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8-2-2011

DEPARTMENT OF MENTAL HEALTH vs.
TIMOTHY ADAMS, Grievant

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**BEFORE THE CIVIL SERVICE COMMISSION OF THE
STATE OF TENNESSEE**

IN THE MATTER OF:

DEPARTMENT OF MENTAL HEALTH,

v.

TIMOTHY ADAMS,
Grievant.

DOCKET NO: 26.15-115966J

INITIAL ORDER

This matter was heard on August 2, 2011, in Nashville, Tennessee, before Administrative Judge Kim Summers assigned by the Secretary of State, Administrative Procedures Division, to sit for the Civil Service Commission of the State of Tennessee. During the hearing, the Department of Mental Health (“the Department”) was represented by Richard Prybilla, Esq. The Grievant was not present nor represented by legal counsel.

The issue in this matter is whether the Department properly terminated the Grievant’s employment. After consideration of the evidence, it is determined that the termination of Grievant’s employment was proven to be appropriate by a preponderance of the evidence and should therefore be **UPHELD**. This decision is based upon the following –

SUMMARY OF EVIDENCE

The following witnesses testified on behalf of the Department – Ms. Karen Hunter, Investigator; Ms. Cathie Finney, Recreation Therapist and Trainer; Ms. Tami McRight, Assistant Human Resources Director.

The following eighteen exhibits were entered into evidence: EXHIBIT 1, a Staffing Sheet from September 20, 2011; EXHIBIT 2, a photo of the left side of patient’s neck; EXHIBIT 3, a photo of the right side of patient’s neck; EXHIBIT 4, a video of the incident occurring on September 20,

2011; EXHIBIT 5, a training sheet for the Grievant from July 27, 2011; EXHIBIT 6, a power point entitled “Comprehensive Crisis Management”; EXHIBIT 7, a manual on movement training; EXHIBIT 8, an Employee Transcript indicating the training received by the Grievant; EXHIBIT 9, Dismissal Recommendation from October 11, 2011; EXHIBIT 10, October 24, 2011 Dismissal Decision; EXHIBIT 11, Level III decision from December 7, 2011; EXHIBIT 12, January 23, 2012 decision regarding the Step IV Grievance Hearing; EXHIBIT 13, August 23, 2011 Written Warning; EXHIBIT 14, August 13, 2010 Written Warning; EXHIBIT 15, June 8, 2009 decision reducing a dismissal to a suspension; EXHIBIT 16, Human Resources document pertaining to the Grievant’s initial hire with the Department; EXHIBIT 17, Human Resources document pertaining to a promotion with the Department; EXHIBIT 18, Policy No. 0208.01 of the Middle Tennessee Mental Health Institute MTMHI pertaining to Abuse, Neglect, and Mistreatment of Patients.

Since the Grievant did not appear at the hearing, and no one appeared on Grievant’s behalf, the Department proceeded with the case uncontested.

FINDINGS OF FACT

1. The Grievant was hired by the Department on January 2, 2007, to work at MTMHI.
2. On June 1, 2008, the Grievant was promoted to another position at MTMHI.
3. On June 8, 2009, the Grievant received a five-day suspension for violation of MTMHI Policy No. 0208.01.
4. The Grievant was trained as recently as July 27, 2011, on Non-Physical Intervention, Physical Escape Techniques, and Emergency Safety Interventions.
5. The Grievant was on the job at MTMHI on September 20, 2011, when his irritation with a patient resulted in the Grievant lifting the patient off the ground by the neck.
6. On account of this altercation initiated and escalated by the Grievant, the patient was restrained in the seclusion suite for at least an hour.

7. The Grievant was recommended for termination based upon violation of MTMHI Policy No. 0208.01 and for the following violation of the rules of the Department of Human Resources: gross misconduct; conduct unbecoming an employee in state service; brutality in the performance of duties; and for the good of the service.

7. The recommendation to terminate the Grievant's employment was upheld following his Step IV hearing held on January 18, 2012.

5. The Grievant timely requested a Step V hearing.

ANALYSIS AND CONCLUSIONS OF LAW

1. Level V Civil Service appeals are heard *de novo* before an Administrative Judge. No presumption of correctness is attached to the agency's action. *Big Fork Mining Co. v. Tennessee Water Quality Control Bd.*, 620 S.W. 2d 515, 521 (Tenn. Ct. App. 1981).

2. 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, to prove by a preponderance of the evidence that the discipline imposed on the Grievant complies with state law.

3. MTMHI Policy No. 0208.01 specifically states that "[a]ny form of physical or verbal abuse, neglect, or mistreatment is prohibited and will not be tolerated." The Policy defines abuse as "hitting, pushing, slapping or kicking a patient; speaking harshly, rudely, or irritably to a patient; unregulated scolding, detrimental indifference, coercive threats or actions; any form of sexual activity or vulgar gestures; and excessive force or restraint."

4. The Grievant's actions on September 20, 2011, amounted to abuse and were clearly in violation of MTMHI Policy No. 0208.01.

5. Based upon the training provided and the prior five-day suspension, the Grievant was, or should have been, aware that placing his hands around the patient's throat and lifting him off the ground was grossly inappropriate and would likely subject him to disciplinary action.

6. TENN. COMP. R. & REGS. 1120-10-.05, in relevant part, allows an employee to be disciplined for the following offenses – gross misconduct; conduct unbecoming an employee in state service; brutality in the performance of duties; and for the good of the service.

7. The Grievant's actions in violation of MTMHI Policy No. 0208.01 offer sufficient justification for termination under TENN. COMP. R. & REGS. 1120-10-.05.

8. The Department has shown by a preponderance of the evidence that the termination of Grievant's employment was proper. It is determined that the Department did properly terminate the Grievant's employment and that the termination decision should be **UPHELD**.

The Policy reason for this decision is to protect the citizens and employees of the State of Tennessee and to protect the integrity of the civil service laws and applicable rules.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the _____ day of _____ 2012.

JK Summers

KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

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

Thomas G Stovall

THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE