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Civil Service Commission vs. Sandra Waggoner

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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

IN THE MATTER OF:

Sandra Waggoner

DOCKET NO: 26.43-114560J

INITIAL ORDER

This matter was heard on July 31, 2012 in Johnson City, Tennessee before Dewayne Bunch, Administrative Judge, assigned by the Secretary of State, and sitting for the Tennessee Civil Service Commission. Representing the State was Mickie Furlong Smith, Assistant General Counsel with the Department of Children's Services. Grievant Sandra Waggoner was not represented by legal counsel. The matter was subsequently reassigned to Administrative Judge Bettye Springfield to render the Initial Order.

This matter became ready for a decision after the Grievant's Proposed Findings of Fact and Conclusions of Law were filed on October 5, 2012.

The subject of this hearing was the Grievant's appeal of her termination by the Department of Children's Services, ("Department" or "DCS"), for violation of Tennessee Department of Human Resources (TDHR) No. 1120-10-.0 (1) Inefficiency in the performance of duties; (2) Incompetency in the performance of duties; (3) Negligence in the performance of duties; (18) Acts that would endanger the lives and property of others; and (21) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

After consideration of the record, it is determined that the appropriate discipline in this matter is that the Grievant be terminated.

This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Grievant, Sandra Waggoner, was employed by DCS as a Children's Services Case Manager 2. She was terminated, effective July 25, 2011, for violation of DCS rules and Tennessee Department of Human Resources Policy.

2. Lea Ann Jansen, Case Manager 4 and Team Leader with DCS, supervised the Grievant for approximately three and a half years. She identified numerous performance problems that led to the Grievant's termination.

3. DCS Administrative Policy 11.1 Family Functional Assessment (FFA), is the first tool for entering data on families involved in Child Protective Services or children otherwise coming into the system. This is to be initiated within the first thirty (30) days of receiving a case and updated on a quarterly basis, which the Grievant failed to do.

4. The Child and Adolescent Needs Survey (CANS) is an assessment used to determine the level of care and help that is needed to identify the appropriate placement for children. Grievant had problems timely following this policy.

5. DCS Administrative Policy 16.60 Multiple Response Services (MRS) covers the family services worker responsibilities in non-custodial cases. It addresses how much contact the worker is supposed to have with the children and the kinds of services that are supposed to be provided to the child or the family. The Grievant had a problem following the policy.

6. DCS Administrative Policy 16.31 references Permanency Planning for children and youth in DCS custody. It is designed to assist the family with the hope of getting the child back and is very important in custody cases to achieve permanency for the child. The plan is required within thirty (30) days of custody and must be revised every six (6) months.

7. DCS Administrative Policy 31.14 governs Documentation of TFACTS Case Recordings. An important component of the permanency plan is that, once developed or revised, it is to be entered into TFACTS within 48 hours. It is crucial to have the data timely entered, because the system generates information that is provided to the Court. This document becomes a court order once ratified by the Court.

8. The Visitation Protocol Attachment to Policy 16.38 outlines the frequency and purpose of visits with the child placed in DCS custody, and documentation of the visits. The record of the visit is required to be placed in the TFACTS "Case Recording" section.

9. Jansen testified that Grievant consistently had problems following policy. When Jansen became the Social Services Supervisor, she gave Grievant many opportunities to improve because she wanted to make sure the entire team had been properly trained. She took specific steps and offered the Grievant additional training to make sure that the issues with Grievant's job performance were not due to a lack of training.

10. The Grievant's Performance Evaluations dated May 13, 2009 and September 9, 2009 indicated an overall score of 2 or Marginal. The reports noted that Grievant did not consistently notify absent parents nor did she conduct diligent searches on all cases or make reasonable efforts to locate or engage absent or out-of-state parents. She had problems due to not entering dictation in TN Kids timely and/or correctly.

11. In non-custody cases or FSS, the Grievant did not regularly make contact with the child and family within the time frame per policy nor did she make a home visit within the policy time frame. Over a period of 11 months, the Grievant was placed on the “no face-to-face report” seven months and for five consecutive months. Grievant received one FSS case on December 15, 2010 and she did not contact the parent until January the 19, 2011.

