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BEFORE THE CIVIL SERVICE COMMISSION OF THE STATE OF TENNESSEE

IN THE MATTER OF: **TENNESSEE DEPARTMENT OF HUMAN SERVICES** **v.** **GLORIA SANCHEZ** ***Grievant***	**DOCKET NO: 26.11-117412J**

INITIAL ORDER

This contested case was heard in Nashville, Tennessee, on February 4, 2013, before Ann M. Johnson, Administrative Judge, assigned by the Secretary of State to sit for the Civil Service Commission of the State of Tennessee. S. Alexa Whittemore, Assistant General Counsel with the Tennessee Department of Human Services (Department or State), represented the State. The record indicates that the Grievant was not represented by legal counsel.

NOTICE OF DEFAULT

The Grievant did not appear for the hearing, in spite of the fact that she received notice of the hearing as well as of pre-hearing conferences set to take place after the initiation of the case. The Order setting the date, time, and place for the hearing was sent to the Grievant's address of record, and was not returned to the Administrative Procedures Division. Previously the Grievant had requested a continuance of an earlier-set hearing, which was granted. She had also provided an electronic mail address, and she was sent a reminder of the hearing date in an e-mail message to the address she provided, in addition to written notice to her address of record.

In addition to the Grievant's non-participation at the hearing, the Grievant also failed to participate in a pre-hearing conference set for October 25, 2012, stating in a telephone call to the Administrative Judge on October 30, 2013, that she had forgotten about the call. The Grievant also provided an electronic mail address and requested that the hearing be set in January or February of 2013. Although multiple messages were sent to the Grievant requesting her input for a finalized date for the reset hearing, she never responded. The Grievant also failed to file a witness and exhibit list, as required by pre-hearing procedural Orders. Because the Grievant has an obligation to participate in the administrative appeal she requested, and because she abandoned the appeal at the early stages of the process, the Department's oral motion for default was granted at the hearing, and the Department was allowed to proceed with an uncontested hearing in default under T.C.A. § 4-5-309.

ORDER ON THE MERITS

The subject of this hearing was the Grievant's appeal of her dismissal from State service by the Department of Human Services for inefficiency in the performance of duties. After consideration of the evidence and arguments placed on the record, it is determined that the dismissal should be upheld. This decision is based upon the following.

SUMMARY OF THE EVIDENCE

The Department presented testimony from Yovanda Long, Field Manager, Division 1, for the Department of Human Services in Nashville.

Nineteen documents were accepted into evidence at the hearing:

EXHIBIT 1 Dismissal Letter, October 4, 2011;
EXHIBIT 2 Recommendation for Dismissal, July 6, 2011;
EXHIBIT 3 Written Warning, September 19, 2007;
EXHIBIT 4 Oral Warning, October 29, 2007;
EXHIBIT 5 Letter of Suspension, November 5, 2009;
EXHIBIT 6 E-mails, January 28, 2010 through February 3, 2010;

EXHIBIT 7	E-mails, February 4 through February 10, 2010;
EXHIBIT 8	E-mails, March 18, 2010 through April 6, 2010;
EXHIBIT 9	E-mails, April 29, 2010 through June 9, 2010;
EXHIBIT 10	E-mails, May 25, 2010 through June 2, 2010;
EXHIBIT 11	E-mails, June 15, 2010 through July 6, 2010;
EXHIBIT 12	E-mails with attachments, May 3, 2011 through June 7, 2011;
EXHIBIT 13	Performance Improvement Plan, June 21, 2010, with e-mail attachments;
EXHIBIT 14	Follow Up Notes;
EXHIBIT 15	Monthly Conference Form, March 2010, with attachments;
EXHIBIT 16	Monthly Conference Forms, June, July, August 2010, with attachments;
EXHIBIT 17	Spread Sheet, August 26, 2010;
EXHIBIT 18	Running Record Comments; and
EXHIBIT 19	Running Record Comments.

The Grievant failed to participate or to present any proof.

FINDINGS OF FACT

1. The Grievant, Gloria Falls-Sanchez, was employed as an Eligibility Counselor 2 for the Tennessee Department of Human Services (DHS), Families First Division. She was assigned to work in the DHS office in Davidson County, Tennessee, and was supervised for the majority of her employment by Yovanda Long, Field Manager.

2. The Grievant remained in this employment until terminated by letter of October 4, 2011.

3. Previous discipline imposed upon the Grievant includes a written warning in September, 2007; an oral warning in October 2007; and a three (3) day suspension in October of 2009.

4. During the time the Grievant was serving her three (3) day suspension, it was found that the Grievant had a backlog of approximately eight hundred ten (810) alerts and one hundred thirty-nine (139) e-mails. Her co-workers were required to complete the work that the Grievant had not done.

5. On November 20, 2009, the Grievant returned to work after serving her suspension. At that time, she had only eighteen (18) e-mails in her GroupWise mailbox and three (3) case reading corrections, since her co-workers had completed the Grievant's backlog of work.

6. At all times during her employment, the Grievant had knowledge of the Families First Division, Davidson County, policies regarding the following essential functions: timely responses to third party contractors' requests for information; timely completion of bi-monthly contacts; timely completion of voicemail logs; timely completion of compliance alerts; timely return of client phone calls; timely opening, working, and responding to e-mails from clients, agency contacts, and third parties; timely scheduling of client appointments; timely referencing of cases for needed sanctions; and timely provision of customer service.

