall with Grievant moving toward Joseph. While Joseph has the phone in his left hand and his right hand raised, it appears Grievant reaches to Joseph's throat/neck area and Joseph backs away. Grievant again puts his left hand on Joseph's neck area and lunges at Joseph pushing him with both hands backward into the alcove at the end of the hall. At that point, both Joseph and Grievant are essentially out of camera view. Three other employees begin running from the day room toward Joseph and Grievant and are joined by another employee from the opposite end of the hallway. After approximately 15-20 seconds, primarily out of view in the alcove, the group emerges in the hallway, with Joseph being pulled/ pushed from the alcove.

6. An incident report was prepared and includes an assessment by a nurse of injuries to Joseph, including scratches to his cheek, arms and back, in addition to three scratches to his head. Pam Curtis, the investigator on call that evening, went to the scene and took photos of Joseph's injuries and Joseph's statement. Joseph said that he hit Grievant and Grievant grabbed him around the neck and by his head, scratching his cheek, neck, head and arm. Joseph further

stated that he told Grievant to quit and tried to walk off but was grabbed and scratched some more.

7. Dr. Nancy Kirby, Director of Psychology and the Intensive Consultation Team, testified as an expert witness for DIDS. Dr. Kirby noted that if a service recipient is pacing this is neither a problem nor a threat to others. The best course of action is for the staff member to back away, putting some distance between oneself and the service recipient to reduce the chance of a control struggle and escalating the situation. Dr. Kirby opined that absent imminent danger to the service recipient, interference by physical action or force by a staff person is not permitted under any circumstances. In reviewing the video, Dr. Kirby testified she observed that Joseph had been calm while talking on the phone and there was no motivation for Grievant to confront Joseph by restricting his movement and trapping him near the alcove. She further noted that Grievant put his hand on Joseph's chest, assumed an offensive stance, then Grievant's hand moved toward Joseph's throat and forearm to the chest while moving forward.

8. Grievant denied putting his hands on Joseph's throat or lunging at him, as well as denying that he pushed Joseph into the alcove area or scratching him. Grievant underwent neck surgery several months before this incident and said he wouldn't try to fight someone due to his physical condition. He stated that when he and Joseph were in close proximity, he was reaching to get the phone back from Joseph because he didn't want Joseph to destroy the phone. Because Joseph had his right hand raised, Grievant raised his hand to be in position to response block. Joseph cursed at Grievant and hit Grievant in the head and jaw (Joseph had never struck Grievant before this occurrence). According to Grievant, Joseph was very upset as a result of the earlier incident involving a service recipient. Grievant surmised that the scratches on Joseph may have been caused by the other employees trying to separate Grievant and Joseph. Grievant

acknowledged that he knew from the beginning of his employment at CBDC that he could not physically abuse a service recipient and that if he did, the consequences were termination.

9. The allegations of abuse were investigated by CBDC/HJC investigator, Stephanie Blevins. She concluded that the scratches had been caused by Grievant, not other staff, and that the scratches were evidence of physical abuse, but that physical abuse itself is shown in the video, independent of the scratches or injuries. Grievant was terminated by letter dated November 16, 2009, for violation of the Protection From Harm Policy and Tennessee Department of Personnel Rule 1120-10-.06 (8), gross misconduct or conduct unbecoming of an employee in state service. The Commissioner of the Department of Finance and Administration subsequently upheld the recommendation for termination following a Due Process Hearing and a Step IV Hearing.

CONCLUSIONS OF LAW

1. Tennessee Department of Human Resources Rule 1120-10-.07, PROGRESSIVE DISCIPLINARY ACTION, states in relevant part:

> (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
>
> (3) Written Warning
>
> (4) Suspension Without Pay
>
> (a) After minimal due process is provided, a suspension without pay may be issued by the appointing authority for one (1) to thirty (30) days.

(5) Dismissal

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

(6) Transfer or Demotion

2. T.C.A. § 8-30-330, Progressive Discipline, states in relevant part:

(a) The supervisor is responsible for maintaining the proper performance level, conduct, and discipline of the employees under the supervisor's supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the lowest appropriate step for each area of misconduct.

(c) When corrective action is necessary, the supervisor must administer disciplinary action beginning at the step appropriate to the infraction or performance. Subsequent infractions or poor performance may result in more severe discipline in accordance with subsection (a).

3. CBDC Administrative Policies and Procedures, Index # 111, DIDS policy 06-07-201, Protection From Harm, provides:

II. PURPOSE:

The purpose of this policy is to establish a written process for the appropriate and timely response to reportable incidents including, but not limited to, all allegations of abuse, neglect, exploitation, and staff misconduct.

IV. DEFINITIONS;

I. Abuse: the knowing infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. The four subcategories of abuse include:

….

a. Physical Abuse is any physical motion or action (e.g., hitting, slapping, punching, kicking, pinching) by which bodily harm or trauma occurs (whether or not the injury is visible on the person after the action). Physical Abuse includes use of corporal punishment as well as the use of any restrictive, intrusive procedure to control inappropriate behavior for purposes of punishment.

V. POLICY:

CBDC prohibits abuse, neglect or exploitation of service recipients. Allegations will be investigated in a timely manner.

VI. PROCEDURES:

C. Allegations of Abuse, Neglect or Exploitation:

C.1. All allegations of abuse, neglect or exploitation are required to be reported to the on call FI-ANE (Facility Investigator-Abuse, Neglect, Exploitation) within one hour of observation or discovery….

C.7. Disciplinary and/or corrective action will be taken at the discretion of the Chief Officer/designee for substantiated allegations of abuse, neglect or exploitation.

F. Disciplinary Actions

F.7. The following provides guidance for the minimum disciplinary action to be taken for substantiated investigations. However, the Chief Officer has the discretion, based on the information provided, to issue disciplinary action up to and including termination.

F.7.1. For substantiated allegations of abuse the minimum disciplinary action is termination.

4. Tennessee Department of Personnel Rule 1120-10-.06, EXAMPLES OF DISCIPLINARY OFFENSES, lists the following as examples of disciplinary offenses:

(8) Gross misconduct or conduct unbecoming of an employee in state service.

5. The proof showed that Grievant engaged in physical abuse of Joseph. DIDS policy/procedure, Protection From Harm, prohibits such conduct. Grievant was aware that DIDS policy/procedure prohibited any type of physical abuse and he had been trained to manage such a situation. Although the video does not indicate that Joseph initiated the incident by striking Grievant, even if that were the case, Grievant should not have grabbed and pushed Joseph. Termination comports with the applicable policy and is the appropriate step of discipline in this instance.

It is **ORDERED** that the decision by the Division to terminate Grievant's employment with the Division be **UPHELD.**

This Initial Order entered this 19th day of October, 2010

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Thomas G. Stovall, Director
Administrative Procedures Division