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DEPARTMENT OF CHILDREN'S SERVICES v.
TAWANNA LELAND, Grievant.

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**BEFORE THE CIVIL SERVICE COMMISSION OF THE
STATE OF TENNESSEE**

IN THE MATTER OF:

**DEPARTMENT OF CHILDREN'S
SERVICES**

v.

TAWANNA LELAND,
Grievant.

DOCKET NO: 26.43-107651J

INITIAL ORDER

This matter was heard on June 21, 2011, and October 13, 2011, in Nashville and Memphis, Tennessee, via video conference¹ before Administrative Judge Mary M. Collier, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Civil Service Commission of the State of Tennessee. During the hearing, the Department of Children's Services (DCS) was represented by Marjorie Bristol and Mickey Smith², and the Grievant, Tawanna Leland, was represented by Florence Johnson Raines. Merlene Hyman, DCS Regional Administrator for Shelby County, served as the DCS representative during both days of the hearing.

The issue is whether DCS properly suspended Ms. Leland for 2-days and/or properly demoted Ms. Leland from a Team Coordinator to a Case Manager 4/Team Leader in Shelby County. After consideration of the evidence and arguments of the parties, it is determined that the 2-day suspension of Ms. Leland's employment by DCS was proven to be appropriate by a preponderance of the evidence and should therefore be **UPHELD**, and it is determined that the

¹ Pursuant to TENN. CODE ANN. § 4-5-312(c), by agreement of the parties and the undersigned Administrative Judge, the hearing was conducted via video conference.

² Ms. Bristol represented DCS on June 21, 2011, and Ms. Smith represented DCS on October 13, 2011.

demotion of Ms. Leland's employment is not justified in this matter and should therefore be **OVERTURNED**. Accordingly, Ms. Leland's appeal is **GRANTED in part and DENIED in part**, and Ms. Leland is hereby **REINSTATED to a DCS Team Coordinator position with back pay and full benefits**. This decision is based upon the following.

PROCEDURAL HISTORY

The Grievant filed her Level V Grievance hearing request with the Civil Service Commission on May 24, 2010. Thereafter, on June 1, 2010, the matter was referred to the Administrative Procedures Division in the Secretary of State's Office for a contested case hearing. After multiple continuances, the hearing in this case was held on June 21, 2011, and October 13, 2011. The second volume of the transcript was filed on December 14, 2011. On December 22, 2011, DCS filed proposed findings of fact and conclusions of law. Because the Grievant's counsel did not promptly receive the post-hearing brief filed by DCS, she was given an extension of time in which to file the Grievant's post-hearing brief, which was filed on February 6, 2012. DCS did not opt to file an optional reply brief.

FINDINGS OF FACT

1. The Grievant Tawanna Leland has been employed by DCS for twenty-three (23) years. Since 2002, the Grievant has been employed by DCS as a Team Coordinator. Ms. Leland was the Team Coordinator for Adoptions from 2002 to 2008, and she was a Juvenile Justice Team Coordinator from July, 2008, until February 7, 2010, when her demotion went into effect.
2. Prior to taking the position as the Team Coordinator for Juvenile Justice, the Grievant was employed for the bulk of her time with DCS in the adoptions program of DCS.
3. When the Grievant was transferred to the Team Coordinator position in Juvenile Justice, she had no familiarity with the Juvenile Justice program.

4. In July of 2008, DCS had a newly implemented Juvenile Justice program because DCS had taken over the program's administration from the Juvenile Court system.

5. Merlene Hyman is the DCS Regional Administrator for Shelby County. Ms. Hyman served as the DCS representative during the hearing.

6. The Grievant's direct supervisor at the time in question was Marvin Chaney, the DCS Deputy Regional Administrator.

7. During the time in question, the Grievant reported to the DCS Deputy Regional Administrator, Marvin Chaney, who reported to the DSC Regional Administrator, Merlene Hyman, who reported to the DCS Executive Director, Mildred Lawhorn.

