



8-24-2012

TENNESSEE DEPARTMENT OF MENTAL
HEALTH AND SUBSTANCE ABUSE
SERVICES, Petitioner, vs. GWENDOLYN
STEWART-JEFFERY, Grievant

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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF MENTAL
HEALTH AND SUBSTANCE ABUSE
SERVICES,**

Petitioner,

v.

GWENDOLYN STEWART-JEFFERY,

Grievant.

Docket No. 26.15-115964J

INITIAL ORDER

This matter came to be heard on August 24, 2012, before Rob Wilson, Administrative Judge, sitting for the Tennessee Civil Service Commission. The Department of Mental Health & Substance Abuse Services (Department) was represented by D. Tyler Thornton, Assistant General Counsel. Ms. Gwendolyn Stewart-Jeffery (hereinafter “Grievant”) was present and proceeded *pro se*.

PROCEDURAL HISTORY

On August 7, 2012, Counsel for the Department filed a Motion to Dismiss for failure to state a claim upon which relief can be granted. In that Motion, Counsel for the Department argued that a valid resignation is not a grievable matter under the rules of the Tennessee Department of Human Resources. The Motion was taken up as a pre-trial hearing and denied by the undersigned for the stated reason that a hearing on the merits would be necessary to determine if Grievant’s resignation was valid.

Grievant, an employee of the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) is contesting her termination for violations of Tennessee Department of Human Services Rules including *conduct unbecoming an employee in state service*, and *for the good of the service*,¹ and Memphis Mental Health Institute's (MMHI) acceptance of her voluntary resignation. Grievant properly appealed the determination, 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 Grievant resigned from her position at MMHI, MMHI properly accepted Grievant's resignation, and Grievant's resignation is **UPHELD**.

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

FINDINGS OF FACT

1. From June 16, 1997, to October 24, 2011, Gwendolyn Stewart-Jeffery was employed by the TDMHSAS and worked at MMHI as a Registered Nurse 3. As a Registered Nurse 3 at MMHI, Ms. Stewart-Jeffery's job responsibilities were supervisory duties. She worked in MMHI's admissions department and was responsible for ensuring that nursing staff did vital sign tests on newly admitted patients. In addition, she was responsible for direct patient care and was expected to assist with any code blues.

2. Ms. Stewart-Jeffery sustained an on-the-job injury (hereafter "OJI") on July 10, 2010. She received workers' compensation benefits from the date of injury until approximately August 16, 2011. On September 1, 2011, Ms. Stewart-Jeffery requested to use accumulated personal leave benefits from MMHI retroactively back to August 17, 2011, until she recuperated

¹ Although Grievant was originally terminated for conduct unbecoming an employee in the state service and for the good of the service, a February 6, 2012, letter to Grievant from Mental Health Commissioner E. Douglas Varney [Exhibit 8] states that Grievant's termination for cause was overturned, but that Grievant's verbal resignation is accepted. Accordingly, the sole issue for consideration is whether or not Grievant resigned her position at MMHI.

from the OJI.

3. Ms. Stewart-Jeffery remained absent from her job at MMHI from July 10, 2010, the date of the OJI until October 12, 2011, the date she separated from employment at MMHI because she had not been released to come back to work by her workers' compensation physician. Ms. Stewart-Jeffery's medical records from Phoenix Neurosurgery, dated August 15, 2011, and October 6, 2011, clearly indicate that she was to "stay off work."

4. Claudette Seymour, Director of Human Resources at MMHI, received two phone calls from a human resources employee at Community Behavioral Health (hereafter "CBH") during the first week of September, 2011. CBH is a mental health facility in Memphis, Tennessee, that is smaller than MMHI but very similar. The representative from CBH called to verify Ms. Stewart-Jeffery's employment at MMHI and other information on an employment application that she had submitted to CBH. During the second telephone conversation between Ms. Seymour and the CBH representative, Ms. Seymour was informed that Ms. Stewart-Jeffery had accepted a full-time position as the Director of Nursing at CBH, effective September 1, 2011. After the call ended, Ms. Seymour informed John J. Coons, Assistant General Counsel at MMHI, that Ms. Stewart-Jeffery began working for CBH on September 1, 2011, as the Director of Nursing.