12. Jansen had to see one child herself after the parent of that child called the team leader to complain about the way in which Grievant handled the case.

13. The Grievant’s Performance Evaluation dated February 8, 2011 noted that she was not following the policy of developing an initial permanency plan within the first 30 days of referral per DCS policy. She allowed permanency plans to expire without developing new plans. There was one particular FSS case in which Grievant had to be reminded at five consecutive monthly case conferences to update the non-custodial perm plan before it was completed. She also did not follow policy of entering perm plans, custodian and non-custodial, within the required 48 hour time frame, or document consistently visitation in TFACTS.

14. The Grievant had Monthly Performance Briefings with Supervisor Jansen, which were used as a method to identify issues of concern and develop solutions. Jansen would go through every case and then develop action steps for Grievant, giving her at least a month’s notice to complete items before they came due. The issues remained the same concerning failure to develop initial and revised permanency plans; failure to update Family Functional Assessments (FFA) or the FAST assessments; face-to-face contacts not being conducted according to policy and/or not being entered into the DCS’s computer system.

15. Copies of DCS policies were given to the Grievant during the Monthly Performance Briefings. The monthly briefings gave the Grievant an opportunity to request help.

16. The Grievant was given several Job Performance Improvement Plans: January 29, 2009; May 13, 2009; and September 2, 2009. The Job Performance Improvement Plans reviewed areas needing to be addressed, the details of the policies were discussed, and action steps for the Grievant were developed to help her “resolve deficiencies or improve.”

17. The Grievant also had Job Performance Improvement Plans dated August 28, 2009 and April 13, 2011 in which her job duties were outlined. These plans presented Grievant with another opportunity to discuss any job problems she was having.

18. The Grievant was given the opportunity to be flexible with her hours in order to meet the needs of families, and was given permission for overtime in some situations. Jansen gave the Grievant “do not disturb days... at least once a week” in order for her to get caught up. On these days, the case manager (Grievant) was not to be disturbed and all emergencies were directed to the supervisor.

19. In some instances, Jansen entered perm plans for the Grievant in TFACTS, typed or hand wrote the child and family team meeting summaries; sent reminder e-mails; entered all FFAs into the new TFACTS system for Grievant, gave her lists of cases and requirements for face-to-face contacts; gave action sheets discussed in monthly performance briefings, so she would have a clear list of things to do with due date; developed monthly spreadsheets to provide Grievant with another tool for tracking face to face visits and EPSD&Ts and; took Grievant off the monthly new case rotation several times “so she wouldn’t get new cases.”

20. When asked how Grievant's actions or inaction affected child safety, Ms. Jansen responded, "I guess most importantly would be the lack of face-to-face contacts whether it's the – the certain number of per month that...we're required to do per policy or if it's a new family support services referral where we're required to see that child within so many days or we're supposed to be in a parent's home or we're supposed to check out a child in a resource home, when we're not doing that, I don't know how we can insure child safety."

21. Jansen testified she never got a sense of urgency from the Grievant for achieving permanency on behalf of the children. She tried to help Grievant see the big picture, i.e. "That we want these kids to, number one, not be in our custody if it's an FSS case. We want to try to prevent that, and it's important to—to work with families to assess...the issues...strengths too, so that we can build on them to prevent custody, but then when we do get the kids in custody, there should be a sense of urgency in getting these kids out of custody."

22. The Grievant did not deny the reasons provided for her present discipline, but disputes the termination of employment as the appropriate discipline.

23. Grievant acknowledged that Jansen did take on some of her responsibilities and completed those tasks and that Ms. Jansen explained the policies and procedures to her. She also admitted that she had reoccurring performance issues that had not been resolved as of the date of her termination.

24. The Grievant blamed the fact that she had to visit children placed in Memphis as one of reasons that prevented her from completing assigned tasks timely. From 2008 until July 2011, the Grievant had two to three children placed in Memphis.

25. Mr. Waggoner, Grievant's husband, presented a newspaper article on problems with DCS's computer data base system, TFACTS. He testified that this was one reason Grievant was having performance problems. She also had problems with the prior data system, TNKids.

