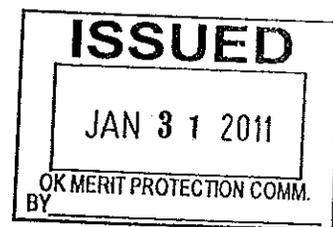


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



STACY LEE HALL,)
Appellant)
vs.)
OFFICE OF JUVENILE AFFAIRS)
Appellee.)

CASE NO. MPC 10-169

ORDER

Hearing on this matter was held before the undersigned Administrative Law Judge on January 18, 2011, at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant, Stacy Lee Hall, appeared in person and was represented by John Coyle, III, Esq. Appellee, Office of Juvenile Affairs (hereinafter referred to as "OJA" or "Appellee"), appeared by and through its Counsel, Wayne L. Johnson, Esq., and table representative, James Goble, Assistant Division Director, Juvenile Services.

Appellant, a permanent classified employee working for Appellee, was discharged from her position as a Juvenile Justice Specialist II at the Osage County Juvenile Services Unit, effective November 18, 2009, for violation of agency policies SP-03-05-801 (II) Misconduct, and (K) conduct unbecoming a state employee, after the Osage County District Attorney filed criminal charges against her for cultivation of marijuana, possession of marijuana, and possession of drug paraphernalia.

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

Appellant, a Juvenile Justice Specialist II at the Osage County Juvenile Services Unit, had been an employee of OJA since September 2000. As a Juvenile Justice Specialist II (JJS II), Appellant was responsible for providing detention services and supervision to juvenile offenders, including screening and processing referrals for intake, referring clients to appropriate services, contacting clients, families and service providers, monitoring clients and the services provided to them, preparing reports for the court, district attorney's office, and as required by OJA, attending detention hearings, and serving as liaison with the court. (Appellee Ex. 2 and Appellant Ex. 8)

On September 5, 2009, at approximately 6:00 a.m. law enforcement officers from Osage County, in conjunction with the District 10 Drug Task Force, executed a search warrant at Appellant's home that she shared with her husband and 18-year old son. The warrant was issued as a result of information received from an informant by Drug Task Force lead investigator, Douglas Elliott, and verified in July 2009 by a helicopter fly-over of Appellant's and her husband's 160-acre property, which confirmed that there were marijuana plants growing on the property. (Appellant Ex. 1, pgs 7-9) As a follow-up to the fly-over, officers entered the property in a "creep-in", verifying the location of two marijuana patches, identifying the plants as actual marijuana plants, and placing hidden cameras to monitor activity on the marijuana patches. (Appellant Ex. 1, pgs 16-18) Pictures taken by the hidden camera showed Appellant's teen-aged son, Jared

Hall, and another youth spraying and staking the marijuana plants. (Appellant Ex. 1, pgs 18-20)

On the morning of September 5, 2009 officers entered Appellant's home, arrested Appellant's 18-year old son, Jared, and executed a search warrant of the premises. During the five- to six-hour search, officers found, inside the home:

- A gun safe in the hallway off of the living room, containing 5.5 grams or 1/5 ounce of marijuana in a plastic baggie inside a glass jar with a screw top. The glass jar was behind a box containing several prescription bottles with Appellant's husband's name on the bottle labels. (Testimony of James Dale Hunter and Jared Hall; Appellee Ex. 14, pgs 3-4)
- In the son's room on a shelf, a pill bottle with Appellant's name on the label was found inside a binocular case. Inside the pill bottle was found a single smoking device, also known as a "1-hitter", and marijuana residue. (Testimony of Jared Hall and Doug Elliott; Appellee Ex. 14, pgs 4-5)
- In another bedroom, inside a gun safe, an unlabeled pill bottle was found containing marijuana seeds. (Testimony of Jared Hall and Doug Elliott; Appellee Ex,14, pages 5-6)

In addition to items found in the family's living quarters, officers also found:

- In the cellar beneath the house, a fan, a heater, string "run across with flags" and what appeared to be marijuana seeds on the floor – indicating that the cellar had been used, or was intended to be used, for drying out marijuana leaves. (Testimony of Doug Elliott and Jared Hall; Appellee Ex. 14, pgs 1-2)

