University of Tennessee, Knoxville
Trace: Tennessee Research and Creative Exchange

Tennessee Department of State, Opinions from the Administrative Procedures Division

Law

4-16-2013

TENNESSEE DEPARTMENT OF CORRECTION (BOPP), Department, v. BARBARA DATTULO, Grievant

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION

TENNESSEE DEPARTMENT OF CORRECTION (BOPP) Department,	)	
v.	)	Docket No. 26.41-115143J
BARBARA DATTULO, Grievant	)	

INITIAL ORDER

This matter was heard by Contested Hearing on December 12, 2012, by the Honorable Anthony Adgent, Administrative Law Judge assigned by the Secretary of State, sitting for and on behalf of the Tennessee Civil Service Commission. Mr. Torrey S. Grimes, Department of Correction Staff Counsel, represented the Department. Mr. Jonathan Stephens, Tennessee State Employees Association Staff Counsel, represented the Grievant, Ms. Barbara Dattulo.

At issue in this matter is the Department's imposition of a three (3) day, unpaid suspension as discipline. After hearing the testimony, observing the demeanor, weighing the credibility of the parties and witnesses and viewing the evidence as a whole, it is determined that the discipline imposed was appropriate and is hereby upheld. The Court's determination is based on the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Grievant in this matter, Ms. Barbara Dattulo, is employed as a Probation and Parole Officer II in PSU of the Tullahoma Office.[1] Her caseload consists of sex-offenders.[2]

At the time of the events that comprise this matter, the Grievant was assigned to supervise half of the sex offenders in Coffee County and all the sex offenders in Lincoln and Moore counties. The Grievant was not assigned to supervise any offenders in

[1] Testimony of Ms. Barbara Datullo, Transcript, Page 161
[2] Testimony of Ms. Jane Luther, Transcript, Page 39

Bedford County.[3]

On May 5, 2011, Ms. Joyce Reed, a pre-sentence Officer and report writer, was assigned by the Bedford County Criminal Court to prepare a pre-sentence investigation (PSI) report on Offender, Andrew Michael Johnson.[4]

On May 5, 2011, on the day the PSI report was ordered and thereby assigned to Ms. Reed, the Greivant informed Ms. Reed that she [the Grievant] had known Offender Johnson and his family for a very long time, was very close to them, and that if any information was needed, or if Ms. Reed needed any help gathering information or needed any other assistance, that the she would be more than willing to help. The Grievant further informed Ms. Reed that Offender Johnson was like a "nephew" to her.[5]

On July 13, 2011, the Grievant again approached Ms. Reed about Offender Johnson. In this encounter, the Greivant informed Ms. Reed that that she [the Grievant], along with Offender Johnson's family, had discussed the information contained in the PSI report and that they thought the information about Offender Johnson's juvenile record was incorrect and that the information reflected in the PSI report did not actually belong to Offender Johnson, but could, on the other hand, belong to Offender Johnson's older brother.[6]

In reference to the July 13, 2011, conversation, Ms. Reed's testified that while she did not feel pressure from the Grievant to change the content of the PSI report, the Greivant's tone and demeanor was different than the May 5, 2011, conversation, and as such, classified the Greivant as "very serious", "very matter of fact", "very forward".[7]

Ms. Reed testified that she felt as if the Grievant was "warning" her that the information contained in the PSI report would be brought up at Offender Johnson's Sentencing Hearing. Ms. Reed testified that the encounter seemed as if the Greivant was siding with Offender Johnson's family because the Grievant used the pronoun "we" and included herself with Offender Johnson's family. Futhermore, Ms. Reed testified that because the Grievant had previously told her that she had a close relationship with the Offender and his family, coupled with totality of both the May 5, 2011, and the July 13, 2011, conversa-

[3] Testimony of Ms. Jane Luther, Transcript, Page 42
[4] Testimony of Ms. Joyce Reed, Transcript, Pages 12, 13, and 14
[5] Testimony of Ms. Joyce Reed, Transcript, Page 16
[6] Testimony of Ms. Joyce Reed, Transcript, Pages 17, 18, and 32
[7] Testimony of Ms. Joyce Reed, Transcript, Pages 33 and 34

tions, the Greivant approaching her about Offender Johnson felt "really inappropriate".[8]

After her July 13, 2011, encounter with the Grievant, Ms. Reed reported the encounter to her supervisor.[9]

