

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD  
OF THE STATE OF DELAWARE**

<b>GRIEVANT,</b>	:	
	:	
Employee/Grievant,	:	
	:	<b>DOCKET No. 20-04-755</b>
<b>v.</b>	:	
	:	<b>DECISION AND ORDER</b>
<b>DEPARTMENT OF HEALTH AND SOCIAL SERVICES,</b>	:	<b>[PUBLIC - REDACTED]</b>
<b>DIVISION OF SOCIAL SERVICES,</b>	:	
	:	
Employer/Respondent.	:	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the “Board”) at 9:00 a.m. on September 17, 2020, in the Public Service Commission hearing room, 861 Silver Lake Boulevard, Dover, DE 19904. The hearing was closed to the public pursuant to 29 *Del. C.* § 10004(b)(8).

**BEFORE** W. Michael Tupman, Chair, Paul R. Houck, Jacqueline D. Jenkins, Ed.D, and Sheldon N. Sandler, Members, a quorum of the Board under 29 *Del. C.* §5908(a).

**APPEARANCES**

Carla A.K. Jarosz  
Deputy Attorney General  
Legal Counsel to the Board

Deborah L. Murray-Sheppard  
Board Administrator

Employee/Grievant, *pro se*

Allison J. McCowan  
Deputy Attorney General  
on behalf of the Department of Health  
and Social Services

## **BRIEF SUMMARY OF THE EVIDENCE**

The Employee/Grievant (“Grievant”) offered thirty-four (34) documents into evidence, of which the Board admitted fifteen (15), in whole or in part. The Board admitted the thirty-two (32) exhibits offered by the Department of Health and Social Services, Division of Social Services (“Agency”) into evidence.

Four (4) witnesses testified on behalf of the Agency: Ashley Gianacoplis (“Gianacoplis”), Performance Team Administrator, Division of Social Services (“DSS”); Jessica Clarkson (“Clarkson”), Social Service Chief of Operations, DSS; Francine Stone (“Stone”), Social Services Chief Administrator (Personnel), DSS; Kimberly Boulden (“Boulden”), Chief Administrator, DSS. Three (3) witnesses testified on behalf of the Grievant: Athena Starling (“Starling”), Office Manager at North East State Service Center, DSS; Andrea Allen (“Allen”), Case Manager Supervisor at Canby Park, DSS; Tina Skinner (“Skinner”), Case Manager Supervisor at Canby Park, DSS. The Grievant also testified on her own behalf.

## **FINDINGS OF FACT**

The Grievant was employed as a Social Service Senior Administrator with the Agency. She was responsible for “managing, directing, coordinating, assigning, reviewing and evaluating the day to day operations”<sup>1</sup> for the North East State Service Center (“NESSC”), Canby Park Office (“Canby Park”) and the Churchmans Center<sup>2</sup>. The Grievant began overseeing Canby Park in 2017 and NESSC around April 2019. Each of these DSS offices is staffed with Social Worker/Case Managers and Senior Social Worker/Case Managers who provide front-line services to applicants in need of public assistance.<sup>3</sup> There are three levels of supervision in each office, beginning with

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<sup>1</sup> Agency Exhibit A.

<sup>2</sup> The Grievant’s oversight of the Churchmans Center is not in issue.

<sup>3</sup> DSS administers multiple programs including Temporary Assistance for Needy Families (TANF), food benefits, subsidized childcare, general assistance and refugee cash assistance.

Social Worker/Case Manager Supervisors, who report to Social Service Administrators, who then report to the Social Service Senior Administrator (the position held by the Grievant). A Social Service Senior Administrator is responsible for oversight of multiple DSS offices.

The Grievant was out of work on approved Family Medical Leave (“FMLA”) from June 24, 2019 through July 28, 2019. When she returned to work, she worked part-time before returning to full-time duty in late August, 2019. She left the workplace on November 12, 2019 on short-term disability. Later and up through the date of the hearing, the Grievant was on long-term disability and unable to work.

