



10-15-2007

ANNETTE HARDAWAY, vs. BOARD OF PROBATION AND PAROLE

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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

IN THE MATTER OF:)	
)	
ANNETTE HARDAWAY,)	
)	DOCKET NO. 26.41-094874J
)	
v.)	
)	
BOARD OF PROBATION AND PAROLE,)	
)	

INITIAL ORDER

This matter came to be heard on October 15, 2007, before Marion P. Wall, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Civil Service Commission. Loys A. Jordan, III, of the Nashville Bar represented the Grievant, Annette Hardaway. C. Edward Scudder, Jr., Staff Attorney for the Board of Probation and Parole (Board), represented the Board.

The subject of this hearing was the Grievant's appeal of her termination by the Board for violation of the ethics policy, negligence and inefficiency in performance of her duties, causing serious disruption of the normal operation of an agency of the State, and for the good of the service.

After consideration of the entire record herein, it is DETERMINED that the termination of the Grievant should be set aside, that she should have back pay, attorney's fees, and otherwise be made whole in her leave balances and longevity, subject to the appropriate offsets for unemployment benefits and other money earned by the Grievant during her separation, as

calculated by the Department of Personnel. This determination is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Grievant was employed as a Probation a Parole Officer by the Tennessee Board of Probation and Parole from April 16, 2006 until her termination on December 11, 2006. Prior to being promoted to Probation and Parole Officer I, she worked as a secretary in the Jackson Probation and Parole Office from November 2, 1994 until her promotion. She had excellent performance reviews until the incidents involved in this matter.

2. Michael Robinson is a sex offender, convicted of statutory rape. He is required to register with the Tennessee Bureau of Investigation. He did not do so, and was jailed for his failure to do so. Because of his age, and the age of the girl involved, he was eligible to request that his name be removed from the Sex Offender Registry.

3. At the outset of the case, the State contended that the Grievant should be terminated because she had helped a sex offender try to beat the system. It alleged that she had brought him the form to somehow sabotage the pending prosecution of Robinson because she had a personal relationship of some years with Robinson's mother.

4. The proof in no way substantiates this charge. Robinson requested the form, which he was entitled to file, from his supervisor, Mr. Russell Phillips. At Phillips' request, Grievant took the appropriate form to the Madison County Jail for delivery to Robinson when she was going to pick up some executed probation orders related to her own cases, the jail being in the same building complex as the Court which had issued the probation orders.

5. It is noteworthy that no charges were filed against Phillips, nor could there have been. He was merely furnishing a form to a sex offender he supervised, a form which the offender was entitled to file. Phillips asked Grievant to take it with her when she was going to the jail and Court complex. Just as Phillips did nothing wrong, Grievant did nothing wrong. This matter, which was referred to in opening as “that’s what this case is about; that’s the crux of it,” was nothing at all but an attempt to assist a fellow employee. While it is true Grievant did have a relationship with the offender’s mother, she did what she did at the request of Phillips, and what she did was not improper. At the conclusion of the proof, the State yet asserted that furnishing the form to Robinson was somehow an attempt to undermine the prosecution of Robinson for not registering as he was required to do. The State was given additional time within which to request an opportunity to introduce proof on how furnishing the form could undermine the prosecution. The State never offered any proof, nor did it seek to do so. In short, this allegation that the Grievant was improperly trying to help a convicted sex offender beat the system is utterly without foundation. It is noteworthy that the District Directory for the Western Tennessee Division of the Board could cite nothing improper done by Grievant relating to this action. In fact, she did nothing improper whatsoever.

6. Grievant was also charged with another sort of improper action. The State contends that she attempted to admit Cynthia Hunt (Robinson’s mother) into the jail as a Board of Probation and Parole intern.

7. When Grievant attempted to deliver the form on the morning of October 25, 2006, she was unable to meet Robinson, who was eating, and was told to return after lunch. She went back to her office to work. While in her office, she received a call from a man working on her home’s heating and air conditioning system, and she took annual leave and went to meet him at

her home. While returning to her home, she passed Cynthia Hunt going the other way. Hunt flagged Grievant down, and asked her to help her get the form, which she still had, executed. Grievant thereafter returned to the jail, with Ms. Hunt, to deliver the form.

8. When she arrived at the jail, she was told by Deputy Tammy Collins to have a seat in the waiting area. Grievant, and Ms. Hunt, did so.

9. Ms. Hunt works as a bus driver, and wears a uniform which prominently identifies her as a bus driver. She was wearing her uniform at the time of the jail visit.

10. The next events are in sharp dispute. Deputy Collins testified that the Grievant attempted to gain Ms. Hunt's entrance to the jail by identifying her as an intern of the Board. The Grievant, and Ms. Hunt, flatly deny it. In Deputy Collins version, Hunt came back, and when asked for identification, the Grievant stated that she had not been given one. In Grievant and Hunt's version, Collins said "Y'all come on back" and Hunt followed Grievant up to Collins. When asked for identification, Hunt had none, having left it in her vehicle, since she knew that visitation was not allowed at those hours. The two, Ms. Hardaway and Hunt, testified that the Grievant never attempted to gain her admission to the jail, either by identifying her as an intern or otherwise.

11. The testimony is in stark conflict. Deputy Collins stoutly maintains that Grievant identified Hunt as an intern, thus improperly trying to gain her admission to the jail. Grievant and Hunt equally adamantly state this did not occur. The surveillance tapes of the area were recorded over by the time this incident became a dispute, and are of no help. While it is concluded that Deputy Collins is telling the truth as best she remembers it, it is also concluded, that, more likely than not, the incident occurred as related by Ms. Hunt and the Grievant. The demeanor of all the witnesses was carefully scrutinized, particularly on this point. The testimony

of the Grievant and Ms. Hunt is credited. This is not simply a matter of two credible witnesses stating something different than one credible witness. Here, Ms. Hunt was in a bus driver uniform. She had no identification as an intern. Grievant had been the person responsible for making the badges that identified interns when she was a secretary, and knew that an intern would have to have a visible badge identifying her as an intern, and that the jail would require such identification. In fact, jails are quite strict about identification of people allowed into the jail, and quite understandably so. All in all, the testimony of the Grievant, and Ms. Hunt, is the more credible.

CONCLUSIONS OF LAW

1. The State has not proved by a preponderance of the evidence that the Grievant is guilty of negligence and inefficiency in the performance of duties. Specifically, the State's charges relating to the form to be furnished to inmate Robinson are without any real foundation. Likewise, the charges relating to trying to obtain Ms. Hunt's admission to the jail are found to lack a factual basis.

2. The State's contention regarding Grievant seriously disrupting the operation of a State agency is likewise without foundation. This charge better relates to such things as telephoning in a false bomb threat, or something else that *seriously* disrupts a facility or otherwise interferes with management's ability to manage. Even had the State proven all of its factual allegations completely, it would not have proved this charge.

3. It is therefore **ORDERED** that the termination of the Grievant be set aside, that she have back pay, attorney's fees, and otherwise be made whole in her leave balances and longevity, subject to the appropriate offsets for unemployment benefits and other money earned by the Grievant during her separation, as calculated by the Department of Personnel.

This Initial Order entered and effective this 2nd day of February, 2009.

Marion P. Wall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 2nd day of February, 2009.

Thomas G. Stovall, Director
Administrative Procedures Division