5. Sallie Powell, Nurse Executive at MMHI, testified that the job responsibilities of the Director of Nursing position at CBH are very similar to the job responsibilities of the position that Ms. Stewart-Jeffery held while employed at MMHI. According to Ms. Powell, in a small mental health facility such as CBH, the director of nursing provides much more "hands-on patient care" than a director of nursing or nurse executive would typically provide at a larger facility.

6. Ms. Powell testified that Ms. Stewart-Jeffery's work schedule at MMHI fluctuated on weekdays and weekends from 7:00 a.m. to 7:00 p.m., 11:00 a.m. to 7:00 p.m., and 3:00 p.m. to 11:00 p.m. Ms. Powell testified that Ms. Stewart-Jeffery's work schedules at MMHI and CBH would have overlapped, and employees are not allowed to work two full-time positions with fluctuating schedules that sometimes overlap because it disrupts the operation of both hospitals.

7. Ms. Stewart-Jeffery began employment at CBH on September 1, 2011. At that time, she was still employed by MMHI and using personal leave to be absent from work. Personal leave must be reviewed or approved by an employee's supervisor. The use of personal leave had been approved by MMHI based on the doctor's note that Ms. Stewart-Jeffery submitted dated, August 15, 2011, which stated: "Stay off Work." In fact, all of the doctor's notes that Ms. Stewart-Jeffery submitted to MMHI following the 2010 OJI stated: "Stay off Work."

8. The Nursing Department at MMHI does not allow Registered Nurse 3 employees or other direct care nursing staff to work under medical restrictions or light duty status. The reason for not allowing this is because nursing staff employees provide direct care to volatile patients who occasionally attack staff. Registered Nurse 3 employees are responsible for assessing patients, providing direct care, responding to emergency situations involving patients, and other duties which all require the employee to be physically capable.

9. After learning of Ms. Stewart-Jeffery's employment at CBH, on September 8, 2011, Mr. Coons contacted Ms. Stewart-Jeffery to give her an opportunity to clarify her employment situation with MMHI and CBH. Mr. Coons asked Ms. Stewart-Jeffery why she had taken a substantially similar position with CBH while she continued to rely on a doctor's note to

remain absent from MMHI for more than one year while receiving workers' compensation benefits or using personal leave, especially given the fact that based on the doctor's note she submitted, she still had not been cleared by her physician to return to work. Given Ms. Stewart-Jeffery's medical records which stated "stay off work," Mr. Coons asked Mr. Stewart-Jeffery if she would submit a letter from her physician, clarifying her ability to work at CBH, in light of her inability to work at MMHI. She declined to do so. Mr. Coons then asked Ms. Stewart-Jeffery what her intentions were regarding returning to her position at MMHI. Ms. Stewart-Jeffery told Mr. Coons that she had planned to call and let MMHI know that she had accepted another job elsewhere. At that time, Ms. Stewart-Jeffery delivered a verbal resignation to Mr. Coons by stating: "I resign."

10. Mr. Coons never asked Ms. Stewart-Jeffery to resign. Ms. Stewart-Jeffery voluntarily resigned to Mr. Coons on her own and without any pressure or influence by Mr. Coons. Before the telephone call ended, Ms. Stewart-Jeffery told Mr. Coons that she would bring her state property (e.g., badge, facility keys, etc.) and a written letter of resignation to MMHI the next day.