In September 2019, Gianacopolis, Clarkson and Darryl King from the DSS Performance Team deployed to NESSC in response to client complaints and observations that reported service data from multiple sources had been inconsistent in July and August, 2019. The Agency’s Performance Team tracks, monitors and supports Agency site location operations and analyzes data to identify issues and problems. The Performance Team is deployed to sites to track and address front-line, direct service problems. The Performance Team worked at NESSC for two months during which they retrained supervisors; discovered unprocessed and past due cases which were not accounted for on weekly reports; rebuilt intake pods; and implemented pending drawers, checklists and researcher procedures. The Performance Team was also deployed to Canby Park where they performed similar remediation work.

Beginning October 29, 2019 through November 20, 2019, the Agency conducted an investigation at the NESSC and Canby Park based on work quality and productivity concerns raised by the Performance and Personnel Teams.<sup>4</sup> As a result of the investigation, the Agency terminated the Grievant from her position as a Social Service Senior Administrator.<sup>5</sup> At NESSC,

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<sup>4</sup> The Investigation Report for Canby Park was offered into evidence as Agency Exhibit DD. There was no Investigation Report for NESSC entered into evidence.

<sup>5</sup> Agency Exhibit FF.

the Grievant was alleged to have failed to report a case backlog; denied clients services; falsified cases; failed to notify management that cases were not entered on client logs; and failed to use management tools as instructed by the Agency.<sup>6</sup> At Canby Park, the Grievant was alleged to have falsified time on the front desk log, falsified reports to conceal a backlog, denied clients services, failed to use management tools as instructed and report concerns to management, and complete interactive interviews instead using paper applications.<sup>7</sup> At both locations, the Grievant was alleged to have failed to have representation on scheduled calls, failed to meet deadlines, failed to provide coverage to another service center, failed to monitor her mailbox, failed to conduct monthly conferences, failed to provide support and guidance to her staff, failed to hire vacant positions, failed to issue time memos, failed to take action to report sexual harassment claims, spoken negatively about a direct report and failed to follow procedures regarding performance data.<sup>8</sup>

The Board found that the Grievant was assigned to NESSC in April 2019 in order to turn a struggling site around. The backlog and unreported cases existed prior to her being assigned to this site. Staff shortages and vacancies at both NESSC and Canby Park had and continued to lead to significant backlogs. The Grievant notified management and requested help with staffing shortages and backlogs. The Grievant worked with the Performance Team when it came to both NESSC and Canby Park. The Grievant did not falsify documents and to the extent that staff used white-out to change the dates on applications, the reason for doing so was not to conceal a backlog but to correct a software glitch.

By letter dated March 4, 2020 from DSS Chief Administrator Boulden, the Grievant was

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

advised of the Agency's intent to terminate her employment.<sup>9</sup> Following a pre-termination hearing on March 19, 2020, the Grievant was advised by letter of April 21, 2020 from the DHSS Secretary that her employment was terminated effective immediately.<sup>10</sup>

### CONCLUSIONS OF LAW

Merit Rule 12.1 provides:

**Employees shall be held accountable for their conduct. Disciplinary measures up to and including dismissal shall be taken only for just cause. "Just cause" means that management has sufficient reasons for imposing accountability. Just cause requires: showing that the employee has committed the charged offense; offering specified due process rights specified in this chapter; and imposing a penalty appropriate to the circumstances.**

The Board finds that the Grievant was responsible for the on-site business practices at both NESSC and Canby Park and that the significant backlogs existing at these sites continued during her tenure. The Agency offered the Grievant due process required by the merit rules by providing her a pre-termination letter and conducting a pre-decision meeting. The Board concludes as a matter of law, however, that the Agency did not impose a penalty appropriate to the circumstances.

