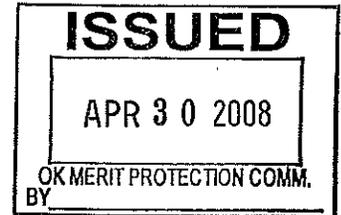


BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA

Annette C. Watson,)
Appellant,)
vs.) MPC-08-097
Department of Human Services,)
Appellee.)



FINAL ORDER

Hearing on this matter was held April 9, 2008, before the duly appointed, undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. Present at this hearing was Appellant, Annette Watson, who was represented by her attorney, Phillip Watson. Present for Department of Human Services (hereinafter "DHS" or "Appellee") was Assistant General Counsel, John E. Douglas. Also present for Appellee was table representative William Wilson.

Appellant was employed by Appellee working as a Child Welfare Worker in the Atoka County Child Welfare office at the time of her discharged on December 18, 2007 for misconduct, unauthorized disclosure of confidential information, insubordination, and misuse of state property or equipment. Specifically, the Appellee alleged that Appellant used her state computer to access confidential information which she then disclosed to a personal friend without authorization.

Whereupon the hearing began and the sworn testimony of witnesses for Appellee and Appellant was presented, along with exhibits, which were admitted and are incorporated herein and made a part hereof. In addition, the Appellee

requested that Appellee exhibits 2, 6, and 13 be sealed under protective order and such motion is hereby granted.

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 August 20, 2007, a child welfare referral was received by the Choctaw County Department of Human Services office. The subject of the referral was a woman who will be referenced in this Final Order as A.S.

Following standard operating procedure, the matter was assigned to an Investigator at DHS, Ryan Pitt. On September 5, 2007, Investigator Pitt attempted a home visit at A.S.'s home in Antlers, Oklahoma. A.S. was not at home so Investigator Pitt left his business card on the door requesting A.S. contact him.

When A.S. returned home she saw Investigator Pitt's information on her door. A.S., who had attended a College Masters program with the Appellant, contacted the Appellant to find out what action she should take. Appellant accessed the case file, confirmed the case was active, and advise A.S. to contact Investigator Pitt immediately. Following the call to Appellant, A.S. called Investigator Pitt and immediately proceeded to his office. While Investigator Pitt did not testify at this hearing, uncontroverted testimony was given that Investigator Pitt stated that during his meeting with A.S. it did not appear that she had prior knowledge of the referral information.

On September 18, 2007, Cheryl Craft, Child Welfare Supervisor in Atoka County received a complaint from a woman who will be referenced in this Final

Order as R.L. R.L. was the reporter who had made the child welfare referral regarding A.S. on August 20, 2007. Referral information, and specifically the name of the reporter who makes the referral, is confidential. R.L. was calling to complain that the Appellant had violated that confidentiality and told A.S. that R.L. was the reporter who had made the referral. R.L. told Supervisor Craft that she believed this was true because A.S.'s husband, G.S., had told her, R.L. that it was Appellant who had given A.S. the confidential information.

After receiving the complaint from R.L., Supervisor Craft contacted the Atoka County Director Phyllis Brister. On September 18, 2007, Supervisor Craft and Director Brister met with Appellant. Appellant readily admitted that she knew A.S., but denied that she had accessed the case file on September 5, 2007, Immediately following their meeting, Appellant left the office to attend a home visit. Appellant was scheduled to be off work the next day so when she completed her home visit, Appellant returned to the office and accessed the file hoping to remember anything about the September 6, 2007, telephone call.

The next day, Appellant checked her voice mail and retrieved a voice mail left the night before from Supervisor Craft telling Appellant not to access the file. Appellant immediately contacted Supervisor Craft and told her that she had accessed the file the night before.

It is Appellee's position that Appellant, during her telephone conversation with A.S. on September 6, 2007, disclosed the name of the confidential reporter, R.L., to A.S. This allegation is based on A.S. allegedly telling her ex-husband, G.S. who then told R.L. who then told Supervisor Craft that Appellant had given A.S. the confidential information. The preponderance of the evidence does not support this position.

At this hearing, A.S. emphatically testified that Appellant did not disclose R.L.'s name. A.S. also testified as to her relationship with her ex-husband, G.S.

during the period of August and September, 2007. During that time, A.S. and G.S. were separated and G.S. was living with R.L. and her husband. There was uncontroverted testimony offered that during that time, G.S. would try to visit A.S. and her daughter (G.S.'s step daughter) at their home and on more than one occasion the sheriff's office was called because of G.S.'s behavior. G.S. was later arrested for actions against A.S.

The Appellant also testified that she did not disclose R.L.'s name.

R.L. did not testify at this hearing. A.S.'s ex-husband, G.S. did not testify at this hearing. During the course of the agency's investigation prior to the discharge of Appellant, A.S., G.S., and R.L. were not interviewed. The only evidence that Appellant gave A.S. confidential information was an alleged statement from the ex-husband, G.S. who was not interviewed by Appellee prior to Appellant's discharge and was not present at this hearing. Accordingly, the preponderance of the evidence presented at this hearing does not support Appellee's allegation that Appellant disclosed to A.S. the name of a confidential reporter.

Appellee has also maintained that since the A.S. referral came from Choctaw County and not Atoka County, Appellant violated DHS confidentiality policy when she accessed the file. However, during this hearing, Supervisor Craft testified that under those circumstances, the proper procedure would have been for Appellant to give A.S. the correct contact phone number. This is what the Appellant did.

William Wilson, Area Four Director testified that he relied mainly on the investigative report when deciding the appropriate discipline for Appellant. It should be noted again that the Investigator did not interview the original source of the information that Appellant gave A.S. the confidential informant's name: G.S.

In addition, Director Wilson testified that there is a distinction between Appellant simply looking up the information as opposed to looking up the information and giving that information to another.

Appellee has also alleged that Appellant violated DHS policy on September 6, 2007, and September 18, 2007, when she accessed the file because the very act of accessing the file was a violation of DHS policy. Testimony at this hearing by other child welfare workers who have, or who are, working in the Atoka County office indicates that it is common practice for caseworkers to access files and then give non-confidential information to callers.

Lastly, the Appellee has asserted that because Appellant did not remember accessing the file on September 6, 2007, that Appellant is not being truthful about the entire matter. The undersigned does not agree with this assertion. Appellant explained to her supervisors and testified at this hearing that during that time in September, she was emotionally and mentally dealing with the anniversary of the death of her daughter. The undersigned finds this to be a reasonable explanation.

CONCLUSIONS OF LAW

1. The Merit Protection Commission has jurisdiction over the parties and subject matter in the above entitled cause.
2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.
3. The burden of proof in this case was placed upon Appellee, as the appointing authority, pursuant to a OAC 455:10-9-2 and Appellee has failed to meet its burden of proof.

Appellee has failed to prove by a preponderance of the evidence that the Appellant disclosed the name of R.L. to A.S. Appellee has also failed to prove by a preponderance of the evidence that Appellant violated Department of Human Services policy on September 6 and September 18, 2007 by accessing the case records.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant Annette Wilson is hereby **GRANTED**. The Appellant shall be reinstated to her former position of Child Welfare Worker with full back pay and benefits effective no later than May 15, 2008. Further, Appellant's personnel file is to be expunged of all references and documentation of the adverse action by the Appellee.

Dated this 30th day of April, 2008.



P. K. Floyd, OBA #10300
Administrative Law Judge
Oklahoma Merit Protection Commission
3545 NW 58th St, Suite 360
Oklahoma City, Oklahoma 73112
405-525-9144