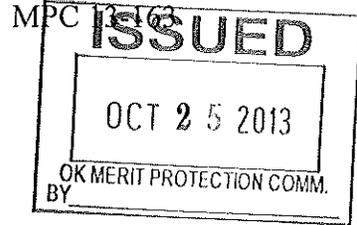


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**

SHEILA ANN WATSON,)
Appellant,)
)
v.)
)
DEPARTMENT OF HUMAN)
SERVICES,)
Appellee.)

Case No. MPC 13-133 and



FINAL ORDER

This matter came on for hearing on October 9 and 10, 2013 before the undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. The Appellant, Sheila Ann Watson (hereinafter "Watson"), appears personally and with her attorney, Lowell R. Burgess, Jr. The Appellee, Department of Human Services, (hereinafter "DHS"), appears by and through counsel, John Douglas, and through Zane Gray, Table Representative.

Appellant Watson was a permanent, classified employee of DHS, appealing an adverse disciplinary action of involuntary demotion¹. During the administrative hearing, the sworn testimony of witnesses was presented, along with exhibits. Joint Exhibits 1 through 21 and Protected Exhibit 1 were offered and admitted into the record. No Exhibits were offered that were denied admission. Accordingly, the exhibits presented and admitted are incorporated and made a part of the record. During the administrative hearing, it was determined that some confidential information contained in the Exhibits was not properly redacted. In addition, various witnesses mistakenly provided testimony referring to DHS clients by name. After repeated admonishments, it was determined that the Protective Order should be extended and all Exhibits in this matter and the audio recording of the hearing are subject to that Protective Order.

After careful consideration of the record, including all relevant evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

¹ As noted hereinbelow, Appellant orally dismissed her alleged violation appeal during the administrative hearing.

FINDINGS OF FACT

Background of Case

Watson was a classified employee of DHS, employed as a Child Welfare Specialist IV in Pushmataha County. Following a complaint from a law enforcement agent, Watson's supervisor reviewed a case file on a DHS client, I.F. Thereafter, there were concerns that Watson had failed to properly ensure that a proper investigation was conducted. An audit of other files supervised by Watson was undertaken and a number of concerns were identified. On August 28, 2012, following the audit and investigation, Watson was given notice of proposed termination (Exhibit 1). In addition to the issues with the I.F. case, four other referrals were identified as being mishandled by Watson or employees under her direct supervision and had to be reopened. Supporting documentation on these allegations was provided to Watson (Exhibit 2). The notice alleged that Watson was guilty of unsatisfactory performance, neglect of duty and maltreatment of clients, which constituted misconduct. Watson was placed on Suspension with Pay (Exhibit 3) and provided a written response to the allegations on August 29, 2012 (Exhibit 5). On October 10, 2012, an amended Notice of proposed discipline was issued as a result of the use of the wrong policy, but contained the same allegations (Exhibit 6). Watson submitted another written response (Exhibit 10). A pre-termination hearing was scheduled (Exhibit 11) and was held on January 16, 2013. The Hearing Officer concluded that DHS had met its burden to show that Watson was guilty of unsatisfactory performance and neglect of duty but did not meet its burden to show that Watson was guilty of maltreatment of clients. The Hearing Officer concluded that the proven policy violations did not warrant termination. (See Exhibit 13). DHS reconsidered its proposed action following the recommendation of the Hearing Officer, and on January 31, 2013, issued notice of involuntary demotion (Exhibit 14). Watson was demoted from a Child Welfare Specialist IV to a Child Welfare Specialist II effective February 1, 2013, resulting in a cut in pay of approximately \$1000 per month. Watson timely appealed the disciplinary action. In addition, Watson filed an alleged violation appeal, regarding the same disciplinary action. At the administrative hearing, Watson announced that she was withdrawing her alleged violation appeal, and the hearing proceeded on the adverse action appeal only.

ISSUES

1. Did DHS have just cause to impose discipline in this matter?
2. If so, was the discipline of termination just and appropriate under the circumstances?

THE TESTIMONY

During the administrative hearing, the testimony of ten (10) witnesses was taken, with each witness sworn and offered under oath.

The first witness offered by DHS was Lynn Childers. Childers is the Area IV Director, which includes Pushmataha County, and she signed the two notices of proposed disciplinary action and the notice of suspension with pay. She testified that in June, 2012, Freda House reported to her the complaints and concerns of an OSBI agent. These concerns were in regard to the sexual abuse of I.F., and Watson's failure to properly identify the abuse in earlier referrals involving this family. Childers stated that prior allegations of abuse were noted in the file, but no action had been taken, and in later referrals, the previous information was not sufficiently reviewed or noted. Childers identified the Exhibits and discussed the DHS policies in effect at the time of the violation. She noted that Watson was given a poor evaluation because these concerns were brought to her attention (Exhibit 7). She also discussed that she and Tricia Howell reviewed the Hearing Officer's decision following the pre-termination hearing and as a result, decided to impose discipline in the form of involuntary demotion, rather than discharge. Childers stated that she authorized Mr. Leewright to sign the notice of final discipline on her behalf because she was out of town. Both Childers and Howell were exercising joint authority over the decision because of a restructuring change at the time. Childers admitted that at various times in 2011 and 2012, Watson's case load doubled due to being assigned supervisory duties over both Pushmataha and Choctaw Counties, due to a staff shortage and budgetary issues. She stated that the demotion was to a level II rather than a level III because they wanted to eliminate all supervisory duties. She stated that the role of a supervisor was to properly supervise and guide employees to ensure that DHS policy was followed and investigations were fully

completed. She indicated that a corrective action plan was also instituted as part of the discipline.