On July 14, 2011, PSU Manager, Ms. Jane Luther, was notified of the July 13, 2011, encounter between Ms. Reed and the Greivant.[10]

Ms. Luther testified that her primary concern based on the information she received, as the Grievant's manager, was that there was a "conflict of interest" as it related to the Offender and the Greivant.[11]

Offender Johnson's Sentencing Hearing occurred on July 15, 2011.[12]

The Greivant attended Court in Bedford County on July 15, 2011.[13]

Ms. Reed, in accordance with her job duties, was in Court in Bedford County on July 15, 2011.[14]

Based on the information that she received about the Grievant's encounter with Ms. Reed, Ms. Luther attended court in Bedford County on July 15, 2011, and sat beside the Grievant during Court proceedings.[15]

In Court, the Grievant informed her manager, Ms. Jane Luther, that she was subpoenaed to testify for a case, but that it was not for a sex offender. Ms. Luther, being the manager of sex offender supervision, would have been familiar with the name of a sex offender.[16]

The Grievant testified in her sworn interrogatories that she was in Court for Tionta Ridley, a sex-offender on her caseload.[17]

The Grievant testified in her sworn interrogatories that she she did not receive a subpoena to appear in Court in Bedford County on July 15, 2011.[18]

The Grievant testified at the Contested Hearing in this matter that she was

---

[8] Testimony of Ms. Joyce Reed, Transcript, Pages 19, 20, 36 and 37
[9] Testimony of Ms. Joyce Reed, Transcript, Page 21
[10] Testimony of Ms. Jane Luther, Transcript, Page 40
[11] Testimony of Ms. Jane Luther, Transcript, Page 40
[12] Testimony of Ms. Joyce Reed, Transcript, Page 21
[13] Testimony of Ms. Joyce Reed, Transcript, Pages 23 and 44, Testimony of Ms. Barbara Datullo, Transcript, Page 168
[14] Testimony of Ms. Joyce Reed, Transcript, Page 17
[15] Testimony of Ms. Jane Luther, Transcript, Pages 44
[16] Testimony of Ms. Jane Luther, Transcript, Pages 44, 45, 91, and 92
[17] Grievant's Answer to Petitioner's First Set of Interrogatories, Page 3
[18] Grievant's Answer to Petitioner's First Set of Interrogatories, Page 3

in Court in Bedford County on the Offender Andrew Johnson case and the Tionta Ridley case.[19]

The Grieviant testified that she was "subpoenaed verbally" to appear in Court that day on the Andrew Johnson matter.[20]

Ms. Luther instructed Ms. Reed to check the Court records for any subpoenas that may have been issued in Offender Johnson's case for the July 15, 2011 hearing, and there were none. Ms. Reed was instructed to check for subpoenas the following week and again, there was no subpoena for the Grievant to appear in any matter on the Bedford County Court docket on July 15, 2011.[21]

The Grievant charged 4.5 hours work-time on her timesheet for her July 15, 2011, Court appearance.[22]

Tionta Ridley was sentenced on June 17, 2011.[23] The Grievant testified that Tionta Ridley was an add-on to the Court docket on July 15, 2011, because of new charges.[24]

The docket sheet for Bedford County Court on July 15, 2011, did not have Tionta Ridley on the docket nor did it reflect him as an add-on. There was no other Court in session in Bedford County on July 15, 2011.[25]

The Grievant did not testify in Court on July 15, 2011.[26]

State Department of Human Resources (DOHR) Policy instructs that "an employee must take compensatory, annual, or leave without pay if subpoenaed in a private litigation to testify not in an official capacity."[27]

The Department has a Code of Ethics policy which defines and instructs employees on ethical issues. When first hired, and annually thereafter, the Greivant acknowl-

---

[19] Testimony of Ms. Barbara Dattulo, Transcript, Pages 168-169, 172-173, and 176-177
[20] Testimony of Ms. Barbara Dattulo, Transcript, Page 177
[21] Testimony of Ms. Joyce Reed, Transcript, Pages 23-24, and Testimony of Ms. Jane Luther, Transcript, Pages 46, 50, 51. 63, 70, and 72
[22] Testimony of Ms. Jane Luther, Transcript, Pages 47 and 48; and Exhibit No. 3 –Timesheet
[23] Exhibit 18 – Judgment and Testimony of Ms. Barbara Dattulo, Pages 178-179
[24] Testimony of Ms. Barbara Dattulo, Page 180
[25] Exhibit 21 – Bedford County Court Docket and Testimony of Ms. Joyce Reed, Transcript, Pages 208-211
[26] Testimony of Ms. Barbara Dattulo, Pages 170 and 180
[27] Exhibit 12-Civil Leave Policy; Testimony of Ms. Helen Ford, Transcript, Pages 104-107

edges and signs that the Code of Ethics policy has been received and read.[28]