8. The Grievant was supposed to receive a job description within 30 days of starting the position as Team Coordinator with Juvenile Justice; however, the Grievant did not receive any form of a job description until October of 2008. The job description that she finally received was in e-mail format from her supervisor, Marvin Chaney.

9. Mr. Chaney did not provide the Grievant with a formal job description until December of 2008 even though she started work in July of 2008.

10. DCS policy provides that a job description should be provided within thirty (30) days or in this case no later than August of 2008.

11. Because she was not provided with sufficient guidance, such as at a minimum a job description, the Grievant learned her job by going to work each day and handling those matters that came up.

12. As the Team Coordinator the Grievant was responsible for the coordination of the efforts of Team Leaders and of the Case Managers that reported to the Team Leaders. The Team Leaders supervise the Family Services Workers.

13. In addition, the Grievant was responsible for supervising and staffing court liaisons and post-trial services for DCS.

14. Generally, a Team Coordinator is responsible for ensuring that every worker is monitoring and managing cases, convening the necessary teams of people for a child's case to be sure that the recommendations are followed timely, and seeing that the child's needs are being met.

15. It is DCS's mission to ensure the safety, permanency and well being of every child under DCS's purview.

16. The term permanency refers to the goal of a child who is in DCS custody to no longer be in DCS custody – to be reunified with the child's parents or relatives.

17. In July or August, 2008, the Grievant was trained for one (1) week of specialty training on South Third Street in a group setting with old and new staff members. This training covered policy and procedure related to Juvenile Justice.

18. The Grievant also trained for one (1) day in Madison County with Margaret White. Ms. White walked the Grievant through how the Juvenile Justice program worked. The Madison County commitment numbers were significantly less than those in Shelby County.

19. Mr. Chaney was accessible to the Grievant but he did not engage in any training of the Grievant.

20. Mr. Chaney was out on leave for 30 days during the month of August, 2008.

21. Mr. Chaney has no personal knowledge of the training that the Grievant received during the month of August, 2008.

22. The Grievant was supposed to receive interim reviews to document job performance and to note any job deficiencies; however, she did not receive these reviews in 2008. The Grievant received a formal performance plan for the first time in December, 2008.

23. The First Interim Review that the Grievant received was on February 20, 2009.

24. In March, 2009, Mr. Chaney and Ms. Lawhorn asked the Grievant if she would voluntarily take a demotion from her position of Team Coordinator to a Case Manager 4 position. The Grievant declined to take this demotion.

25. On March 10, 2009, the Grievant was issued a written warning for alleged performance deficiencies.

26. The Grievant was given an evaluation that was favorable on June 26, 2009. This evaluation observed that the Grievant “has shown great improvement since her interim evaluation.”

27. In August or September, 2009, DCS Case Manager 3, Rand Coleman, was absent from work due to an extended illness. Mr. Coleman reported to Team Leader Alonzo Richmond, who reported to the Grievant. The Grievant was told by Mr. Cheney to make sure that the cases assigned to Mr. Coleman were reassigned so that they would be covered by other case managers while Mr. Coleman was absent from work.

28. The Grievant verbally told the case managers which of Mr. Coleman’s cases they should handle during his absence. The Grievant also instructed Mr. Richmond, to reassign Mr. Coleman’s cases within the computer system to these case managers. However, the Grievant never followed up with Mr. Richmond to make sure that the reassignment task had been completed.

29. Mr. Richmond failed to reassign the cases within the computer system, and confusion arose in September, 2009, when one of the children erroneously still assigned to Mr. Coleman fled his placement home, and the Agency provider attempted to contact the child's DCS case manager.

30. On September 1, 2009, the Grievant received a one-day suspension, to be taken on September 16, 2009, from then DCS Commissioner Miller for failing to follow a directive given to her by Executive Director Lawhorn. Specifically, Ms. Lawhorn had told the Grievant, in passing, to let her know when they were interviewing job applicants because she was going to show them how to interview. This 1-day suspension was received because the Grievant followed the instructions of her Direct Supervisor, Mr. Chaney, to schedule interviews without first letting Ms. Lawhorn know that she was doing so. Ultimately, the Grievant was suspended for 1-day because she followed the inconsistent orders of her direct supervisor, Mr. Chaney.

