BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA

CHAD WOFFORD,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. MPC 07-141
	)	
OFFICE OF JUVENILE AFFAIRS,	)	
	)	
Appellee.	)	

ISSUED
OCT 18 2007
OK MERIT PROTECTION COMM.
BY

FINAL ORDER

This matter comes on for pre-hearing conference on the 10th day of October, 2007 before the duly appointed, undersigned Administrative Law Judge of the Oklahoma Merit Protection Commission, in Oklahoma City, Oklahoma. The Appellant, Chad Wofford (hereinafter "Wofford"), appears personally and by counsel, Melinda Alizadeh-Fard. The Appellee, Office of Juvenile Affairs (hereinafter "OJA"), appears by and through counsel, Wayne Johnson. A Pre-Hearing Conference was previously held on the 14th day of June, 2007, wherein Appellant asserted that the Appellee was barred from applying a second disciplinary action for the same behavior. The Pre-hearing Conference was continued at that time and the parties filed Briefs outlining their positions.

After careful consideration of the record and having reviewed the pleadings and the Briefs of each party, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Appellant, Chad Wofford is a permanent, classified employee of the Appellee, Office of Juvenile Affairs. He appeals an adverse action of a three (3) day suspension without pay.

2. On September 18, 2006, Wofford is alleged to have failed to take certain appropriate steps to ensure that a juvenile in the custody of OJA was safely and securely transported to and

from a court appearance, and as a result, the juvenile escaped. OJA disciplined Wofford, applying a three (3) day suspension without pay on January 25, 26, and 27, 2007.

3. Wofford grieved the suspension without pay internally and also filed an appeal with the Merit Protection Commission (hereinafter "MPC"). His primary argument was that the notice of the final disciplinary action was not given to him within ten working days as required by OJA policy, by statute and by rule.

4. On March 21, 2007, the Chief of Staff for OJA, Gary P. Bolin, met with Wofford regarding the grievance. Following that meeting, on March 22, 2007, Gary Bolin sent Wofford a memo stating that he was "granting" Wofford's appeal and "rescinding" the three day suspension without pay. (See Exhibit 1 to Appellee's Brief in Chief, filed herein on July 31, 2007). This memorandum agreement makes no mention to the possibility of subsequent disciplinary action for the same events and is the only written memorialization of the agreement of the parties regarding the disposition of the grievance and the appeal.

5. As a result of this memo, the Merit Protection Commission Executive Director dismissed the MPC appeal as "moot". (See Exhibit 2 to Appellee's Brief in Chief, filed herein on July 31, 2007).

6. On April 5, 2007, OJA gave Wofford a "Re-issuance, Notice of Proposed Action – Suspension Without Pay". (See Exhibit 7 to Appellee's Pre-Hearing Conference Statement, filed herein on June 14, 2007). On April 20, 2007, OJA gave Wofford "Notice of Final Action – Suspension Without Pay". (See Exhibit 8 to Appellee's Pre-Hearing Conference Statement, filed herein on June 14, 2007).

7. The April, 2007 disciplinary action is based entirely upon the same events that gave rise to the January, 2007 disciplinary action of suspension which was rescinded.

8. Wofford was suspended without pay on April 25, 26 and 27, 2007. Wofford timely filed an appeal of the April suspension with the MPC.

9. OJA attempts to clarify or modify the memorandum agreement four months after the fact by offering an Affidavit containing additional terms of the agreement. (See Exhibit 3 to Appellee's Brief in Chief, filed herein on July 31, 2007).

ISSUE

Is the Appellee, Office of Juvenile Affairs, barred from applying a second disciplinary action for the same actions following a rescission of the first suspension and granting of the grievance?

CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause and the filing of the Petition for Appeal was timely.

2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.

3. Title 74 O.S. §840-6.5 and Merit Rule 455:10-9-2 state that the Appellee OJA has the burden of proof in an adverse action and must prove by a preponderance of the evidence that just cause exists for the adverse action and that the discipline imposed is just.

4. Title 74 O.S. §840-6.5 and Merit Rule 455:10-11-17 state that a permanent classified employee may be suspended without pay for the reasons of misconduct, insubordination, inefficiency, habitual drunkenness, inability to perform the duties of the position in which employed, willful violation of the Oklahoma Personnel Act or the Merit Rules, conduct unbecoming a public employee, conviction of a crime involving moral turpitude or any other just cause.

5. On March 21, 2007, OJA and Wofford met and entered into an agreement disposing of Wofford's grievance. This agreement was reduced to writing by OJA on March 22, 2007. The memorandum of agreement fails to mention any conditions and fails to indicate that a subsequent suspension without pay would be reissued at a later date. The memorandum of agreement was provided by OJA to MPC and resulted in the dismissal of Wofford's appeal as "moot".

6. The Affidavit of Gary Bolin, dated July 31, 2007 offered by OJA is evidence of additional oral agreements which were not included in the memorandum agreement of March 22, 2007. Evidence of such oral agreements is subject to the parol evidence rule and inadmissible. The memo of March 22, 2007 constitutes a written agreement which is in force and operative, and subsequent evidence of a contemporaneous oral agreement is subject to the parol evidence rule and inadmissible. *Bredouw v. Jones*, 1966 OK 93, 431 P.2d 413.

7. It would have been an easy matter for OJA, the drafter of the memorandum agreement, to have included the provision that a subsequent suspension was to take place. There being no such provision in the written memo, OJA should not be permitted to remedy its procedural error and reimpose the same discipline by establishing a collateral parol agreement inconsistent with or contrary to the terms of the written memo. See *Stebbins v. Lena Lumber Co.*, 1922 OK 291, 89 Okla. 244, 214 P. 918; *Bolon v. Massey*, 1924 OK 62, 101 Okla. 8, 222 P. 685.

8. The memorandum agreement specifically states that Wofford's appeal is "granted" and the suspension is "rescinded". OJA's argument that the disciplinary action was "withdrawn" is not supported by the evidence and is rejected.

9. Appellee, OJA, is barred from applying a second disciplinary action in April, 2007 for the same actions following its rescission of the first suspension and granting of Wofford's grievance.

10. An evidentiary hearing is not necessary because the Appellant, Chad Wofford's appeal is sustained as a matter of law.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant Chad Wofford, MPC 07-141 be **SUSTAINED.** The discipline imposed upon Appellant of a three day suspension without pay is rescinded consistent with this Order. All documentation concerning the adverse action shall be expunged from any and all of the employee's personnel records, together with reinstatement of all pay and all appropriate benefits accorded thereto.

This Order entered this 17th day of October, 2007.

Lydia Lee
Administrative Law Judge