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3-13-2012

DEPARTMENT OF CHILDREN'S SERVICES, Petitioner v. CONNIE HORTON, Greivant

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BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION

IN THE MATTER OF:	)	
	)	
DEPARTMENT OF CHILDREN'S SERVICES,	)	
Petitioner	)	
	)	**DOCKET NO. 26.43-107296J**
v.	)	
	)	
CONNIE HORTON,	)	
Grievant	)	
	)	
	)	

INITIAL ORDER

This matter came to be heard on March 13, 2012, before Marion P. Wall, Administrative Judge, Administrative Procedures Division, Office of the Secretary of State, sitting for the Tennessee Civil Service Commission. The Department of Children's Services was represented by Ms. Micki Furlong Smith, Assistant General Counsel. The Grievant, Ms. Connie Horton, was represented by Mr. James A. Anderson of the Chattanooga Bar. This issue is this case is Grievant's appeal of a two day suspension for alleged negligence in the performance of duties.

After consideration of the entire record and the arguments of counsel, it is concluded that the Department has failed to show that Grievant was negligent in the performance of her duties, and that her two day suspensions should be set aside, and she should be awarded back pay, attorney's fees, and otherwise made whole. This determination is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Grievant was at all pertinent times employed by Petitioner as team leader and supervisor of resource parent support.

2. This case arises from one incident. A child, JB, was left in a temporary placement for more than the 120 days allowed without an extension. Moreover, when the situation was discovered, it was also determined that the child had been placed in a home in Georgia, and not Tennessee.[1] An investigation was ordered by Nashville, and an internal affairs investigator was sent to look into the matter.

3. The Internal Affairs investigation cited the entire upper management of the region, which, since Grievant was a team leader, included the Grievant. Grievant was assessed a two day suspension for her part in this embarrassment. She was said to have been negligent. Her only connection to this matter was that an individual she supervised, Ms. Marilyn Baldwin, was a resource parent support person. It was Ms. Baldwin's job to attend meetings regarding the child's placement to provide support. It was not her job to call meetings, nor was it her job to keep track of how long a child had been in a particular home, nor whether the necessary meetings were held.

4. The internal affairs investigator, Mr. Dave Anderson, testified as to the problems involved in this child's case. Without going into detail, his investigation revealed, essentially, that JB was lost in the system and that when JB was found, he was found in Georgia, where he had been inadvertently, and erroneously, placed.

[1] This is actually not the error it might seem. The child was placed in a home in East Ridge, where it is often difficult to tell where the state line is. In some areas, different sides of the same street are in different states, or in others, one end of the street is in Tennessee and the other in Georgia. This being so, the failure to notice the child had been placed in a home in Georgia is not a vast dereliction, but a somewhat understandable failure.

5. Other witnesses also testified as to "losing" of JB, and who did what, or failed to do what, with regard to this problem. Ms. Baldwin was not found to have been negligent. She was Grievant's responsibility, and her only connection to this problem.

6. Each witness, including Mr. Anderson, the internal affairs investigator, was asked what did the Grievant do, or what did someone under her supervision do, that should not have been done. Each was also asked what did Grievant fail to do, or what did someone under her supervision fail to do, that should have been done. No witness cited any action, or failure to act, by the Grievant that caused or failed to correct this problem. No witness cited any negligence on Grievant's part, or on the part of anyone she supervised. As told by Mr. Anderson, she was a member of upper management, and so she was cited for negligence. It is quite clear that the situation involving JB resulted from negligence on the part of the Department. It is also quite clear that none of any such negligence involved the Grievant, or anyone she supervised. Not one witness could identify any area in which the Grievant was negligent, or in which anyone she supervised was negligent. In short, Grievant was assessed a two day suspension because she was a team leader, not because she did anything wrong or failed to do anything she should have done. All of the upper management of the region was cited because they were upper management and a problem had occurred which had endangered a child in that region.

CONCLUSIONS OF LAW

1. The Department has the burden of proof, by a preponderance of the evidence.

2. The Department has utterly failed to prove any negligence in the performance of duties by the Grievant. It proved she was upper management of a region in which a problem had occurred. Not one witness could identify any actual negligence on the part of the Grievant or anyone she supervised.

It is therefore ORDERED that Grievant's two day suspension be set aside, and she be awarded back pay, attorney's fees, and otherwise made whole.

This Initial Order entered and effective this 2 day of July, 2012

_____
Marion P. Wall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 2 day of July, 2012

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Thomas G. Stovall, Director
Administrative Procedures Division