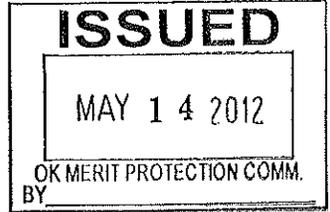


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



MARY CRISTELLI,)
Appellant)
vs.)
DEPARTMENT OF CORRECTIONS,)
Appellee.)

CASE NO. MPC 12-089

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on May 3, 2012 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant, Mary Cristelli, appeared in person and was represented by James Patrick Hunt, Esq. Appellee, Department of Corrections (hereinafter referred to as "DOC"), appeared by and through its Counsel Michele J. Minietta, Assistant General Counsel, and agency representative Michael Carr, District Supervisor, Northwest District Community Corrections, Enid, Oklahoma.

Appellant, a Probation and Parole Officer III in Union City, Oklahoma, filed this grievance after she received a five (5) day suspension for violation of DOC Policy OP-110215, *Rules Concerning the Individual Conduct of Employees*, Section II A(1) and (2) and Section D, as well as multiple DOC Operations Procedures governing the supervision of community offenders, by failing to properly manage her cases, including failing to monitor offenders, assess offender needs and make appropriate referrals,

report offender status changes to the court, obtain DNA and UA testing where required, maintain up-to-date case files, and close cases timely.

Whereupon, the sworn testimony of witnesses for both Appellee and Appellant was presented, along with Joint Exhibits 1 through 59, which were admitted and 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 Probation and Parole Officer (PPO) III in Union City, OK, has been employed by DOC for approximately 16 years. As a PPO she is responsible for determining and administering offender's needs and risks, working with the offender in developing and monitoring a transition plan, establishing a rapport with offenders and interacting with offenders in a professional, non-judgmental manner, initiating contact with offenders when scheduled contacts are missed, ensuring that offenders are in compliance with DNA and UA testing, timely completing investigations and reports to the court where required, properly managing and closing cases, and conducting law enforcement duties where required. (Joint Ex. 25, 28 and 29) In this position, Appellant is part social worker, part law enforcement officer. A Level III PPO is experienced, skillful, and regarded as an expert PPO based upon her experience, education, and time on the job. (Testimony of District Supervisor Carr) This is the highest level PPO below the supervisory level.

Appellant has had performance problems for at least the past six years. When Arvella Rucks became Appellant's Team Supervisor in 2008, the instruction from District Supervisor Mike Carr to Ms. Rucks was for her to get Appellant into compliance and make her salvageable as an employee. At the time Ms. Rucks took over as Appellant's supervisor, a disciplinary action was pending against Appellant for her failure to carry out her duties satisfactorily and failure to correct deficiencies noted. A letter of reprimand was issued to Appellant on June 19, 2008 because of her failure to correct deficiencies found in her caseload during routine 5% case file reviews conducted on March 13, 2008 and May 27, 2008. (Joint Ex. 22) These reviews found cases lacking transition plans, missing or inaccurate LSI assessments, no contacts listed for offenders, no attempt to locate offenders with missed appointments, undocumented delinquent fees, no proof of offenders complying with their court-ordered conditions, delinquent home and office visits, a case that needed to be closed, and one offender living out of state without permission. This letter of reprimand came after several prior discussions dating back to 2005, and a 2007 letter of concern. (Joint Ex. 22)

Two of Appellant's annual performance evaluations, PMP's for March 2008 to February 2009 and from March 2009 to February 2010, both showed Appellant with performance ratings of "Needs Improvement". (Joint Ex. 28 and 29) Throughout each of these years Team Supervisor Rucker attempted to work with Appellant to help her bring her caseload into compliance. Appellant's extra duties in the office were taken away from her to allow her to work on her delinquent files. (Joint Ex. 22, pg. 3) Five percent (5%) audits were conducted quarterly to try to help Appellant stay on top of her caseload, make corrections where needed, and reach a satisfactory compliance level.

(Joint Ex. 29, pg.7) Supervisor Rucker gave Appellant a Mid-Year Review in October 2009, again to help her come into compliance. On that review Ms. Rucker stated:

For the mid year review you currently would receive a needs improvement rating and I want to give you time to make the needed corrections so that you will receive a meets standards when your yearly PMP is closed in March.

If there is anything I can do to help you improve and stay consistent let me know. I will be glad to help you. I know that you want to be successful in your career with Corrections and with continued hard work you will be.

Joint Ex. 28, pg. 8.

On August 6, 2010 Ms. Rucker conducted a Roster Review, looking at office visits and home visits of Appellant's caseload. Twenty-three cases were identified as needing corrections and Appellant was given a September 5, 2010 deadline to complete them. (Joint Ex. 26) Problems identified included cases with missed appointments, no contact for months and no reports to the court, no entries for months, offenders in custody with their cases still open.

A subsequent December 2010 audit found similar deficiencies – people who have not been seen in months, papers loose in files, files past their discharge dates, and indeterminate files. (Joint Ex. 23) Appellant was given 30 days to correct these deficiencies and a follow-up assessment was scheduled for January 20, 2011. In her letter of December 20, 2010 Ms. Rucks again offered her assistance:

This area has been an ongoing concern since I became your supervisor. I have attempted to assist you in coming in compliance with your supervision but as of this date it does not appear that it has been successful. Different types of coaching and discipline has been use but it does not appear that you have made any lasting change in your supervision of the offenders assigned to you.

Your last audit had an over all compliance rate of 78% which does not meet standards.

I have not given you any extra duties for almost three years so that should not be an issue.

If you have questions or concerns feel free to contact me and I will attempt to assist you.

On January 20, [sic] 2010 I will get together with you and do an audit of your files and determine your success.

Joint Ex. 23

The weather prevented Ms. Rucks from meeting with Appellant on January 20, 2011. However, a roster review of Appellant's cases on March 4, 2011 revealed 49 cases out of compliance and deficient, including cases previously identified as out of compliance in the August 2010 review and the December 2010 audit. (Joint Ex. 24, page 3) Appellant was given until March 31, 2011 to correct these deficiencies. (Joint Ex. 24) On the morning of March 17, 2011 Ms. Rucks discussed with Appellant her annual PMP covering the period from March 2010 to February 2011. Her overall rating was "Does Not Meet Standards". (Joint Ex. 25) After their discussion, Appellant left for lunch and did not return to the office that day. Four days later Appellant went on sick leave. She was on sick leave for stress-related illness from March 21, 2011 to August 1, 2011.

On May 28, 2011, while Appellant was still on sick leave, an unfortunate incident occurred that triggered media attention and scrutiny of DOC. An offender serving a seven year suspended sentence for assault and battery with a dangerous weapon was in a stand-off with police after his girlfriend called the police and accused him of molesting her daughter. (Joint Ex. 12) During the stand-off, the offender, Joseph Garcia, shot himself in the head and later died. Records indicated that Mr. Garcia was under DOC supervision and Appellant was the supervising PPO. Appellant last saw Mr. Garcia December 27, 2010, at which time he tested negative for drug use and

presented confirmation that he had completed his counseling program at Turning Point. (Joint Ex. 9) The December 27, 2010 record was the last entry in the Chronological Record until Supervisor Rucks reviewed the file on May 26, 2011 and verified that Mr. Garcia had met all the conditions of his parole as of his office visit on December 27, 2010 and, therefore, Appellant should have taken steps to terminate his probation at that time. (Joint Ex. 9) Instead, Appellant kept him on her roster, but failed to provide any supervision and failed to make any inquiries or report him as missing after he missed his January 2011 scheduled visit without any subsequent contact.

