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Law

1-7-2013

TENNESSEE HUMAN SERVICES, Petitioner V.
JAMES HENRY HOLLOWAY, Grievant

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entrance he observed Rehabilitation Assistant Jonathan Chapman asleep on a couch in the lobby. The Grievant proceeded to awaken Mr. Chapman and advise him that this was unacceptable behavior. The Grievant then left the building and continued on his security rounds. At approximately 5:20 a.m. the Grievant returned to the Transitional Life Skills Building and once again observed Chapman asleep. However on this occasion, rather than awaking Mr. Chapman as required by TRC policy, the Grievant left him asleep and continued on his security rounds. At approximately 8:00 a.m. the Grievant notified his supervisor Leah Powell that he had twice found Mr. Chapman asleep while on duty. Later the same day the Grievant and Ms. Powell sat down together while the Grievant composed a Special Report describing the incident.¹

3. According to Ms. Powell, the standard protocol at TRC that one is to follow if they observe another employee asleep is to: 1) observe; 2) document time and position; 3) wake them up.

4. During his testimony at the hearing the Grievant stated that he did not wake Mr. Chapman on the second occasion he saw him sleeping because Mr. Chapman woke up when someone else walked into the lobby. The Grievant did not include this in the Special Report he composed on November 1, 2011, nor did he make such a statement to Ms. Powell or any other member of the TRC supervisory staff.

5. On March 5, 2012, the Grievant received a three (3) day suspension for negligence in the performance of his duties and acts that would endanger the lives and property of others. On May 18, 2012, the suspension was upheld by the commissioner after a Level IV hearing.

¹ Col. Ex. 1

RELEVANT LEGAL AUTHORITY

1. **Department of Human Resources Rule 1120-10-.03 Examples of Disciplinary Offenses²**

(3) Negligence in the performance of duties;

(18) Acts that would endanger the lives and property of others

CONCLUSIONS OF LAW

1. The Department has carried its burden of proof by a preponderance of the evidence that the Grievant's conduct constituted a violation of the rules set forth above.

2. The Grievant failed to awaken Mr. Chapman when he found him asleep the second time on November 1, 2011. The Grievant's assertion during his testimony that he did not awaken Mr. Chapman because he was awakened by another individual is not credible. The Grievant failed to note this critical item in the Special Report drafted the same day nor did he mention this to Ms. Powell or anyone else at TRC.

3. The residents at TRC are a fragile population who need to be monitored at all times. Allowing Mr. Chapman to remain asleep while on duty could have jeopardized the safety of the residents in the Transitional Life Skills Building had an incident occurred. Making the Grievant's conduct even more egregious is the fact that as Security Chief he has supervisory authority over other employees and should serve as a role model for those employees. Clearly the Grievant's failure to awaken Mr. Chapman constituted negligence in the performance of his duties and an act that could endanger the lives and property of others.

4. Based upon the foregoing it is hereby **ORDERED** that the Grievant's suspension is **UPHELD**.

² The rule numbers have been changed since the letter of suspension issued March 5, 2012.

This Initial Order entered and effective this 30 day of January, 2013

Thomas G. Stovall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 30 day of
January, 2013

Thomas G. Stovall, Director
Administrative Procedures Division