The discipiline imposed by management was a three (3) day, unpaid suspension.[29]

The Grievant was delivered an Intent to Suspend letter on August 4, 2011. The Greivant signed the letter on August 4, 2011.[30]

The Grievant was delivered a letter Upholding the Intent to Suspend Letter after relevant and appropriate due process on October 6, 2011. The Greivant signed the letter on October 6, 2011.[31]

The Grievant was delivered a letter upholding the three (3) days suspension, as imposed, after a Level IV hearing on December 8, 2011. The Grievant signed the letter on December 8, 2011.[32]

---

[28] Exhibit 9-BOPP Admin. Policy 202.01 an d Exhibit 10-BOPP Acknowledgement of Receipt Form, and Testimony of Helen Ford, Transcript, Pages 96-102
[29] Testimony of Ms. Jane Luther, Transcript, Pages 52
[30] Exhibit 8-Intent to Suspend Letter
[31] Exhibit 14-Uphold Intent to Suspend
[32] Exhibit 6-Uphold Suspension Letter

CONCLUSIONS OF LAW

The events of this matter, the discipline imposed, and the cause of action filed by the Grievant occurred before the implementation of the *Tennessee Excellence, Accountability and Management (TEAM) Act* of 2012.

A career service employee who has completed probation has a property right in their job. The Tennessee Civil Service Commission has jurisdiction to make the ultimate determination upon any property taking action against a career service employee.[33]

A career service employee may be suspended, demoted, or dismissed from employment whenever just or legal cause exists.[34]

While not inclusive, *Tenn. Comp. R. & Regs* 1120-10-.05 gives examples of acts that may warrant disciplinary action.[35]

Before disciplinary action can be imposed on a career service employee, the employee must be given minimum due process, as defined by *Tenn. Comp. R. & Regs* 1120-10-.02.[36]

Due process was met in this case as evidenced by Exhibit 8-Intent to Suspend Letter, Exhibit 14-Uphold Intent to Suspension Letter, and Exhibit 6-Uphold Suspension Letter, and the testimony of Department Representative, Ms. Helen Ford.[37]

By the Greivant's own admission in her answers to her sworn interrogatories testimony she has known the family of Offender Johnson "since before the offender was born."[38] Further, the testimony at Hearing of the Greivant and Ms. Reed make it clear that the Greivant's relationship with Offender Johnson was more than that of mere acquaintances. Because of this, any contact, whether purposeful, incidental, or accidental should not have occurred or should have been otherwise disclosed to management.[39]

Because of her realtionship with Offender Johnson and his family, the Greivant obviously felt some sort of kinship with Offender Johnson because she sought out

---

[33] Former *Tenn. Code Ann.* §8-30-108(2), prior to October 1, 2012
[34] Former *Tenn. Comp. R. & Regs*. 1120-10-.02, prior to October 1, 2012
[35] Former *Tenn. Comp. R. & Regs*. 1120-10-.05, prior to October 1, 2012
[36] Former *Tenn. Comp. R. & Regs*. 1120-10-.02, prior to October 1, 2012
[37] Testimony of Ms. Helen Ford, Transcript, Page 109-110
[38] Grievant's Answer to Petitioner's First Set of Interrogatories, Page 2
[39] Testimony of Ms. Helen Ford, Transcript, Page 96-100

Ms. Reed to offer assistance in the prepartion of the PSI report on May 5, 2011.[40]

The Greivant was obviously keeping herself apprised of the situation with Offender Johnon's case as she, on July 13, 2011, sought out Ms. Reed's completed PSI report on Offender Johnson. While the PSI report was technically available to the Greivant, she would have had to seek out the content of the report as she would have had no other business reason to access it.[41] The Greivant testified that Offender Johnson's family contacted her about the report.[42] The Grievant should have quickly informed them that she could not be privy to Offender Johnson's case since she had a conflict of interest because of their relationship. However, the **Greivant did not**. The Greivant approached and questioned Ms. Reed about the content of the PSI report, which was a contunuation of a clear conflict of interest.

