1-22-2008

Jeffrey Allen Morgan

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INITIAL ORDER

This matter was heard on January 22, 2008, in Cleveland, Tennessee, before Joyce Carter-Ball, Administrative Judge, assigned by the Secretary of State to sit for the Civil Service Commission of the State of Tennessee. Dana M. Schmidt, Staff Attorney, represented the Tennessee Department of Children’s Services (herein after referred to as the (“Department”). Jeffery A. Morgan (hereinafter referred to as (“Grievant”) represented himself.

The issue of this hearing was whether the Department of Children’s Services properly terminated Grievant Jeffery Allen Morgan.

After consideration of all of the evidence, arguments of counsel and the entire record in this matter, it is determined that Grievant’s termination was proven to be proper by a preponderance of the evidence and should therefore be upheld.

This decision is based upon the following:
PROCEDURAL HISTORY

Grievant was employed with the Department as a Supervisory Child Services Officer (C.S.O.) at the Bradley Group Home, which is a Juvenile Justice Group Home for males ages 13-18. The boys are delinquent males that have committed some form of crime, ranging from minor to serious offenses. Grievant had been employed there since September 2001.

Grievant was the Senior C.S.O. on duty on May 12, 2007, and had the responsibility to make sure that the children were safe and that the secured areas remained secure. One of the students entered a secured area, and during that time the student was able to obtain secured medication. He ingested some of that medication and also distributed that medication without permission to some of the other students. On that same day, a screwdriver was found in the common area of the Group Home.

FINDINGS OF FACT

1. On May 12, 2007, Ginger Farmer, Director of the Bradley Group Home, left the facility for the day at 1:00. Before Ms. Farmer left, she made sure that the medicine cabinet was locked, and that the door to the office where the medication was kept was also locked. She put the key to the medicine box in her combination safe, which is secured by turning the knob.

2. Grievant was the lead officer on May 12, 2007. Ms. Farmer testified that the responsibilities and duties of the lead officer were to take the lead in all security measures. The lead officer is the one who is supposed to be mindful of where the students are, coaching the newer officer, advising the newer officer and essentially training that officer.
3. Between 4:30 and 5:00 Ms. Farmer was notified that medication was missing. Ms. Farmer was concerned that the students were going to ingest the medication; that she would have some overdoses at the facility.

4. The missing medication was Adderall, which is used to treat students diagnosed with ADHD.

5. Ms. Farmer was concerned that the children would pass the missing medication around, package and sell it. Several of the children were going to public school at the time.

6. Ms. Farmer testified that on February 18, 2007, Adderall was stolen and Grievant was involved in that incident as well.

7. Ms. Farmer testified that on February 18, 2007, Grievant was dispensing the evening medication, which is a part of his duties as a C.S.O. Several students were allowed to be in the C.S.O. office where the medication was laid out on the table. Grievant physically left the facility to go to pickup another staff member who was having car trouble. Grievant let Jason Brown, another C.S.O., pick up where he left off with dispensing the evening medication.

8. Grievant left the facility before finishing dispensing the evening medication.

9. A student picked up his bottle of Adderall off the table. There were numerous students in the office, which is a violation of procedure.

10. Grievant did not follow the procedures of having no students in the office when medication was present. This allowed a student to actually pickup a bottle off the desk and walk out with it.

11. The student who did this on February 18, 2007 was involved in the incident that took place on May 12, 2007 as well. Both times the student took the medication Adderall.
12. Ms. Farmer issued a written warning to Grievant at that time. She reviewed the written warning with Grievant and Grievant signed the written warning.

13. After the February medication incident, Ms. Farmer changed the procedures for medication completely. She rewrote the procedures and placed them in the in-house policy manual.