- In the attached garage two sprayers were found, one of which looked like the one that Jared was observed using to fertilize the marijuana plants in the photos taken with the hidden camera (Testimony of Doug Elliott; Appellee Ex. 14, pg 2)
- Inside a bucket in the barn or shop, which was detached from the house, officers found a glass smoking pipe or “bong”. (Testimony of Doug Elliott; Appellee Ex. 14, pgs 2 and 10)
- Between the house and the driveway, a diesel fuel pump and tank were found, and lying on the tank was rebar and tie string that looked like the rebar and string used in the marijuana fields to stake the plants. (Testimony of Doug Elliott; Appellee Ex. 14, pg 1)
- Two patches of 10-foot tall marijuana plants were found on the 160-acre property owned by Appellant and her husband. One patch was located in a wooded area approximately 1086 feet north of the home. Twenty-three sprayed and staked plants were found in a cleared area in the woods. The second patch was located approximately 675 feet southeast of the home, across and in a wooded area, closer to the house occupied by Appellant’s older son. Thirty-three plants were found growing there. Officer Elliott testified that it appeared that 20 or so plants had already been harvested. (Testimony of Doug Elliott; Appellant Ex. 10)

On October 20, 2009 Appellant, her husband, and older son were criminally charged in Osage County with unlawful cultivation of marijuana, possession of marijuana, and possession of drug paraphernalia. The younger son, Jared, was charged with unlawful cultivation of marijuana. (Appellant Ex. 1, pgs 2-3) In accordance with OJA policy, on October 20, 2009 Appellant advised her supervisor of

the charges, and followed up with a letter the following day, October 21, 2009 (Appellee Ex. 1) On November 3, 2009, OJA prepared and served Appellant Notice of Proposed Discharge, based on the criminal charges filed against her in Osage County. (Appellee Ex. 3) A Pre-termination Hearing was held on November 16, 2009 in which the hearing officer concluded that reasonable grounds exist to support the proposed action of discharge, and Appellee discharged Appellant effective November 18, 2009 for violation of agency rules concerning misconduct and conduct unbecoming a state employee, SP-03-05-801 (II)(K). (Appellee Ex. 4) Appellant filed this appeal with the Oklahoma Merit Protection Commission. On October 8, 2010 Osage County District Attorney Robert Hudson filed a Motion to Dismiss charges against Appellant after son Jared Hall entered a guilty plea to the charge of cultivating marijuana and admitted that he was solely responsible for the cultivation. Osage District Judge John Kane dismissed the charges against Appellant on October 12, 2010, nearly one year after charges were initially filed against her.

Juvenile Services Division Director Kimberly D. Sardis testified that in spite of the charges being dropped against Appellant, and in spite of a lack of evidence that Appellant was aware of or involved in the cultivation of marijuana, discharge is still appropriate. Ms. Sardis stated that in her job counseling and working with juveniles and their families, Appellant must work with clients who often have drug problems, as well as with judges and court personnel, district attorneys and law enforcement officers. Appellant's effectiveness and credibility are compromised because of the widespread knowledge in her work community that marijuana had been found in and around her house. Appellee argued that Appellant knew or should have known that her son was growing marijuana on the premises and that he had marijuana in the home.

Considering all the evidence presented, this Administrative Law Judge finds that the preponderance of evidence fails to support Appellee's position, and this discharge cannot be sustained. Appellant's discharge is based on "misconduct", defined to include any failure to comply with statutes, rules, policies, or other authorities *governing performance and conduct* (Policy No. P-03-05-801(II), *emphasis added*), and with "conduct unbecoming a public employee," including any *failure by an employee of good behavior*, during or outside of duty hours, which causes discredit to the agency or to her employment. (Policy No. P-03-05-801 (II) K, *emphasis added*). Both of the cited policies require some behavior or action by Appellant, or at least some failure to act where a duty to act exists. The facts in this case fail to sustain any actions taken by Appellant or any behavior exhibited by Appellant or any conduct on the part of Appellant which would constitute "misconduct" by her, or "conduct unbecoming a public employee". The only action here was the levying of criminal charges against Appellant. This was not her action, this was the action of the district attorney, over which she had no control. The mere filing of charges by the district attorney, without any overt, independent action by Appellant, does not constitute misconduct or conduct unbecoming a public employee where there is no evidence that Appellant engaged in any action or behavior for which she was charged, or otherwise.¹

Appellee claims that Appellant knew or should have known that her son was cultivating marijuana or had marijuana in the house, and failed to act responsibly to quell his behavior. Although knowledge alone is not conduct or misconduct, failure to