31. On November 16, 2009, the Grievant received a 1-day suspension because she was unable to locate a camera that had been assigned to her. This camera had been broken and/or missing since 2008.

32. The Grievant was also required to participate in telephone conference calls with the DCS Commissioner in Nashville and local management on certain aspects of the Juvenile Justice program. During one of the these telephone calls the Grievant told the Commissioner that she would find out some information sought by the Commissioner and get back to her. The Grievant was criticized for this response.

33. The Grievant held staff meetings with all staff once a month where case managers and team leaders could ask questions or discuss problems.

34. The Grievant would not know what files were ready to be closed out of the system unless the Team Leaders made her aware of the case status.

35. The Grievant was treated differently by Mr. Chaney than Diane Hurth, who was the Team Coordinator in Foster Care section and also supervised by Mr. Chaney. Both Ms. Hurth and the Grievant worked overtime on occasion during 2008 and 2009. When Ms. Hurth worked overtime, she was merely required to inform Mr. Chaney of the overtime, either before or after the occurrence, and he never discouraged Ms. Hurth from working overtime. In contrast, the Grievant was told by Mr. Chaney that all overtime had to be approved prior to the overtime. In addition, the Grievant was actively discouraged from working overtime.

36. Gwynn Kersey is a retired employee of DCS. Ms. Kersey was the Team Coordinator over the Continuous Quality Improvement (CQI) area and the Quality Service Reviews (QSR) during the time that she worked with the Grievant. During this time frame, Ms. Kersey was supervised by either Mr. Chaney or Ms. Hyman. Ms. Kersey was never disciplined for working overtime.

37. There is documentary evidence on the two (2) fold rise of children coming into custody under the Juvenile Justice Program during the time in question. The Juvenile Justice program was hampered because of the increased number of children coming into the program and the fact that case managers were leaving due to the high caseload.

38. However, during this time the Juvenile Justice program was accredited by the State and had some of the highest scores of the departments of DCS involved in the Quality Scoring Review (“QSR”). In areas such as “permanency,” “long term view,” and “engagements,” Juvenile Justice scored higher than all other departments.

39. On January 21, 2010, the Grievant was issued the 2-day suspension and demotion from a Team Coordinator to a Case Manager 4/Team Leader. That is the subject of the instant appeal.

40. Grievant currently works in the demoted position as a Team Leader at the monthly salary of \$3,963.00 from the monthly salary in the Team Coordinator position \$4,328.00.

ANALYSIS and CONCLUSIONS OF LAW

Level V Civil service appeals are heard *de novo* before an Administrative Judge. No presumption of correctness is attached to the agency's action. *Big Fork Mining Co. v. Tennessee Water Quality Control Bd.*, 620 S.W. 2d 515, 521 (Tenn. App. 1981). DCS, as the party seeking to "change the present state of affairs," has the burden of proof, under RULE 1360-4-1-.02(7) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. ch. 1360-4-1 (June 2004 (Revised)), to prove by a preponderance of the evidence that the discipline imposed on the Grievant Tawanna Leland complies with State law and the applicable Rules, TENN. COMP. R. & REGS. ch. 1120-10 (Disciplinary Action) and ch. 1120-11 (Grievance) (May 1999 (Revised)). DCS must prove, by a preponderance of the evidence, that: (1) the Grievant acted or failed to act as it alleges; (2) the Grievant's actions constitute a disciplinary offense; and (3) suspension and/or demotion of the Grievant's employment with DCS is appropriate for the given offense.

The issue in this hearing was whether the 2-day suspension and demotion of Ms. Leland's job position with DCS from a Team Coordinator to a Case Manager 4/Team Leader in

Shelby County constituted appropriate disciplinary action. DCS suspended and demoted Ms. Leland for allegedly violating the following three rules:

- (1) Inefficiency or incompetency in the performance of duties.
- (2) Negligence in the performance of duties.
- ...
- (18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

...