14. Ms. Farmer testified that she questioned the Grievant on the missing medication. She stated that Grievant told her that he checked the office door and it was locked and that he looked in the office to make sure the safe was still there and just locked the door behind him. Ms. Farmer stated that a C.S.O. should have checked to see if the medicine was gone by looking into the cabinet. She stated that this is something that would have been expected of a seasoned C.S.O. who had been employed at the group home for five (5) years.

15. Ms. Farmer testified that the Grievant should have taken some action to see what was going on that day and made sure the students were safe. It was her opinion that Grievant did not do this.

16. David Creason testified that he was an investigator with the Internal Affairs Division within the D.C.S.

17. Mr. Creason investigated circumstances involving the alleged theft of medication at the Bradley County Group Home on May 12, 2007. Mr. Creason interviewed Grievant.

18. Mr. Creason testified that the Grievant told him that Grievant did not check the drawers in which the keys to the medicine cabinet were kept to see if any keys were missing from those drawers. The Grievant told him the drawers were unlocked, but he did not go and pull out the drawers to see whether the keys were there or not. He also testified that Grievant told him he later found a screwdriver that was pretty adjacent to a student.
19. Mr. Creason stated that the Grievant said to him that he did not confront the “kids” or anybody as to why the screwdriver was on the floor.

20. Mr. Creason testified that the Grievant said to him that he did not “approach any of the kids, or try to find out why the door was unlocked.”

21. Mr. Creason said these statements raised red flags as it related to the security of the children.

22. Grievant testified that he **knew** that Student Cooke had tendencies to break-in and take medication without permission.

23. Grievant testified that he was the most experienced officer at the home on the day the medication was stolen by the student.

24. Grievant testified that he had received the written warning regarding the student stealing medication a few days before the May 12th incident.

25. Grievant testified that he understood that he was responsible for watching the students at the home on May 12, 2007.

26. Grievant testified that he did not have any concerns about finding a screwdriver in the proximity of violent children.

27. Grievant testified that he found the office door unlocked, that he did not check the key boxes to see if any were missing. He stated he was only concerned with his keys and he had his keys on him. He stated that the door should not have been unlocked. He did not check to see if any medication was gone. He testified that keys in the other key boxes could have been used to obtain the missing Adderall.

28. Grievant testified that his job was to keep the students and staff safe and secure.
29. Grievant testified that he had a concern that the children would overdose on the missing medication when he discovered medication was missing. He also testified that he did not have this concern when he saw the door to the office where the medicine was kept unsecured and the keys unsecured.

30. Ms. Farmer recommended that the Grievant’s employment be terminated on July 8, 2007.

31. Ms. Farmer recommended the Grievant’s termination because the Grievant’s actions on May 12, 2007 while in the group home placed children and staff at risk of harm.

32. Grievant was terminated from the Department effective July 20, 2007.

33. The Department terminated Grievant for violating the following rules: Tennessee Department of Personnel (TDOP) Rule 112-10-.06 (1) Inefficiency or incompetence in the performance of duties; (2) Negligence in the performance of duties and Tennessee Department of Personnel (TDOP)(12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the State service or that would interfere with the ability of management to manage; (15) Actions that would endanger the lives and property of others; (24) For the good of the service and for violating the Bradley County Group Home Facility Supervision Protocol regarding the in-house facility – Staff must always be conscious and aware of where the youth are located; Staff shall be constantly moving and monitoring youth activity; If more than one staff person is on duty, supervision shall be coordinated to allow maximum coverage; One staff is to be posted at each end of the building.
CONCLUSIONS OF LAW

1. As the Petitioner, the Department bears the burden of proof, which is a preponderance of the evidence standard.

2. The Department has shown by a preponderance of the evidence that Grievant violated TDOP Rule 1120-10-.06(1). The foregoing evidence as applied to TDOP Rule 1120-10-.06(1) supports a finding that Grievant was negligent in the performance of said duties. Grievant testified that he knew he had a duty to keep the students safe on May 12, 2007. His failure to immediately investigate the whereabouts of the missing medication and determine how the screwdriver appeared on the floor was incompetent on his part. The evidence shows that the Grievant was not competent in his duty to keep the children safe from stealing and taking the medication.