11. When the call ended, it was clear to Mr. Coons that Ms. Stewart-Jeffery had resigned her position at MMHI and had already started working full-time as the Director of Nursing at CBH. Mr. Coons then informed Lisa Daniel, Chief Executive Officer (CEO) of MMHI, and Ms. Seymour that he talked to Ms. Stewart-Jeffery and that she verbally resigned her position at MMHI during the call and would return her state property to MMHI the next day. Ms. Daniel accepted Ms. Stewart-Jeffery's verbal resignation to Mr. Coons. The verbal resignation was considered by MMHI to be valid and sufficient, and MMHI accepted the finality of Ms. Stewart-Jeffery's decision to resign from MMHI on September 8, 2011.

12. After Ms. Stewart-Jeffery verbally resigned to Mr. Coons on September 8, 2011, she was informed by CBH that the decision had been made to terminate her from the Director of Nursing position. On September 9, 2011, the next day, Ms. Stewart-Jeffery called Mr. Coons and indicated that she no longer intended to resign. It was only after she learned of CBH's decision to terminate her employment that she began to contest the fact that she verbally resigned to Mr. Coons on September 8, 2011. Ms. Stewart-Jeffery attempted to rescind her verbal resignation because her employment at CBH had been terminated, not because she chose to come back to MMHI against her doctor's orders. Clearly, Ms. Stewart-Jeffery's decision to deny that she verbally resigned was motivated by her losing her job at CBH.

13. Ms. Stewart-Jeffery failed or refused to submit a written resignation, turn in her state property (e.g., facility keys, badge access, etc.), or otherwise complete the exit process for employees who separate from state service. It is the employee's responsibility to complete the departure process, including returning keys, badge access and completing the necessary paperwork. However, Ms. Stewart-Jeffery continued to retain the keys and badge access to the facility after Ms. Daniel had accepted her resignation. On October 12, 2011, as CEO of the facility, Ms. Daniel made the decision to terminate Ms. Stewart-Jeffery from service to ensure the security and safety of hospital staff and service recipients and allow MMHI to have finality regarding Ms. Stewart-Jeffery's employment. MMHI later followed up with a termination letter because Ms. Stewart-Jeffery failed to follow through with returning state property. If Ms. Stewart-Jeffery would have followed through with the resignation process by returning the state property in her possession, MMHI would not have pursued the termination action.

14. On September 14, 2011, Sallie Powell, Nurse Executive, sent Ms. Stewart-Jeffery a recommendation for dismissal for the good of the service based on fraudulent use of sick leave

and conduct unbecoming a state employee. At Ms. Stewart-Jeffery's request, a due process hearing was conducted on September 22, 2011. Based on the information presented at the hearing, Ms. Daniel made the decision to uphold Ms. Stewart-Jeffery's dismissal, and Ms. Stewart-Jeffery was informed of Ms. Daniel's decision in a letter dated October 12, 2011.

15. At Ms. Stewart-Jeffery's request, a Step IV grievance hearing was conducted on January 4, 2012, before Commissioner Douglas Varney's designee, Step IV Hearing Officer Douglas Bennett. At that hearing, Ms. Stewart-Jeffery testified that she had accepted a full-time appointment as Director of Nursing at CBH, effective September 1, 2011. After hearing the testimony and reviewing the evidence presented at the Step IV hearing, Mr. Bennett recommended to the Commissioner that the termination decision be overturned, and the Commissioner accepted Mr. Bennett's recommendation. Although Mr. Bennett did not find sufficient proof to support management's decision to terminate Ms. Stewart-Jeffery, he did find sufficient evidence that she resigned her position at MMHI. Such evidence consisted of her own testimony at the Step IV hearing – that she had interviewed for and accepted a full-time position working for a private agency and started working for that private agency on September 1, 2011. In addition, Mr. Bennett based his decision on testimony that Ms. Stewart-Jeffery had a discussion with Mr. Coons and told him that she resigned her position at MMHI because she had accepted another job. Accordingly, Commissioner Varney overturned the dismissal for cause, but he accepted Ms. Stewart-Jeffery's resignation. Ms. Stewart-Jeffery was informed of Commissioner Varney's decision in a letter dated February 6, 2012. The letter states in pertinent part:

Your separation will be recorded as a resignation, in good standing, in order to accept other employment. This determination is based on your own testimony that you did accept a full-time appointment as Director of Nursing at Community

Behavioral Health, effective September 1, 2011, and your verbal resignation delivered to facility attorney Jeff Coons on September 8, 2011.

