

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

<b>GRIEVANT,</b>	)	
	)	
Employee/Grievant,	)	
	)	<b><u>DOCKET No. 21-07-809</u></b>
v.	)	
	)	<b>DECISION AND ORDER</b>
<b>DEPARTMENT OF HEALTH AND SOCIAL SERVICES,</b>	)	<b>[PUBLIC, REDACTED]</b>
<b>DIVISION OF CHILD SUPPORT 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 July 21, 2022, at the Public Service Commission, 861 Silver Lake Boulevard, Dover, DE 19904. The hearing was closed to the public pursuant to 29 *Del. C.* § 10004(b)(8).

**BEFORE** Victoria D. Cairns, Acting Chair, Joseph A. Pika, III, Ph.D., and Dinah Davis-Russ, Members, a quorum of the Board under 29 *Del. C.* §5908(a).

**APPEARANCES**

Allison McCowan  
Deputy State Solicitor  
Legal Counsel to the Board

Deborah L. Murray-Sheppard  
Board Administrator

Gary W. Aber, Esq.  
on behalf of the Grievant

Stephen M. Ferguson  
Deputy Attorney General  
on behalf of the Department of Health  
and Social Services

## **BRIEF SUMMARY OF THE EVIDENCE**

The Employee/Grievant (“Grievant”) offered two (2) documents into evidence. After the prehearing conference, the Board admitted both documents as Grievant Exhibits 1 and 2, without objection.

The Department of Health and Social Services, Division of Child Support Services (“Agency”) also offered fourteen (14) documents into evidence. After the pre-hearing conference, the Board admitted all fourteen (14) documents into evidence as Agency Exhibits A - N.

Two witnesses testified on behalf of the Agency: Terri Stoneburner, Social Service Administrator, Division of Child Support Services (“DCSS”); and James Pyne, Child Support Supervisor, DCSS. One witness testified on behalf of the Grievant: Robin Johnson, Child Support Specialist III, DCSS. The Grievant also testified.

## **FINDINGS OF FACT**

The Grievant was hired as a Child Support Specialist I (“CSS I”) on July 29, 2013.<sup>1</sup> At the time of her hire, the Grievant was required to review and sign acknowledgement of receipt of the State’s Department of Technology and Information (“DTI”) Acceptable Use Policy.

The Grievant’s 2016 Performance Plan included a list of job duties and stated:

b. **Information Security**

- You are responsible for the protection of confidential agency and customer data. **Releasing confidential data from any source to unauthorized parties is unacceptable.** The unauthorized release of such data not only violates a number of department policies and federal regulations, but could cause loss or harm to a customer. Any unauthorized release of confidential data may be subject to discipline, up to and including termination.<sup>2</sup>

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

<sup>2</sup> Agency Exhibit G.

By 2017, the Grievant had been promoted to a Child Support Specialist II and was recommended and promoted to a Child Support Specialist III in 2018, while being supervised by Ms. Stoneburner.<sup>3</sup> In 2021, the Grievant was supervised by Child Support Supervisor Pyne.

The mission of the Division of Child Support Services is to restore financial wholeness to a child that may not have the benefit of both parents residing together.<sup>4</sup> The duties of a Child Support Specialist III include managing a case load of between 1,500 and 3,000 cases<sup>5</sup>, on average; establishing paternity; monitoring child support orders and enforcing those orders through administrative and/or court actions, where necessary; and participating in mediation hearings on behalf of the State.<sup>6</sup>

The Agency has a Safeguarding Policy<sup>7</sup> which requires DCSS staff be restricted from accessing cases and/or member information in its automated case tracking system (“DECSS”) for “familial” cases (which are defined in §2.1.4.1 of the Policy):

**Familial:** Cases which include case participants with whom a DCSS staff member has a close or personal relationship, such as family members, neighbors, former in-laws, or other types of acquaintances. A familial restriction blocks a specific employee from a case. This will prevent the restricted worker to view, add, delete and/or modify case information.

- If a case is marked for familial restriction, DECSS will not return the case and/or member information to the person who has the familial/personal relationship. However, the case information remains available to all other system users who have been authorized to view case and/or member information.
- Known or Suspected Tampering: DECSS is able to track the identity of persons and the date and time a system user accesses or views a case that has been restricted due to a familial/personal relationship. As such, DCSS administrators are able to generate audit reports in situations where case tampering (hindering or otherwise impacting the predictable

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<sup>3</sup> CSS III is the highest level in the Child Support Specialist career ladder.

<sup>4</sup> Transcript (“TR”) at p. 59.

<sup>5</sup> TR p. 99

<sup>6</sup> TR p. 20.

<sup>7</sup> Agency Exhibit H.

case outcome) by an associated employee or through the guidance of an associated employee is known or suspected. In order to avoid the appearance of impropriety, staff is advised to only access cases that have been assigned to them to handle, and to only access the case when there is a “need to know” for job related duties. Also, staff is strictly prohibited from discussing or providing any case information with the restricted employee. Case tampering will not be tolerated. Violations may result in disciplinary actions against any employee who become [*sic*] involved in this type of behavior.<sup>8</sup>

The Safeguarding Policy required DCSS employees to report personal conflicts of interest:

#### 2.1.4.2 Employees Duty to Report Personal Conflicts of Interest

Restricting employee case access is appropriate under the following situations:

- Relatives or near relatives of the employee (as defined by Merit Rules)
- Present or former boyfriends/girlfriends, “significant others”, or close acquaintances of the employee;
- Present or former spouse of the employee; and
- Person(s) sharing living quarters with the employee

DCSS employees must disclose and identify cases that require blocking if and when any of the above situations occur during their employment with the Division. The employee must report the situation to his/her manager as soon as the employee becomes aware of the “familial” situation.

All new DCSS employees, despite classification (merit, seasonal, etc.), are required to complete the “Case Restriction Form” upon hire. Any child support case in which the employee is a party or the employee is known to have a present or previous involvement with a party must be restricted from the employee’s view.

Employees have an on-going duty to report personal conflicts of interest. On the first working day of each calendar year, the Office of the Director issues a notice by email to remind all staff of the duty to report any changes in circumstances and/or status regarding familial cases.

If DCSS initiates a restriction on a case involving an employee, the affected employee will be notified by their direct supervisor that the restriction has been placed. No further action is required by the employee. If the agency receives a complaint regarding an employee who has not reported a known conflict of interest, the employee may be subject to appropriate disciplinary actions.<sup>9</sup>

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<sup>8</sup> Agency Exhibit H.

<sup>9</sup> Supra.

The Grievant's husband is the non-custodial parent of a child who resides with his former spouse in Arizona. He is employed as an independent long-haul truck driver and is frequently on the road for long periods of time. During his trips he does not have access to mail which is sent through the US Postal Service and also has limited access to email and telephone during normal working hours.<sup>10</sup>

On or about March 12, 2021, the Agency was contacted by the Arizona child support agency which reported that the custodial parent had alleged a Delaware DCSS employee (specifically the Grievant) had accessed the confidential child support information of both the custodial and non-custodial parent. The email inquiry stated the custodial parent had contacted the Governors of both states. The custodial parent requested: 1) the case be coded to restrict the Grievant's access; 2) that an investigation be conducted into whether the Grievant's access to the files had impeded the enforcement of the child support order; and 3) requested that enforcement actions be taken against the non-custodial parent (including suspension of his driver's license) because the payments had been irregular.<sup>11</sup>

Thereafter, the Agency conducted an investigation in which it was determined that the Grievant had accessed her husband's file repeatedly over the seven years of her employment. When asked, the Grievant admitted accessing the file in order to ensure that her husband was making timely payments because of the length and frequency of his absences from home for work. She denied altering any of the information in the file or that she at any time disseminated or shared any information from the file with anyone else. The investigation confirmed she had never altered or otherwise tampered with the information in the file. The Grievant admitted she never completed paperwork to request her access to this case be restricted, asserting her supervisors were aware that

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<sup>10</sup> TR p. 102.

<sup>11</sup> Agency Exhibit I.

her husband had a child support order which was being monitored by DCSS.<sup>12</sup> She testified that her supervisor managed her husband's case and that he sometimes spoke with her about the status of the case.<sup>13</sup> The Grievant testified she was wrong for having looked at her husband's case and that she was very regretful for having done so.<sup>14</sup>

By letter dated May 21, 2021, the Grievant was advised that she was being recommended for termination based upon her violation of DTI's Acceptable Use Policy and the DCSS Safeguarding Policy. *Agency Exhibit A*. On June 10, 2021, a pretermination hearing was conducted at the Grievant's request, pursuant to Merit Rule 12. A letter of dismissal was issued by the DHSS Secretary advising the Grievant that her employment was terminated, effective June 17, 2021.

### 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 concludes as a matter of law that the Grievant did access the child support enforcement file of her husband on at least eight-nine (89) separate occasions over a seven-year period, approximately once a month. She admitted she viewed the file and also admitted that she did not complete the paperwork required to restrict her access to the file. The record supported

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<sup>12</sup> Mr. Pyne confirmed he was aware of the relationship between the Grievant and the non-custodial parent. TR p. 71.

<sup>13</sup> TR p. 104.

<sup>14</sup> TR p. 114.

the conclusion that Grievant did not modify or enter any information into the file, nor did she otherwise tamper with the information contained in the file. The record also did not establish that she improperly printed or shared any of the information in the file. The record confirms her testimony that her direct supervisors were familiar with her husband's case and also accessed the file (albeit within the legitimate scope of their responsibilities). The record is devoid of support for the conclusion that the Grievant interfered with the Agency's administration of the case. In fact, it appears that she may have furthered the Agency's goals in insuring that her husband was making timely payments to the custodial parent.

“The [grievant] has the burden of proving that the [discipline] was improper. Thus, [the grievant] is required to prove the absence of ‘just cause,’ as that term was defined in Merit Rule 12.1.” *Id.* (citing 29 *Del. C.* §5949(b) (“The burden of proof of any such appeal to the Board or Superior Court is on the employee.”)).<sup>15</sup> The Board concludes that the Agency had sufficient reason to impose accountability and that the Grievant was afforded the due process rights afforded to her by the Merit statute.

The Board concludes, however, that the Grievant met her burden to establish that termination was not an appropriate penalty under the circumstances. The first purpose of discipline is to place an employee on notice that her conduct or performance are not in compliance with workplace standards. The second is to provide the employee the opportunity to rehabilitate her conduct to conform with expectations. The Grievant was never given the opportunity to rehabilitate her conduct as she was summarily terminated.

In deciding whether a penalty is appropriate to the circumstances, the Board takes into

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<sup>15</sup> *Avallone v. DHSS*, 14 A.3d 566-572 (Del. 2011).

account both mitigating and aggravating factors.<sup>16</sup> The mitigating factors in this case are that the Grievant did not alter or disseminate the information she accessed and was, according to her supervisors, a good employee who was recognized for her willingness to help other employees and to lend a hand when needed. She had no prior disciplinary record and was genuinely remorseful for her actions. The aggravating factors include the length and the frequency with which she inappropriately viewed her husband's file. She testified she was familiar with the restrictions on accessing files of family members, yet she continued to view a file to which she should, admittedly not have had access. Whatever her intentions, by repeatedly accessing the file, she violated the Agency's familial prohibitions and accessed confidential records.

The Board has broad remedial powers under 29 *Del. C.* § 5931 which include the ability to modify an inappropriate penalty imposed by an agency. As such, the Board finds that the penalty appropriate to the circumstances present in this case is to reinstate the Grievant, without back pay, and to demote her to the Child Support Specialist II position.

### **ORDER**

It is this **14<sup>th</sup>** day of **October, 2022**, by a unanimous vote, the Decision and Order of the Board to deny the Grievant's appeal in part and grant it in part. The Board finds the Grievant committed the charged offense of violating the State Acceptable Use Policy and the DCSS Safeguarding Policy by repeatedly accessing the case files of her husband and the custodial parent. The Board further finds the Grievant was afforded due process in processing this grievance. The Board finds, however, that the penalty of termination was excessive.

The Board directs the Agency to modify the penalty imposed by 1) immediately reinstating


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<sup>16</sup> See *Pritchett v. Department of Health and Social Services, Delaware Psychiatric Center*, MERB 13-09-593 (July 14, 2014, p. 7).



the Grievant, without back pay for the period of June 17, 2021, through the hearing date of July 21, 2022; 2) demoting the Grievant to a Child Support Specialist II position; and 3) directing the Grievant to immediately abide by the Agency's Safeguarding Policy. Counsel for the Agency is directed to notify the Board in writing within thirty (30) days of its full compliance herewith.

  
VICTORIA D. CAIRN, Acting Chair

  
JOSEPH A. PIKA, III, PH.D., MEMBER

  
DINAH M. DAVIS-RUSS, MEMBER