The Grievant went to Court in Bedford County on July 15, 2011, on the day that Offender Johnson was being sentenced. The Grievant, in her answers to her sworn interrogatories, testified that she was in Court in Bedford County on Offender Tionta Ridley, who was a sex-offender on her caseload. At Hearing in this matter, the Grievant testified that she was in Court in Bedford County on Offender Ridley ***and*** Offender Johnson. The Grievant testified that she was "subpoenaed verbally" to appear in Court that day on the Andrew Johnson matter.[43]

The evidence presented in this matter make it apparent that Offender Ridley was not on the docket in Bedford County Court on July 15, 2011, and the evidence presented make it apparent that Offender Ridley was not an add-on to the docket as the Grievant proposed. The department offered proof that Offender Ridley was sentenced a month prior, on June 15, 2011. The Grievant offered no contradictory evidence that Offender Ridley was on the Court's docket, scheduled to appear, or in any way before the Bedford County Court on July 15, 2011.

The Greivant charged work-time for her appearance in Bedford County Court on July 15, 2011, therefore, the only conclusion that can be made is that the Grievant was

---

[40] Testimony of Ms. Joyce Reed, Transcript, Page 16, and Testimony of Ms. Barbara Dattulo, Pages 162-163
[41] Testimony of Ms. Helen Ford, Transcript, Pages 96-97, and Testimony of Ms. Joyce Reed, Pages 18-19
[42] Testimony of Ms. Barbara Dattulo, Pages 164
[43] Testimony of Ms. Barbara Dattulo, Transcript, Page 177

in her offical capacity as a Probation and Parole Officer.

Since it is clear by the testimony that Offender Ridley was not in any way before the Bedford County Court on July 17, 2011, the Grievant had ***no reason*** to be at Court acting in her official capacity. The only reason that the Grievant had to be in Court on July 17, 2011, is on behalf of Offender Johnson, with whom, by her on admission, she had a familial relationship.

The Grievant's appearance at Court on work-time in her offical capacity as a Probation and Parole Officer on behalf of Offender Johnson is a ***clear conflict of interest*** and a ***violation of department policies***.

The Grievant's testimony that she was "subpoenaed verbally" to appear in Court on the Andrew Johnson matter fails. Merriam Webster's dictionary defines subpoena as "a writ commanding a person designated in it to appear in court under a penalty for failure". By definition, a subpoena is a "writ". The Grievant's argument that she was "subpoenaed verbally" to appear on Offender Johnson is ineffective. She may have been requested to appear, but she was not "subpoenaed". Even so, if the Grievant would have been under a proper subpoena for Offender Johnson, a person with whom she had a clear conflict of interest, she should have taken annual leave per DOHR policy. Since policy did allow for such issues, the Grievant may have been allowed to appear in Court on behalf of Offender Johnson, but she could not and should not have done so in her official capacity of as a Probation and Parole Officer.

Once it became clear that management intended to impose some sort of discipline for her actions, the Grievant attempted to mislead the inquiry into her actions by claiming that she was in Court on Offender Ridley's case, even though he was sentenced on June 17, 2011, a month prior, and not in any way before the Court in Bedford County on July 15, 2011. While the Grievant testified that Offender Ridley had new charges, she failed to offer any proof of such charges.

The Grievant put on proof about her character, work history, and peformance reviews, as mitigating factors to the level of discpline imposed. While certainly admirable, the Tennessee Court of Appeals has stated quite succinctly in *Lynn v. Camp*, 2003 WL

22401280, (2003), that an employee's "superior" work performance was not a factor in determining whether an employee has violated policy and whether discipline, up to and including termination, were appropriate. Management has broad discretion to impose the appropriate level of discipline based on the offense at issue.

It is appearant that the Grievant inserted herself into the case of another Officer, on behalf of an Offender, with whom she had a clear and unadulterated confict of interest.

The public trust was violated by the Grievant's actions. The Grievant acted inappropriately and her actions were a clear violation departmental policies and represnted a clear conflict of interest and therby brought her professional impartiality into question.[44]

The Petitioner has met its burden to prove, by the greater weight of the evidence, that the Grievant, Ms. Barbara Dattulo, violated departmental policies.

With Due Process being met, discipline was appropriate and imposed at the appropriate level given the facts that give rise to the discipline.

This Initial Order entered and effective this 16 day of April, 2013

_____

Anthony Adgent
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 16 day of April, 2013

Thomas Stovall, Director
Administrative Procedures Dvision

[44] Testimony of Ms. Helen Ford, Transcript, Pages 96-97