7. From about January 13, 2010, to June 15, 2010, the Grievant failed to work or to timely work approximately one hundred thirty-seven (137) e-mails a violation of Departmental policy.

8. The Grievant's failure to adequately and timely perform her job functions regarding e-mail responses resulted in clients who did not receive correct or timely benefits, childcare, or timely updates to their cases. Furthermore, the Grievant's failures resulted in additional work for her co-workers, who had to regularly complete the Grievant's work for her.

9. On or about June 21, 2010, the Grievant and her supervisor, Ms. Yovanda Long, met to develop a performance improvement plan for the Grievant. In the meeting, Ms. Long discussed with the Grievant her failures to properly manage her time, her failure to complete or timely complete her work, and methods by which the Grievant could improve her performance.

10. During the meeting, Ms. Long pointed out that the Grievant had approximately two hundred thirty-nine (239) unopened e-mails and faxes. The Grievant was specifically directed to complete her backlog of work of unopened e-mails and faxes by July 6, 2010.

11. On August 26, 2010, a third party contractor contacted Ms. Long to inform her that the Grievant had not timely responded to repeated requests for case information updates. As a result of the Grievant's failure to open the e-mails from this contractor and then take appropriate action, Ms. Long had to update the cases herself.

12. On September 13, 2010, Ms. Long met with the Grievant to discuss performance statistics for June 2010 through August 2010. The Grievant scored an overall unacceptable performance rating for completing compliance alerts, completing bi-monthly contacts, completing voicemail logs, timely retuning client calls, timely responding to e-mails, and timely scheduling of client appointments.

13. From about April 7, 2010, to September 27, 2010, the Grievant's failure to timely communicate with clients and to timely schedule client appointments potentially resulted in a failure of clients to receive their full benefits.

14. From about January 25, 2011, to June 6, 2011, the Grievant had approximately sixty-six (66) e-mails that she failed to open or to work in a timely manner. From about February 8, 2011, to March 1, 2011, the Grievant had approximately six hundred fifteen (615) alerts that she failed to complete or to complete in a timely manner.

15. On or about May 3, 2011, the Grievant failed to refer or timely refer nine (9) cases for sanctions due to non-compliance. As a result, some of the clients in those cases received several months of benefits for which they were not eligible.

16. On May 25, 2011, the Grievant received an e-mail request from a third party contractor asking for sanctions for twelve (12) cases based upon client non-compliance. The Grievant failed to work or timely work these e-mails. As a result, the clients in those cases received an extra month of benefits for which they were not eligible.

17. The Grievant was dismissed from her State employment by letter dated October 4, 2011. She was provided with the appropriate letters of intent to discharge and terminate employment, as well as an opportunity for informal discussion and hearing through the Level 4. The instant case is her Level 5 appeal.

APPLICABLE LAW

1. The Department, as the party "seeking to change the present state of affairs," has the burden of proof under Rule 1360-4-1-.02(7) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. ch. 1360-4-1 (June 2004 (Revised)), to prove by a preponderance of the evidence that the discipline imposed was appropriate under State law and regulations.

2. The Rules of the Tennessee Department of Human Resources (DOHR) provide the overall policy for imposing disciplinary action in Rule 1120-10-.02:

> POLICY. The intent of this chapter is to establish fair and uniform standards for the application of disciplinary procedures among agencies and institutions subject to the provisions of these Rules. A career employee may be warned, suspended, demoted or dismissed by the appointing authority whenever just or legal cause exists. The degree and kind of action is at the discretion of the appointing authority, but must be in compliance with the intent of the provisions of this Rule and the Act.

3. T.C.A. § 8-30-330 contains the following relevant provisions:

> (a) The supervisor is responsible for maintaining the proper performance 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).

4. DOHR Rule 1120-10-.05, in pertinent part, provides that the following is a disciplinary offense:

> (1) Inefficiency in the performance of duties.

ANALYSIS and CONCLUSIONS OF LAW

The weight of the evidence provided by the State in this matter is incontrovertible. In spite of numerous failures, the Grievant was provided with multiple opportunities to rectify her performance deficiencies, even though other staff was required to perform tasks that were assigned to the Grievant. Although she was able, for brief periods of time, to improve her proficiency, she quickly returned to her previous inefficiency, resulting in a lack of benefits to some clients and undeserved benefits to others. The Department showed remarkable forbearance in warning the Grievant, counseling the Grievant, and even in assigning her duties to others so that she could begin anew; none of these efforts resulted in a sustained adequate job performance. The Grievant demonstrated a pattern of inefficiency that harmed both the Department and the clients it serves. Ultimately, the only choice for the Department was termination of the Grievant's employment.

It is determined that the Department carried its burden of proof, showing by a preponderance of the evidence that the Grievant violated DOHR Rule 1120-10-.05(1).

It is further determined that dismissal is the appropriate disciplinary action for these violations. There was no alternative disciplinary response to the facts presented by this case; indeed, dismissal is the "lowest appropriate step" in light of the pattern presented here.

It is further determined that the Department accorded to the Grievant all rights of due process in the termination action. The facts show that the Grievant was notified of the basis in fact and in law for the discipline. The Grievant was provided with rights to appeal in each step of the process.

IT IS THEREFORE ORDERED that the decision of the Department of Human Services to terminate Grievant from her employment is fully **UPHELD**.

This Initial Order entered and effective this _____ day of _____ 2013.

_____
Ann M. Johnson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this _____ day of _____ 2013.

_____
J. Richard Collier, Director
Administrative Procedures Division