TENNESSEE DEPARTMENT OF PERSONNEL RULES 1120-10-.06(1), (2) & (18), COMP. R. & REGS. ch. 1120-10-.06 (May 1999 (Revised)).³ In the April 28, 2010, letter imposing the discipline at issue, DCS also alleges that the Grievant violated the following three policies:

- DCS Policy 11.4 – Completion of Family Functional Assessments;
- DCS Policy 16.31 – Completion of Permanency Plans; and
- DCS Policy 31.2 – Responsibilities Regarding Runaways, Absconders and Escapees.

Inexplicably, in its post hearing brief, DCS argues that the undersigned should uphold the decision of the DCS Commissioner to terminate the Grievant's employment with DCS. PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW filed by DCS on December 22, 2011, at p. 10, ¶ 3 ("The Department's decision to terminate the Greivant's employment should be upheld."). There is no evidence in the RECORD that DCS has terminated the Grievant's employment. Accordingly, DCS's argument that the Grievant's termination should be upheld is rejected as not properly supported in fact or law. With regard to the actual disciplinary action taken, DCS merely makes the conclusory allegations that it has met its burden of proof without making any connection between its lengthy factual recitations and the rules that the Grievant is

³ The current rules are entitled "Rules of the Tennessee Department of Human Resources," but they were previously entitled "Rules of the Tennessee Department of Personnel." The Rules relied upon by DCS for the discipline imposed in this case were those of the Tennessee Department of Personnel, which became effective in May, 1999. TENN. COMP. R. & REGS. ch. 1120-10 (Disciplinary Action) (May 1999 (Revised)). These Rules were revised in May, 2011. RULES 1120-10-.06(1), (2) & (18), COMP. R. & REGS. ch. 1120-10-.06 (May 1999 (Revised)), are found in the new Rules at 1120-10-.05(1), (2), (3) & (21), COMP. R. & REGS. ch. 1120-10-.05 (May 2011 (Revised)).

accused of violating. PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW filed by DCS on December 22, 2011, at p. 11, ¶¶ 6 & 7.⁴ A thorough review of the evidence reveals that DCS has failed to meet its burden of proof.

First, both of the witnesses produced by DCS are found not to be credible based upon their demeanor, lack of personal knowledge, and misconduct during the hearing. DCS called two witnesses to testify: (1) Merlene Hyman, DCS Regional Administrator and hearing representative; and (2) Marvin Chaney, DCS Deputy Regional Administrator. The testimony of the Grievant's direct supervisor, Marvin Chaney, was offered by DCS for the purpose of documenting the training of the Grievant and her deficiencies that warranted discipline. Mr. Chaney attempted to present evidence pertaining to the Grievant's training and support provided by DCS when the Grievant took the position of Team Coordinator. On direct examination, Mr. Chaney testified that despite this training and the support given to the Grievant, she failed to flourish in the position and because of this failure, she was demoted. Upon cross examination of Mr. Chaney pertaining to his memory of the specific training and support offered to the Grievant, Mr. Chaney testified that the Grievant received support from Mildred Lawhorn and a social worker.

During this testimony, the Administrative Judge observed that Mr. Chaney was handed a document by Ms. Hyman. Ms. Hyman was instructed not to hand the witness documents. The document contained handwritten notes by Ms. Hyman. When asked by the Judge what the document contained, she stated that the handwritten note said "Mildred." June 21, 2011, HRG. TR. at p. 243, l. 1-7. Upon further review, it is determined that the document had additional handwritten notes. The document also contains the following handwritten notations: "Stephanie - MSW." HRG. EX. 18. Ms. Hyman's statement that the document contained the single handwritten word "Mildred" is found to be a false statement. This false statement calls into question Ms. Hyman's veracity throughout her

⁴ DCS's closing argument similarly lacked linkage between the facts and the proposed conclusions of law.

testimony, which preceded that of Mr. Chaney. In addition, her attempt to coach the sworn testimony of Mr. Chaney constitutes completely inappropriate conduct for an agency representative during a civil service hearing. Based upon Ms. Hyman's misconduct and false statement when questioned by the undersigned about her misconduct, Ms Hyman is found not to be a truthful witness and her testimony is discredited.