The Board finds the balance of the evidence weighs heavily in the Grievant's favor. The Agency did not present evidence on most of the alleged infractions listed in the termination letter. There was no credible evidence presented that the Grievant either instructed her staff or that she falsified any client in-take documents. The Grievant credibly testified that she did report vacancies to her superiors but that nothing came of her requests to fill those vacancies.<sup>11</sup> Witnesses were able to explain many of the allegations against the Grievant. While the Grievant may have been able to do more, there were enormous problems at NESSC and Canby Park which predated her

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<sup>9</sup> Agency Exhibit EE.

<sup>10</sup> Agency Exhibit FF.

<sup>11</sup> Grievant Exhibit 1.

responsibility for these sites. Further, the Board finds the Grievant cooperated and supported management efforts to investigate and uncover unlogged and unprocessed work<sup>12</sup>.

Agency management apparently expected the Grievant to turn around long-standing problems in four months, even while she was out on leave and working part-time for seven weeks of that time period. The Board finds this was an unreasonable expectation.

The Board further finds the Agency failed to notify the Grievant about the results of its investigation and to provide her with the opportunity to work with management and her staff to address deficiencies. Much of the unprocessed applications and backlogged work was not reported by individuals who were providing supervision to front-line Social Workers/Case Managers. In fact, much of the missing applications was found on the desks and in boxes in employees' offices. These supervisors worked two levels below the Grievant. The Grievant could not be in each of the three buildings she was assigned to oversee every day and had to rely on the supervisors below her to monitor the daily work and to insure the log and the pending drawers were being properly used. The Grievant testified, without refute, that her direct reports did not alert her to the backlogs or the problems. While she was ultimately responsible for the work of her subordinates, it was not apparent that she could have discovered the cover-up which the Performance Team suspected based on its own comparison of data from multiple sources. Once it identified the potential problems, it was incumbent on management to notify the Grievant. None of the exhibits submitted by the Agency document any communication with the Grievant after the completion of the investigation on or about November 20, 2019.

The Grievant worked for the Agency for twenty-two years, without any prior discipline. Agency management often assigned her to work with struggling service centers, like NESSC, to help correct deficiencies. During the relevant period, the Grievant struggled with staffing

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<sup>12</sup> See Agency Exhibits T and AA.

shortages at both NESSC and Canby Park. She repeatedly asked for help from the Agency. At no point was she placed on a performance improvement plan or offered support in tackling the many challenges which the Agency admits were present at the sites she was assigned to manage.

Considering all of the mitigating circumstances, including that the Grievant cannot be returned to work because she is currently on long-term disability, the Board finds that an appropriate remedy to make the Grievant whole is to expunge any record of the Grievant's termination from the Agency's records. *See, Avallone v. State/Dep't of Health & Soc. Servs. (DHSS)*, 14 A.3d 566, 572 (Del. 2011) (holding that the Board has the authority to exercise its broad remedial powers to "grant back pay, restore any position, benefits or rights denied, place employees in a position they were wrongfully denied, or *otherwise make employees whole.*").

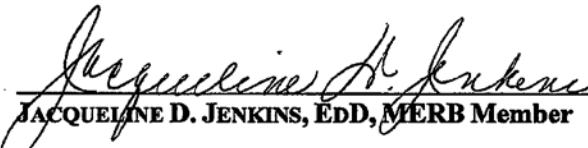
Wherefore, the Board finds, by the preponderance of the evidence, that the Agency did not have just cause to terminate the Grievant because it failed to impose a penalty appropriate to the circumstances.

### **ORDER**

It is this **4<sup>th</sup>** day of **December, 2020**, by a vote of 4-0, the Decision and Order of the Board to grant the grievance and to order the Agency to expunge any record of the Grievant's termination from their records.

  
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**W. MICHAEL TUPMAN, MERB CHAIR**

  
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**PAUL R. HOUCK, MERB Member**

  
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**JACQUELINE D. JENKINS, EDD, MERB Member**

  
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**SHELDON N. SANDLER, ESQ., MEMBER**