11-2-2005

DOUGLAS, SHARON, Grievant

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions
Part of the Administrative Law Commons

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
This matter came to be heard before Lynn M. England, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division and sitting for the Tennessee Civil Service Commission, on November 2, 2005. Ms. Marilyn Tucker, Assistant General Counsel for the Tennessee Department of Finance and Administration, Division of Mental Retardation, represented the Department. The Grievant, Sharon Douglas proceeded without counsel.

The subject of this hearing is whether the Grievant’s conduct merited separation for violation of Tennessee Department of Personnel Rules 1120-10-.06 (6) Habitual pattern of failure to report for duty at the assigned time and place.

After consideration of the record and arguments of the parties, it is DETERMINED that the Grievant should be terminated from the Department of Finance and Administration, Division of Mental Retardation Services.

This decision is based on the following Findings of Fact and Conclusions of Law:
FINDINGS OF FACT

1. In the calendar year 2002, Sharon Douglas (Grievant) was employed by the Department of Finance and Administration, Division of Mental Retardation as a Developmental Technician at Arlington Developmental Center in Memphis (Arlington).

2. As a Developmental Technician, Grievant provided direct care for individuals who lived in the Maple 2 home. The Maple 2 home is one of 16 residential units at the facility.

3. The direct care workers are responsible for the immediate and individual care of the people who live in the home.\(^1\)

4. The Grievant worked the night shift, which was from 10 p.m. to six a.m.

5. The night shift has a ratio of one staff person for every eight residents. During the relevant period of Grievant’s employment, the night shift had sixteen residents in the home with two (2) to three (3) staff people.\(^2\)

6. Ms. Nina Staples, Assistant Superintendent for residential services at Arlington testified for the Department.

---

\(^1\) The residents of this home are male individuals who are developmentally disabled. The majority of residents are severely and profoundly retarded. They need assistance in such areas as bathing, and toileting. Some need assistance with positioning because they are unable to turn over in bed.

\(^2\) Arlington Developmental Center is operating under a federal remedial order that requires a ratio of one staff for every eight residents during the night shift.

8. Charmaine Roman, Grievant’s Team Leader testified.

9. Ms. Roman counseled Grievant concerning her attendance. Grievant was instructed to speak with her supervisor directly if she expected to be late or absent from work.

10. Effective May 21, 2002, Deputy Superintendent Pete Davison issued a directive to all employees of Arlington. The directive stated that disciplinary action will be taken when employees fail to report to work. The disciplinary action for a first offense would be recommendation for one-day suspension; second offense – recommendation for three day suspension and for the third offense – a recommendation for termination.

11. Grievant signed her acknowledgment of this directive June 22, 2002.

12. On July 2, 2002, Grievant was scheduled to work but neither called nor reported for duty. It was recommended that she receive a one day suspension. After completion of her right to Due Process, she served her one day suspension on Monday July 29, 2002.

13. On September 13, 2002, Grievant was provided with a call-in procedure. The procedure stated she was required to call in to her supervisor one hour before her shift was to begin.

14. By letter dated September 19, 2002, Grievant was notified of Arlington’s intent to suspend her for three days for failure to report to work and
failure to notify her supervisor that she would not be at work on September 17, 2002.

15. Grievant completed her Due Process meeting with the Human Resources Director on September 24, 2002 and in accordance with the progressive disciplinary process was suspended for three days without pay. Those days were October 10, October 15 and October 21, 2002.

16. Despite repeated meetings and warnings with her supervisor, Grievant called in at 1:15 a.m. on November 9, 2002, stating she had overslept.

17. On November 12, 2002 Grievant was issued a recommendation for termination for habitual pattern of failure to report for duty.

18. Despite having received this recommendation for termination, Grievant again called her supervisor at 12:15 a.m. on November 17, 2002 stating she was unable to report for work on November 16, 2002 for her 10 pm to 6 am shift.

19. Grievant was provided her 4th step Due Process hearing on November 18, 2002.

20. Grievant was subsequently terminated effective Friday November 29, 2002.

21. Grievant’s only excuse for her attendance problems was that she was “stressed out” during this period of time. She was trying to take care of her sick father and she was also attending classes. She further stated her son was having problems at school.
22. Grievant did not deny any of the allegations for which she was terminated.

CONCLUSIONS OF LAW AND ANALYSIS

The Department of Correction is the Petitioner in this matter, and as such, is assigned the “burden of proof.” The burden of proof is the duty imposed upon a party to establish, by a preponderance of the evidence, that an allegation is true, or that an issue should be resolved in favor of that party. A “preponderance of the evidence” means the “greater weight of the evidence,” or “the more probable conclusion, based on the evidence presented.” The burden of proof is generally assigned to the party seeking to change the present state of affairs with regard to any issue. Rule 1360-4-1-.02(7), TENN. COMP. R. & REGS.

In the instant case, that means that the Department of Finance and Administration, Division of Mental Retardation Services must prove, by a preponderance of the evidence, that the Grievant failed to report to work on a habitual manner as defined in Rule 1120-10-.06 (6), TENN. COMP. R. & REGS., Tennessee Department of Personnel (TDOP) Rules and Regulations, and that her separation from state employment for doing so was appropriate.

Based upon the evidence presented, it is determined that the Department has met its burden of proof by a preponderance of the evidence that the Grievant violated the Tennessee Department of Personnel Rule 1120-10-.06 (6) Habitual pattern of failure to report for duty at the assigned time and place.
Accordingly it is hereby ORDERED that the Department’s termination of Grievant Sharon Douglas be UPHELD.

It is so Ordered.

Entered and effective this 18th day of May 2006.

_____________________________________
Lynn M England
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this 18th day of May 2006.

_________________________________
Charles C. Sullivan, II, Director
Administrative Procedures Division