26. The Department charged the Grievant with violation of Tennessee Department of Human Resources Rules governing inefficiency in the performance of duties; incompetency in the performance of duties; negligence in the performance of duties; acts that would endanger the lives and property of others; and refusal to accept a reasonable and proper assignment from an authorized supervisor or insubordination.

27. The Grievant had received a previous five-day suspension on April 4, 2008 for violations of DCS Policy 1.30, Section C ICPC for allowing a child to go out-of-state without the proper authority or documentation.

28. On January 29, 2009, the Grievant received an Oral Warning due to having permanency plans that had expired and overdue EPSDTs.

29. On June 4, 2009, the Grievant was issued a Written Warning for violations of DCS policy by not seeing children two times per month, not seeing children on a ninety (90) day trial home visit, not updating the Family Functional Assessment quarterly, and not setting up a dental appointment for a child in custody.

30. On February 1, 2010, the Grievant received a ten (10) day suspension for violation of DCS policy relating to the permanency planning for children and youth in DCS custody and the policy regarding her responsibilities for cases that were referred directly from the court, as well as properly recording the FFA process and ongoing assessment.

CONCLUSIONS OF LAW

1. The Department has the burden to prove, by a preponderance of the evidence, that Grievant was properly terminated. Tennessee Department of State, Administrative Procedures Division, Rule 1360-4-1-.02(3)(7).

2. Tennessee Department of Human Resources Rule No. 1120-10-.06 lists causes for disciplinary actions, including: inefficiency in the performance of duties; incompetency in the performance of duties; negligence in the performance of duties; acts that would endanger the lives and property of others; and refusal to accept a reasonable and proper assignment from an authorized supervisor or insubordination.

3. Pursuant to Tenn. Code Ann. §8-30-201(a), the State of Tennessee established for its employees a system of personnel administration that governs the removal, discipline and other incidents of state employment. Section 8-30-330 provides, in pertinent part, that discipline imposed on state employees must be progressive:

(a) The supervisor is responsible for maintaining the proper 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). [Emphasis added.]

4. Pursuant to Tennessee Department of Personnel Policy Rule §1120-10-.05, the causes for disciplinary action include, "causes relating to performance of duties."

5. It is concluded that the Department carried its burden of proving, by a preponderance of the evidence, that the Grievant violated DCS and TDHR Policies and, therefore, termination was the appropriate level of discipline.

6. The Grievant consistently did not conduct diligent searches on all cases or make reasonable efforts to locate or engage absent or out-of-state parent, and was placed on the “no face-to-face report” seven out of a period of 11 months. She had problems not entering dictation in TFACTS timely and/or correctly, and did not always follow policy in terms of making regular initial contact with children and families. Grievant did not develop an initial permanency plan within the first 30 days of referral, and allowed permanency plans to expire without developing new plans.

7. The Grievant was given many opportunities to improve. The Job Performance Improvement Plan was utilized to outline her job duties and go over them with her. She was given the option of flexible hours, permission for overtime, and “do not disturb days” at least once a week to help her to get caught up on work.

8. Grievant’s lack of face-to-face contacts, not seeing the child within the required number of days, not making contact with a parent, or checking out a child in a resource home, as required by policy, negatively impacted child safety.

9. Pursuant to State statute, “the supervisor must administer disciplinary action beginning at the lowest appropriate step.” In this instance, consideration is given to the fact that the Grievant had previously received a five (5) day suspension on for violations of DCS Policy 1.30, by allowing a child to go out-of-state without the proper authority or documentation; an Oral Warning due to having permanency plans that had expired and overdue EPSDTs; a Written Warning for violations of DCS policy by not seeing children two times per month, not seeing

children on a ninety (90) day trial home visit, not updating the FFA quarterly, and not setting up a dental appointment for a child in custody; and a ten (10) day suspension for violation of policy relating to the permanency plan for children and youth in DCS custody.

10. Based on the foregoing, it is determined the appropriate discipline in this matter is that the Grievant be **terminated**.

11. It is so **ORDERED**

Entered and effective this 3 day of January, 2013

Bettye Springfield
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 3 day of January, 2013

Thomas G. Stovall, Director
Administrative Procedures Division