¹ If, for example, Appellant had been charged with public drunkenness and there is evidence that she was in a fight, resisted arrest, or otherwise created a scene, such actions might constitute misconduct or conduct unbecoming a state employee whether or not the charges of public drunkenness are sustained or are later dismissed. There are no such independent actions by Appellant in this instance, including any evidence of drug use. Appellant's submission of hair and urine samples for drug testing both returned as "negative" for illegal drugs. (Appellant Ex.6 and 7)

act on that knowledge where there is a duty to do so may constitute misconduct. Yet, the preponderance of evidence here does not sustain a finding that Appellant had any knowledge of her son Jared's activities. The authorities placed hidden cameras on the property to monitor activities with the marijuana plots. Jared and another youth were seen tending to the plants, however, Appellant was never seen tending the plants or in the area of the cameras. Appellant lived on a 160-acre, partially wooded property. Appellant was not engaged in farming the land and there is no evidence that she hunted on the land or that Jared's activities took place during hunting season when someone might have stumbled upon them. The two marijuana patches were hidden in the woods and found by the authorities after a helicopter fly-over in which officers were looking for the marijuana plots. Even after the helicopter fly-over and a five to six hour extensive search of the property, authorities did not find all the marijuana Jared was growing. Charlie Cartwright, chief investigator with the sheriff's department, testified that several days after the search Appellant came to him with a map drawn by Jared and his father on which Jared had identified other locations on the property where marijuana was growing. Investigator Cartwright and Deputy Hargrove located and destroyed 33 additional marijuana plants that the Drug Task Force had not found. There is no reason to believe that Appellant would have, or should have, stumbled across Jared's marijuana patches, and no evidence that Appellant knew or should have known about Jared's business enterprise. The evidence does show, however, that once Appellant knew about Jared's activities, she took immediate steps to identify the extent and location of his enterprise and contacted the authorities to have them take the proper action.

Appellee claims that Appellant knew or should have known that Jared had marijuana in the house he shared with his parents. Again, the preponderance of evidence does not support this allegation. Jared's "personal stash" that was found by the Drug Task Force was a small amount, hidden in the back of two gun safes behind other items, and in his room inside a binocular case. Appellant would have had no reason to find these items in the normal course of daily activities. Unless she had reason to suspect that Jared was using drugs (and there was no evidence that he exhibited signs of drug usage), Appellant would have had no reason to search for evidence or proof of drug use, as did the Drug Task Force. Again, this unit, trained to know what to look for and where to look, spent five to six hours on the property to find the few items inside the home.

The items found in the cellar and shop might never have been seen by Appellant in the course of her normal daily activities, as these were not places she had reason to frequent. And even if she saw them, she would have had no reason to suspect that they were associated with marijuana cultivation. The string, fan, and heater found in the cellar are normal household items that might be found in any cellar and, to an average, reasonable person, would not conjure thoughts of drug paraphernalia. Likewise, a fertilizer sprayer, metal stakes and rebar found in and around the garage are common items that might be used in any gardening or planting activity, and not specifically associated with the cultivation of marijuana. The glass smoking pipe hidden inside a bucket in the shop might not have been found by Appellant, as the shop is not an area she would be likely to enter. Knowing his parents' habits, Jared would have stored all his paraphernalia in places he knew his parents would not be likely to find them.

This is a case where the sins of the child are attempted to be inflicted upon the parent by OJA. There is little doubt that the actions of a child have an impact on the parent – emotionally, psychologically, financially, and often societally, as the actions of a child – good or bad, but particularly the bad actions – are often seen by society as a reflection of how that child was raised by his or her parents. However, the actions of the child are not those of the parent. Each person is responsible for his or her own actions. OJA cannot hold Appellant responsible for the actions of her 18-year old son as grounds upon which to base this discharge.

Appellee's argument for discharge, as stated by Ms. Sardis, is that the knowledge within the community that there were drugs in and around Appellant's home damaged her credibility to work with juveniles and their families with drug problems, and caused her to lose her effectiveness as a Juvenile Justice Specialist. First, the stated reason for Appellant's discharge was not inability to perform her job effectively, it was misconduct and conduct unbecoming a state employee. However, assuming, *arguendo*, that Ms. Sardis' stated reason is a legitimate ground to base Appellee's action in this case, the evidence does not support Ms. Sardis' assertions.

Appellant works with a variety of constituencies, including law enforcement, district attorneys offices, judges and the courts, service providers, and juveniles and their families. She has been recognized as an outstanding employee. On four of her last five performance evaluations or PMP's Appellant received an "Exceeds Standards" in her overall performance rating. (Appellant Ex. 8) Appellee has produced no evidence that Appellant's credibility and effectiveness were diminished as a result of her son's pursuits. On the contrary, Appellant produced evidence that she was still well thought-of by the people with whom she has worked.