Freda House is the County Director for District 19 but was previously over Pushmataha County. She testified that on June 29, 2012, she met with an OSBI agent who had several complaints about Watson. He told House that Watson's communications with law enforcement were poor and that there was a general lack of cooperation. He was particularly concerned about her actions on the I.F. matter. House stated that she reported this contact to Childers later the same day. She then checked the file and learned of information received from Tennessee in 2010 that was later overlooked in the investigation. She discussed the "F" family and indicated that there were three or four referrals about this family and about I.F. since 2010. The Tennessee reports mentioned concerns that the father had sexually molested family members in 2000. She noted that several members of the family had the same first and last names, but the middle initials and birth dates or ages were distinguishable. House testified that the Tennessee information should have triggered additional investigation, but Watson overlooked these concerns and ultimately approved reunification of the children with the father. After two or three more referrals, I.F. finally confirmed the sexual abuse.

Zane Gray is the District Director and has worked at DHS for over 25 years. He stated that Childers notified him of House's meeting with the OSBI agent and requested that he review the case file in question and conduct the audit. He stated that he reviewed both the paper files and the KIDS programs. He discussed in detail the records that supported the allegations of the misconduct (Exhibit 8) and pointed out the concerns and issues with each file. He discussed the "F" family history, culminating in the conviction and imprisonment of the father for sexual abuse of his daughter. He provided testimony about his interviews with the other DHS case workers (Exhibit 8, pg. 178-179). Gray also testified about the results of his review of several other cases under Watson's supervision (Exhibit 8, pg. 180-189). Gray stated that he was not involved in the decision to demote Watson. Gray stated that the DHS reports are given to the District Attorneys and the Judge and discussed the importance of proper supervision to ensure DHS policy is followed. He said that his audit revealed numerous failures of Watson to follow policy and procedure and his concern was that serious safety issues were not properly investigated. Gray also stated that Watson's failure to acknowledge the errors that occurred caused him great concern. He stated that Watson failed to catch things and this demonstrated her inability to

properly supervise and train her employees. Gray stated that in the audit, he randomly pulled 25 files from the previous 90 days for review and the cases included in the Notice had to be reopened. He reiterated that a supervisor's role is to fully review her employee's reports and "catch" the errors in order to teach the employees to gather the necessary information. He stated that it was impossible to make adequate safety determinations without adequate investigation.

Sandra Kenison worked at DHS until 2011 and conducted the initial investigation on the "F" family. She requested the report from Tennessee. She noted that the father, the grandfather and one son all had the same first and last name and that created some confusion because the Tennessee reports often only used the first name. She noted her concerns in her 2010 Report to the District Attorney.

Alice Faye Ballew is now retired from DHS but was involved in the "F" case in 2011. She was charged with reuniting the children with their father. She worked under Watson and noted that Watson would frequently ask her to provide more information on cases. She discussed the evolution of DHS policies, from an incident-based approach, dealing only with the current complaint, to a more comprehensive approach of reviewing the entire history. She acknowledged that all facts should be assessed to determine the risk or the safety of the children, as part of the policy adopted in March, 2010.

Amanda Hatcher was previously employed in permanency planning in the DHS Pushmataha County office. She worked on the reunification plan for the "F" family and stated that she was never made aware of the history or previous concerns about the father. She discussed the normal progression of a case and stated that the permanency planning worker gets her information from the supervisor. She stated that by the time the case is assigned to her, someone else had already made the decision to reunify and it was her job to accomplish that. She stated that the operations were fairly "compartmentalized" but she admitted that it would have been important for her to know of the previous concerns and allegations of sexual abuse.

Lindsey Hatcher is a Specialist at DHS and previously worked on the "F" family case. She stated that the Tennessee records were only in the paper file and there was nothing in the KIDS system about the previous history. She stated that Watson told her to review the history but she didn't see anything mentioned in KIDS and she never checked the paper file. Hatcher stated that at the time, it was very difficult to connect with Watson because she was covering two counties and was very over worked. She said that as a result of Watson's added duties, she had

to be out of the office a lot, but that she did the best she could. She said that Watson was good to work for and was never a “push-over”.

Margot Barnes is employed in the Human Resources division at DHS. She discussed the guidelines for involuntary demotion at DHS and stated that, by policy, for all involuntary demotions, salary is set at the minimum for the particular pay band. Barnes stated that involuntary demotions were relatively uncommon, and that 2 occurred in 2012 and 2 in 2013. She also stated that these numbers do not include voluntary demotions which could be part of a negotiated disciplinary action.