As a result of the Garcia case, and given Appellant's past performance history, a 100% audit – audit of all of Appellant's case files – was conducted on June 2 and 3, 2011. All 86 of Appellant's case files were audited; approximately 65 – 70 of them had deficiencies and were out of compliance with DOC operating procedures and rules.¹ Deficiencies found during the audit included cases without a required or current LSI risk/needs assessment; cases without an appropriate transition plan; cases lacking rules of supervision or court conditions; cases that should have been closed or transferred; offenders not receiving program referrals or treatment; offenders in need of office visits and/or home visits; offenders who had not had required UA or DNA testing; offenders who violated probation terms or committed new crimes and no violation reports were submitted; offenders with whom there had been no contact for months or

¹ Appellee did not penalize Appellant for any deficiencies that existed during the period of time she was on sick leave. In fact, Appellant's cases may have been in better shape because of her absence. While she was on leave her three fellow PPO's were covering her caseload as well as their own and corrected some of the existing deficiencies during the course of handling her cases. For example, Appellant claimed to have had 100 or more assigned cases, however, she had only 86 cases at the time of her 100% audit. Either Appellant's count was incorrect, or her co-workers were able to close some of her cases during her absence that she had not closed.

whose whereabouts were unknown and no attempt was made to locate them. (Joint Ex. 30 – 59)

Additionally, several other incidents of Appellant's case mismanagement included:

1. Offender Jonathan Emerich received a seven year suspended sentence for vehicular manslaughter. After 25 months of supervision Appellant sought to end supervision, claiming that Mr. Emerich had satisfied all court ordered obligations. On November 9, 2010 Ms. Rucks denied Appellant's request to apply to the court to end supervision, as Mr. Emerich had not had an interlock device installed on his car for a year as required by his Rules and Conditions of Supervised Probation. (Joint Ex. 13 and 14) Mr. Emerich had advised Appellant that he did not own a car. Without confirming his representation or whether he had a valid driver's license, and failing to apply to the court to amend his Rules and Conditions, Appellant ignored Supervisor Rucks' instructions and filed with the court an Application of Unsupervision, misrepresenting that the Offender "had satisfied all court ordered obligations." (Joint Ex. 15 and 16)
2. A female offender from Texas was transferred to Oklahoma and assigned to Appellant for supervision. With Appellant's knowledge, the offender was actually living in New Mexico, had a New Mexico driver's license and a New Mexico address. Appellant was writing monthly passes for her to return to Oklahoma for her office visits, but Appellant never advised the court of the offender's residential status or sought to have her transferred to New Mexico.

3. Appellant waited until the morning of a 9:00 a.m. scheduled court sentencing in Canadian County to forward her Pre-Sentence Investigation report to Supervisor Rucks for approval. (Joint Ex. 18 and 19) Ms. Rucks had less than an hour to read the report, make corrections, complete the report and send it to the Canadian County DA. The report arrived late. The prior day, Ms. Rucks had sent an e-mail to her PPO's, including Appellant, to let them know that she would be out of the office that afternoon and if they needed anything to call her cell phone. (Joint Ex. 18) Rather than call about the report as instructed, Appellant chose to send Ms. Rucks an e-mail that she did not see until the following morning, the morning of the sentencing.

Appellant has had a long history of substandard performance. Appellee has made every attempt to help Appellant improve – quarterly reviews to identify problem areas and what Appellant needed to do to correct them; removal of Appellant's extra duties so she could devote more time to her cases; offers of assistance that Appellant never accepted; progressive discipline designed to assist Appellant in making the necessary changes. District Supervisor Mike Carr has repeatedly stated his desire to "salvage" Appellant, bring her into compliance, and turn her into a productive employee. Team Supervisor Arvella Rucks has made sincere attempts to do this. Clearly, Appellee has worked harder to improve Appellant's performance than has Appellant. Rather than improving, Appellant's roster reviews, audits, and her PMP's indicate that her performance is slipping even further away from acceptable standards.

Appellant's claims that she has more cases than any of the other three PPO's is not persuasive since many of her cases are not being managed and yet, have not been

closed, as required. (This is a practice Mr. Carr describes as “sandbagging”, keeping files open on a roster that should be closed and removed, so that the officer can appear to be overworked and avoid new case assignments.) Additionally, Ms. Rucks explained that while it is possible Appellant has a few more cases than her counterparts, the additional number is small and Appellant's cases are all of a general nature requiring less intensive supervision than the sex offenders, inmates and parolees, and drug court cases that her counterparts handle. Furthermore, Appellant does not have the additional duties assigned to her that the other PPO's have.

Based upon a preponderance of the evidence in this case, this administrative law judge finds that just cause exists for Appellee's discipline of Appellant for failure to perform the duties of her position and for insubordination, and further finds that suspension without pay for five days is just under the circumstances.

CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and subject matter in the above-entitled matter.
2. Any findings of fact that are properly conclusions of law are so incorporated herein as conclusions of law.
3. Merit Rule 455:10-11-14 states that a permanent classified employee may be discharged or suspended without pay for up to sixty (60) days for misconduct, willful violation of the Oklahoma Personnel Act and Merit Rules, insubordination, inefficiency, inability to perform the duties of her position, and any other just cause.

4. Merit Rule 455:10-9-2(f)(1) 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 adverse action and that the discipline imposed was just.

5. DOC Policy OP-110215, Section II A(1) *Rules Concerning the Individual Conduct of Employees*, requires employees to comply with all laws, rules, and regulations which apply to their job duties and responsibilities and comply with all department policies and procedures and written and verbal directives of department supervisors and managers.

6. DOC Policy OP-110215, Section II A(2) *Rules Concerning the Individual Conduct of Employees*, states that failure to carry out lawful orders or directives of supervisors and managers will be considered insubordination.

7. DOC Policy OP-110215, Section II(D) *Illegal Activity, Rules Concerning the Individual Conduct of Employees*, states that employees will fulfill, to the best of their abilities, the duties of their position and devote full time, attention, and effort to the duties and responsibilities of their positions.

8. DOC Policy OP-160103, *Supervision of Community Offenders*, outlines the PPO's role and responsibilities in interacting with offenders and the time frame for accomplishing tasks, including offender orientation interviews, LSI-R/ASUS assessments, home visits, transition plans, referral to appropriate programs, drug tests, action to locate offenders who miss appointments, and submission of violation reports.

9. DOC Policy OP-160201, *Opening, Closing and Transferring Probation and Parole Cases Under Supervision*, II. and III. outline the steps required to close deferred

cases and suspended sentence cases and state that community supervision of both types of case shall not exceed two years, except where otherwise provided by law.

10. DOC Policy OP-160301, *Reports and Investigations*, describes under what circumstances and time-frame case reports, including violation reports, and pre-sentence investigation reports are to be submitted.

11. DOC Policy OP-160108, *Interstate Compact for Probation/Parole*, states that if an offender requests to reside in another state, the supervising officer will transmit to the Interstate Compact Office within seven calendar days a transfer request.

12. DOC Policy OP-140401, *DNA Testing*, sets forth DOC's responsibility to collect DNA samples, identifies which offenders are required to have DNA tests performed, and that such tests must be performed within 30 days of sentencing to DOC, and mailed to OSBI within 10 days of collection.

13. Appellee, Department of Corrections, has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Appellant Mary Cristelli for insubordination and for failure to perform the duties of her position in violation of Merit Rules and DOC Operations Procedures.

14. Appellee, Department of Corrections, has met its burden to prove, by a preponderance of the evidence, that the discipline imposed – suspension without pay for five (5) days – was just under the circumstances.

ORDER

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

DATED: this 8th day of May, 2012.



Annita M. Bridges, OBA # 1119
Administrative Law Judge
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