Judge Bruce David Gambill, Associate District Judge in Osage County, juvenile division, testified that Appellant always handled her job timely and efficiently, that she did good work and had good rapport with the court clerk's office. He said that he could always count on Appellant to find placements for juveniles, no matter the time of day or night needed. When asked by this administrative law judge whether he thought Appellant's credibility or effectiveness as a juvenile justice specialist was compromised as a result of the drug incident with her son, Judge Gambill responded that he did not. On the contrary, he felt that her experience would make her more understanding in dealing with her clients going through the system.

Investigator Charlie Cartwright worked with Appellant when she was assigned to Juvenile Affairs and always found her caring and effective in her dealings with juveniles. In fact he had a personal experience with her working with his own daughter when she was going through a difficult time. Appellant helped get her into a youth shelter, visited her two to three times a week, and developed a special bond with his daughter that helped turn her around.

In addition to these two witnesses, Belinda Martin, a long-time friend testified that she never saw any evidence of marijuana or other drugs in or around Appellant's house and no evidence that either of her boys was involved with drugs. According to Ms. Martin, Appellant's "mission is to help kids" and she felt Appellant did a good job at that.

Lura Jaquess, the community based counselor with Youth Services of Osage County, worked with Appellant through a collaborative arrangement with OJA. She describes Appellant as diligent, dependable, energetic, and creative, an effective manager of programs and people, with "impeccable interpersonal skills" and a "demonstrated commitment to working with law enforcement, non-profit organizations,

public school systems, as well as all other community partners". Ms. Jaquess states that in her experience Appellant has always followed the law and conducted herself with high moral standards; she knows her to be honest and of good character. (Appellant Ex 4)

Co-worker Stacy Mcilvain described Appellant as a "hard worker and advocate for troubled youth in this state," who "prides herself on putting those kids and their families first." (Appellant Ex. 2) Another life-long friend, Kristi Woolley, who also worked with her professionally, described Appellant as a "very strong and trustworthy individual" who "always did the job above and beyond what it required" and "always stood up for what she believed was right whether anyone else agreed or not." (Appellant Ex. 3)

All of the above testimonials were given after Appellant was criminally charged in Osage County. There is no evidence in the record presented to this Administrative Law Judge that Appellant's credibility or effectiveness in her job has diminished as a result of the charges filed against her. The only evidence presented indicates that Appellant is a highly respected, well-thought-of friend, professional, and member of the community.

Based upon the evidence presented and recited above, the undersigned Administrative Law Judge finds that Appellee OJA has failed to prove, by a preponderance of the evidence, that Appellant violated agency rules concerning misconduct and conduct unbecoming a state employee, SP-03-05-801 (II)(K) or that just cause exists for Appellant's discharge and, therefore, Appellant's discharge cannot be sustained.

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 and for 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 # P-03-05-801 *Causes for Disciplinary Action*, II. **Misconduct** states that misconduct includes, but is not limited to, any failure to comply with statutes, rules, policies, and/or other authorities directly governing performance and conduct, and includes K. **Conduct unbecoming a public employee**, which includes any failure by an employee of good behavior either during or outside duty hours, which is of such a nature that it causes discredit to the agency or his/her employment.

5. Appellee, Office of Juvenile Affairs, has failed to meet its burden to prove, by a preponderance of the evidence, that Appellant, Stacy Lee Hall, violated OJA Procedure P-03-05-801 II. **Misconduct**, including K. **Conduct unbecoming a public employee** or that just cause exists for her discharge.

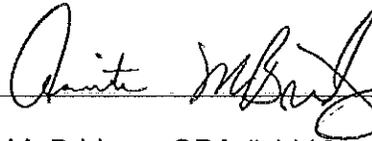
ORDER

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

IT IS FURTHER ORDERED that Appellee will reinstate Appellant to her prior position, without break in service or penalty, within ten (10) business days of the issuance of this ruling, and that all personnel records of this termination will be expunged as if it never occurred.

IT IS FURTHER ORDERED that Appellant shall receive full back pay and benefits from the date of her discharge until the date of her reinstatement, **except** for the periods from December 10, 2009 through May 26, 2010 and June 29, 2010 through November 16, 2010, for which Appellant shall receive no compensation or back pay, in accordance with the parties' pre-hearing stipulations.

DATED this 28th day of January, 2011.



Annita M. Bridges, OBA # 1119
Administrative Law Judge
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