3. The Department has shown by a preponderance of the evidence that Grievant violated TDOP Rule 1120-10-.06(2). The foregoing evidence as applied to TDOP Rule 1120-10-.06(2) supports a finding that Grievant was negligent in the performance of said duties. Such negligence rises to the level of misconduct under TDOP Rule 1120-10-.06(2). The evidence shows that Grievant did not take steps to search for the medication or learn how the screwdriver was placed inside the home. Grievant merely locked the door when he found it unlocked and made a phone call. His duties required much more than that. The evidence shows that it was reasonable for Grievant to inspect the key drawers and to check the medicine to make sure it was still where it was suppose to be. The Grievant did nothing until a student asked him to go and get his medicine.

4. The Department has shown by a preponderance of the evidence that the Grievant violated TDOP Rule 1120-10-.06 (12). The evidence presented supports a finding that Grievant’s
actions resulted in acts that disturbed the normal operations of the DCS. The Grievant’s action led to an Internal Affairs investigation that required all of the students to be placed together and interviewed by an investigator. These actions led to employees having to take time from their duties to meet with the investigator. The evidence shows that Grievant was aware that a student in the home was prone to stealing medication yet Grievant took no extra precautions to watch this student on May 12, 2007. His failure to take this precaution led to the normal routine of the house being disrupted. Children who were already exposed to an accusatory system in juvenile court were questioned and required to give written statements as to whether or not they had committed a crime.

5. The Department has shown by a preponderance of the evidence that the Grievant violated TDOP Rule 1120-10-.06(15). The evidence presented supports a finding that the Grievant’s actions resulted in acts that would endanger the lives of others. The evidence shows that Grievant had a duty to keep the children and staff safe in the group home when he was on duty. The evidence has shown that when he found the door to the office that held the students’ medication unsecured, he did not take an immediate action to determine if the medication had been stolen. He did not take action when he discovered the drawers that kept the keys used to access the medication were found unsecured. During this time a child at the facility had the medication on his person and had already given it to other students. Time lapsed from when the door was found unsecured and the Grievant determined the medication was missing. The evidence has proven that Grievant did virtually nothing to investigate how a screwdriver appeared in the common area. Grievant admitted that the screwdriver could have been used to stab someone but the evidence has shown he did not take any action to determine who had placed the screwdriver on the floor and why it was placed there.
6. The Department has shown by a preponderance of the evidence that the Grievant’s termination was for the good of the service pursuant to TDOP Rule 1120-10-.06(24). The Grievant had been in his same position of employment for five (5) years and knew he was dealing with children who have behavioral issues. By his failure to adhere to follow the orders, Grievant made decisions that could have potentially harmed the children whom he was appointed to ensure their health and safety. This purpose applies to children in the community and children in the Department’s physical custody.

ANALYSIS
1. Having considered and reviewed the entire record in this case, and having carefully evaluated the testimony of each and every witness, it is determined that the Department has proved, by a preponderance of the evidence, that Grievant violated the above rules.
2. Grievant was employed with the Department for five (5) years. One of his main duties was to keep the children residing in the Bradley County Group Home safe. The Grievant received a written warning finding him negligent in this duty six (6) days prior to the May 12, 2007 incident.
3. It is CONCLUDED that, based on the evidence presented, Grievant fails to appreciate the gravity of safety considerations, and the Department’s ultimate duty, which to ensure the safety of the children in its care.
4. Based on the above, it is CONCLUDED that the Department acted reasonably in terminating Grievant.
5. Accordingly, it is ORDERED that the termination of Grievant’s employment from the Department be UPHELD.
This Initial Order entered and effective this 9th day of May, 2008.

Joyce Carter-Ball  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 9th day of May, 2008.

Thomas G. Stovall, Director  
Administrative Procedures Division