CONCLUSIONS OF LAW AND ANALYSIS

1. This matter is properly before the Commission, and all parties to this proceeding have received proper notice of this proceeding and been provided an opportunity to be heard on the issues presented.

2. It is evident from Grievant's actions that she intended to, and indeed did, resign from her position at MMHI. She actively sought out and obtained employment in a similar position while she was absent from her position at MMHI. She submitted to MMHI a physician's letter which stated that she was to "Stay off work," yet she was able to interview for, obtain, and actually start working a job in another establishment with almost identical requirements as the job she had worked at MMHI.

3. Based on the testimony and evidence presented, Ms. Stewart-Jeffery accepted a full-time appointment as Director of Nursing at CBH, effective September 1, 2011, and she delivered a verbal resignation to Mr. Coons on September 8, 2011. Ms. Stewart-Jeffery's resignation was accepted by Ms. Daniel and Commissioner Varney. The Rules of the Tennessee Department of Human Resources do not require that an employee submit a written resignation to be a valid resignation. Chapter 1120-02-.16 of the Rules of the Tennessee Department of Human Resources states, in pertinent part: "An employee who resigns may state the reasons in writing to the appointing authority." (Emphasis added). The fact that Ms. Stewart-Jeffery chose not to submit a written resignation does not nullify her verbal resignation. The conduct on the part of Ms. Stewart-Jeffery and the acceptance of her verbal resignation by MMHI management and the appointing authority, as and proven by TDMHSAS, constituted a valid resignation and is not a

grievable matter under Chapter 1120-11-.06² of the Rules of the Tennessee Department of Human Resources. Additionally, although Grievant's termination for cause was overturned, it is evident that based upon her own conduct of interviewing for and starting another job at another facility, and from the conversation she had with Mr. Coons, that she verbally resigned from her position at MMHI. With the benefit of the testimony from all parties³ it is clear from Grievant's words and actions that she resigned from her position at MMHI.

Accordingly, **IT IS DETERMINED** that TDMHSAS's finding that Grievant resigned her position with MMHI effective September 8, 2011 is affirmed. It is **CONCLUDED** that TDMHSAS's acceptance of Grievant's resignation is **UPHELD**.

This Initial Order entered and effective this 26 day of December, 2012

Rob Wilson
Administrative Judge

² Tennessee Department of Human Resources has determined that the following are grievable matters:

- (1) Disciplinary suspension or demotion;
- (2) Disciplinary dismissal;
- (3) Any disciplinary action or layoff that the employee believes is the result of discrimination prohibited by TENN. CODE. ANN. § 8-50-103 or TENN. CODE. ANN. § 4-21-401. The employee may file such grievance directly with the appointing authority, warden, or superintendent;
- (4) Involuntary geographical transfer of an employee or official duty station more than fifty (50) miles. Distance will be determined by drawing a circle, with a fifty (50) mile radius, centered on the previous official duty station;
- (5) Non-compliance with an approved reduction in force plan by an appointing authority;
- (6) Prohibited political activity as outlined in TENN. CODE. ANN. Title 2, Chapter 19 (the "Little Hatch Act");
- (7) Coercion of an employee to waive his right to consideration on an eligibles' list;
- (8) Final performance evaluations based on procedural grounds to the fourth step; and
- (9) Other matters determined at the sole discretion of the appointing authority to be grievable, **but not included in section 1120-11-.07 below**. RULE 1120-11-.06.

³ The Motion to Dismiss was denied because there was insufficient proof in the record prior to the hearing.

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 26
day of December, 2012

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, looping initial 'T' and 'S'.

Thomas G. Stovall, Director
Administrative Procedures Division