Likewise, Mr. Chaney's testimony is found to be unreliable because, despite the fact that Mr. Chaney was out of the office on leave during the time period that the Grievant was provided with the training and support at issue, he attempted to testify to this training as if he had personal knowledge thereof. Then, when he appeared to be unsure of what had happened during his absence, Ms. Hyman attempted to substitute her knowledge for his knowledge during his testimony. Mr. Chaney's testimony is found not to be credible based upon his lack of personal knowledge.

Thus, DCS attempts to meet its burden of proof with the testimony of two witnesses who are found not to be credible. Although the Grievant may not have been completely up to date with her work, the testimony of two discredited witnesses is insufficient proof for DCS to support its decision to demote the Grievant. *Buchanan v. Harris*, 902 S.W.2d 941 (Tenn. App. 1995) (Invoking the latin maxim of *falsus in uno, falsus in omnibus*, and determining that if the trier of fact finds that a witness has testified falsely as to a material issue, then it is justified in disregarding all of that witness' testimony if it sees fit to do so).

However, with regard to the proof pertaining to the reassignment of Rand Coleman's case load, the Grievant admits that she failed to follow up with Team Leader, Alonzo Richmond, after she instructed him to reassign the cases that had been assigned to Mr. Coleman during his leave from work. Although she was instructed to do so by Mr. Cheney, the Grievant failed to make all

necessary efforts to ensure that no cases would be left uncovered during Mr. Coleman's absence. Based upon the Grievant's testimony, it is determined that DCS has met its burden of proof by a preponderance of evidence that the Grievant was inefficient or incompetent in the performance of her duties as the Team Coordinator under Department of Personnel Rule 1120-10-.06(1). In this instance, this incompetent and inefficient conduct is sufficient for suspension; however, demotion is not justified in this matter. Accordingly, it is determined that DCS has proven by a preponderance of evidence that the two (2) day suspension given to the Grievant should be upheld.

In contrast, the Grievant's testimony does not support a conclusion that she violated the other rules relied upon by DCS. Accordingly, it is determined that DCS has failed in its burden of proof to prove by a preponderance of evidence that the Grievant was negligent in the performance of her duties pursuant to Department of Personnel Rule 1120-10-.06(2). Similarly, it is determined that DCS has failed in its burden of proof to prove by a preponderance of evidence that the Grievant refused to accept a reasonable and proper assignment from an authorized supervisor under Department of Personnel Rule 1120-10-.06(18).

It is further determined that DCS has failed to prove by a preponderance of evidence that the Grievant had sufficient training to perform the position of Team Coordinator in the Juvenile Justice program. Without proper training, it is illogical for DCS to argue that the Grievant failed in the performance of her duties. DCS failed to prove by preponderance of evidence that a demotion was appropriate.

Finally, it is determined that DCS has failed to prove by a preponderance of evidence that the Grievant violated the following three policies:

DCS Policy 11.4 – Completion of Family Functional Assessments;
DCS Policy 16.31 – Completion of Permanency Plans; and

DCS Policy 31.2 – Responsibilities Regarding Runaways, Absconders and Escapees.

Because DCS failed to adequately train the Grievant to be a Team Coordinator for the Juvenile Justice program, the claims of DCS that the Grievant failed to fully comply with these policies is found to be insufficient to by a preponderance of evidence that the Grievant violated these policies.

Because DCS has partially failed to meet its burden of proof, the discipline imposed by DCS is found to be improper. Accordingly, the two (2) day suspension is HEREBY UPHeld and the demotion of the Grievant is HEREBY OVERTURNED. The Grievant shall be reinstated to a Team Coordinator position within DCS and provided with the proper training to fulfill her job duties.

This INITIAL ORDER is issued to protect the integrity of the Tennessee civil service laws and applicable RULES.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the _____ day of _____ 2012.

MARY M. COLLIER
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the _____ day of _____ 2012.



THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE