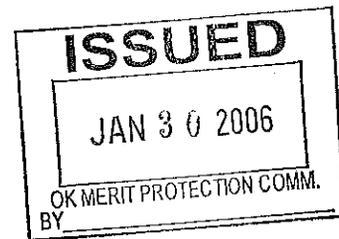


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



STACY MATHEWS,)
Appellant)
vs.)
OFFICE OF JUVENILE AFFAIRS)
Appellee.)

CASE NO. MPC 05-280

ORDER

Hearing on this matter was held before the undersigned Administrative Law Judge on January 10, 2006, at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant, Stacy Mathews, appeared in person and was represented by Michael Woodward, Esq. Appellee, Office of Juvenile Affairs (hereinafter referred to as "Appellee"), appeared by and through its Counsel, Wayne Johnson, Esq., and table representative, LeAnn Saunders, Deputy Superintendent at the L.E. Rader Center in Sand Springs.

Appellant, a permanent classified employee working for Appellee, was discharged from his position as a police officer at the L. E. Rader Center following investigation of an incident at the Center in which Appellant was found to have abused a juvenile resident by hitting him on the head during a restraint of that resident, in violation of OJA Procedures P-03-05-801(1), Unsatisfactory Performance, and P-03-05-801(2)(m) Misconduct – Abuse.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with exhibits, which are incorporated herein and made a part

hereof. Accordingly, after careful consideration of all evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

On the evening of September 24, 2004 Juvenile Specialist (JS) Pamela Mays called security to the room of a 14-year-old resident engaged in a struggle with a male juvenile specialist on the Mental Health Unit of L. E. Rader Center. During the course of the struggle, the juvenile was hit in the head by the JS worker. After calling security, Ms. Mays began getting the other residents into their rooms. Police Officers Stacy Mathews (Appellant) and Joe James arrived on the scene together. Hearing the commotion, one resident, 18-year-old Resident "J", refused to stay in his room and rushed to the room where the struggle was taking place. Appellant told Resident "J" to return to his room. He refused, and made a move toward Appellant. Appellant put Resident "J" in a holding wrap and took him to the floor on his stomach with his arms behind his back. Officer James lay across Resident "J's" legs and Appellant knelt beside him close to his head. During the restraint, JS Mays observed Appellant give three quick blows to Resident "J's" head with his fist.

Additional security arrived to the room. A total of six officers responded to the incidents with the two residents. The 14-year-old resident was taken away to isolation, while Appellant continued to restrain Resident "J" on the floor. After the room had cleared somewhat, JS Mays went back into the room to try and calm Resident "J". Appellant said something to Resident "J", who responded by trying to spit on Appellant.

He missed Appellant, and spit bloody saliva on JS Mays. Resident "J" was eventually taken from the unit in handcuffs.

Following the incident, all staff members involved were asked to write incident reports. JS Mays wrote two reports – one concerning the 14-year-old resident and one concerning Resident "J". Neither report indicated any improper actions by staff members, nor told of staff members hitting or acting inappropriately toward either of the residents. However, the following day, on September 25, 2004, Ms. Mays told her supervisor the complete story, including the staff abuse of the residents that she observed. The matter was referred for investigation by the Department of Human Services Office of Client Advocacy on September 27, 2004. That investigation found abuse of residents by Appellant and two other staff members.¹ These findings were confirmed by the Department of Human Services Grievance and Abuse Review Committee (GARC).

Appellant was discharged effective June 1, 2005. Based on a preponderance of the evidence presented at the hearing, the undersigned Administrative Law Judge finds just cause exists to support Appellee's allegations that Appellant Stacy Mathews did violate OJA Procedures SP-03-05-801(1), Unsatisfactory Performance and SP-03-05-801(2)(m), Misconduct – abuse by hitting Resident "J" in the head on September 24, 2004. The undersigned further finds that discharge of Appellant was just under the circumstances.

¹ The original finding was "abuse with injury". However the finding was amended to "abuse", as it was inconclusive whether the injuries were self-inflicted or caused by the abuse. The DHS Grievance and Abuse Review Committee asked for additional information concerning several unanswered questions before rendering its Report and Recommendation.

DISCUSSION

Appellant argues that he did not abuse Resident "J", that he did not hit him in the head, and that JS Mays, the only staff member who has alleged that these events took place, is not truthful in her account of the incident. In support of his position, Appellant called two witnesses, police officers who responded to the incidents, to testify that they did not see Appellant hit or abuse Resident "J". Police Officer Joe James testified that he assisted Appellant in restraining Resident "J" by holding his feet after Appellant took him to the floor. Officer James testified that he never saw Appellant strike Resident "J". However, he also testified that he left Appellant with Resident "J" on the floor while he took the 14-year-old resident to solitary confinement. When he returned, Appellant was still restraining Resident "J" on the floor. He left the scene again to go to his car to get handcuffs for Resident "J", again leaving Appellant restraining Resident "J" on the floor. While Officer James may not have witnessed Appellant strike Resident "J", he was out of the room more than he was in the room, and was not in a position to say the abuse did not occur, only that he did not see it.

On the other hand, one thing Officer James did witness was JS Mays come into the room to talk with Resident "J", and Resident "J" spitting on Ms. Mays while attempting to spit on someone else. Officer James testified that he saw Resident "J" spit blood on Ms. Mays. Officer James' testimony corroborates Ms. Mays' testimony on this point, and supports Ms. Mays' contention, and this administrative law judge's finding, that Appellant struck Resident "J" on his head, thus causing the bleeding in his mouth.

Appellant also called Police Officer Roy McHenry to testify. He, likewise, testified that he did not see Appellant strike Resident "J". However, he was in the room an even

shorter time than was Officer James. Officer McHenry testified that when he arrived in the room, Appellant was already restraining Resident "J". Officer McHenry then left to take the 14-year-old resident to solitary confinement, and when he returned to the unit, Resident "J" was being taken away in handcuffs. Officer McHenry, like Officer James, had little opportunity to observe Appellant striking the resident, and was in no position to say that Appellant did not strike him, only that he did not see it.

Next, Appellant points to Ms. Mays' incident reports that fail to state any abuse, as evidence that the abuse was manufactured. However, evidence shows that Ms. Mays was intimidated by several of the police officers, particularly Appellant, while she was completing her incident reports, and days later.² She was admonished not to rat on fellow staff, to uphold the code of silence; told that staff must stick together, security may not be available the next time she needs help. In spite of the intimidation, in spite of the fact that she was acknowledging that she had not accurately completed her incident reports, the day following the incidents Ms. Mays went to her supervisor and told about the abuse she had witnessed. She told the Office of Client Advocacy investigator about the abuse she witnessed, as well. At the time of the incident, Ms. Mays had worked at the L. E. Rader Center only two and a half months, had no grudges and no malice against Appellant or the other police officers. This administrative law judge found Ms. Mays to be a highly credible, sincere, and believable witness with no motivation to spin an untrue tale against Appellant.

Finally, Appellant points out that he is a 20-plus year employee with Appellee, and has no prior incidents of abuse. However, having no prior violations does not

² Ms. Mays testified to this intimidation and both the DHS Office of Client Advocacy and the GARC noted this intimidation. (Exhibits 12 and 17)

presuppose that the violation alleged did not occur. Having found that Appellant did commit the violations alleged, discharge is appropriate. LeAnn Saunders, Deputy Superintendent at the L. E. Rader Center, testified that the Center has a “no tolerance” policy regarding abuse. In her experience and to her knowledge, every finding of abuse has always resulted in discharge of the employee. No evidence has been presented in this instance that would justify straying from the Center’s past practice.

CONCLUSIONS OF LAW

1. Any findings of fact that are properly conclusions of law are so incorporated herein as conclusions of law.

2. Merit Rule 455:10-11-14 states that a permanent classified employee may be discharged for misconduct, inefficiency, inability to perform the duties of his job, willful violation of Merit Rules, conduct unbecoming a public employee, and any other just cause.

3. Merit Rule 455:10-9-2 states that the Appellee bears the burden of proof in an adverse action and must prove by a preponderance of the evidence that just cause exists for the action taken.

4. Office of Juvenile Affairs Policy # SP-03-05-801 *Causes for Disciplinary Action*, 1. **Unsatisfactory performance** states that an employee’s performance that fails to meet established standards and criteria for the position constitute unsatisfactory performance.

5. Office of Juvenile Affairs Policy # SP-03-05-801 *Causes for Disciplinary Action*, 2. **Misconduct**, m. **Abuse** states that abuse of agency juveniles is not tolerated

and is cause for discipline without regard to progressive discipline when an investigation finds reasonable grounds to believe the charges against the employee are true.

6. Appellee, Office of Juvenile Affairs, has met its burden to prove, by a preponderance of the evidence, that Appellant, Stacy Mathews, violated OJA Procedures SP-03-05-801(1), Unsatisfactory Performance and SP-03-05-801(2)(m) Misconduct - Abuse, and that just cause exists for his discharge.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant is hereby **DENIED** and the discharge is sustained.

DATED this 20th day of January, 2006.



Annita M. Bridges, OBA # 1119
Administrative Law Judge
OKLAHOMA MERIT PROTECTION COMMISSION
3545 N.W. 58th Street, Suite 360
Oklahoma City, Oklahoma 73112
(405) 525-9144