Tricia Howell is the Deputy Director for Region IV, which includes Pushmataha and Choctaw Counties. She discussed the policy change from an incident based approach to a more comprehensive investigation to assess total family function. She stated that DHS had been providing training on the assessment of child safety since 2008. She testified that she concurred in the decision to demote Watson to a level II because level III still may have had some supervisory duties and therefore level III was not considered. This decision was made because Watson never acknowledged her failures in these cases and therefore couldn't be responsible for supervising others. She stated that the Tennessee allegations should have absolutely been investigated and addressed fully in making the decisions about the “F” family. Howell stated that the outcome may not have changed but the failure was that the risk was never addressed or assessed. She discussed the Corrective Action Plan that was implemented as part of the discipline. Howell testified that some of the other DHS employees involved in the “F” family case were disciplined with reprimands but the more serious discipline was imposed on Watson because she was the supervisor in charge of this matter. She said that the responsibility level and expectations for supervisors is higher.

Sheila Watson, the Appellant, testified last. She stated that she has been an employee of DHS since July, 2000. She was previously employed with the Choctaw nation and with an alcohol recovery program. Watson stated that she became a supervisor for Pushmataha County in 2002 and had been required to add supervisory duties for Choctaw County periodically since 2009. She stated that at various times, she was required to supervise up to four units in two counties at the same time. Watson testified that it was overwhelming and often required her to split her time between the different offices and court appearances. She stated that the Choctaw County office had a huge turnover rate and was always understaffed, adding to her work load.

Watson stated that she had received only one prior discipline of an oral reprimand. Watson testified that she had asked for help on numerous occasions and talked several times to Freda House and Zane Gray about her being overwhelmed. She stated that she was never provided with any relief, which contributed to this situation. Watson stated that she was aware of the Tennessee report about the "F" family but the reports were confusing and she thought the sexual abuse allegations were about the grandfather, not the father. She said that she was devastated after she learned of the rape of I.F. and met with her, apologized and cried together with her. She said it was a very emotional meeting and the case still bothers her. Watson said she was remorseful, but felt attacked, which made her behave defensively. Watson discussed the other cases and admitted that mistakes were made and not caught by her. Watson believes it was unfair of DHS to place all of the blame on her.

DISCUSSION

After consideration of all of the child welfare records included in this case, it is clear that there was a heinous crime perpetrated upon I.F., and that the failure to recognize the risk to her may have contributed to the problem. It is also clear that the other four cases referenced in this action also involved failures to recognize risks or conduct proper follow-up investigations. Fortunately, no harm occurred as a result of those cases. As the supervisor, Watson had the ultimate responsibility for ensuring that proper action was taken to protect the families in question. Based upon this, it is determined that the preponderance of the evidence supports the allegation of unsatisfactory performance in that Watson's performance as a supervisor fails to meet the established standards and criteria for her position. (See OKDHS: 2-1-7(i) (1) – Exhibit 2, pg. 3). However, the preponderance of the evidence fails to support the allegation of neglect of duty in that DHS has failed to provide evidence that Watson inexcusably failed to perform or pay attention to her assigned duties. The key to this allegation is the use of the term "inexcusably". (See OKDHS: 2-1-7(i) (4) – Exhibit 2, pg. 4). Finally, as indicated by the pre-termination hearing officer, there is no evidence that Watson is guilty of maltreatment of clients (See OKDHS: 2-1-7(i) (7) – Exhibit 2, pg. 4).

In making this decision, it was critical that Watson provided evidence that she was seriously overworked, being assigned double duty, with an understaffed office. She also provided evidence that she reasonably sought help and relief by advising her supervisors that she

was overwhelmed. DHS provided nothing to rebut this evidence. Budget shortfalls and understaffing are sometimes unavoidable, but the undersigned agrees that it is unfair to lay the total blame for the errors in the “F” family case and the other four audited files solely at the feet of Watson, given the work load she was forced to endure.

Therefore, it remains to be determined if the discipline of involuntary demotion was appropriate and just under the circumstances. Evidence was presented that Watson was a good employee and had received positive ratings prior to these incidents. She has also received awards since the demotion. Her involuntary demotion was a full two level demotion – from a CWS IV to a CWS II. There was evidence that a CWS III was required at times, to supervise in the absence of the IV, but this was not a full time supervisory position.

The only allegation of misconduct in this case that was found to be supported by the evidence is unsatisfactory performance. DHS policy provides that this is, in most circumstances, correctable and disciplinary action should normally be preceded by efforts to correct the performance problems (See OKDHS: 2-1-7(i) (1) – Exhibit 2, pg. 3). There is no evidence that efforts were made to help Watson correct the performance problem. In fact, her pleas for help fell on deaf ears. This is simply a performance related problem and should be addressed accordingly, in accordance with the principals of progressive discipline. No efforts were undertaken to help Watson improve her performance prior to taking this action. While there is justification in imposing an involuntary demotion to eliminate the overwhelming supervisory duties, the evidence supports that demoting one level rather than two is more appropriate as progressive discipline. Watson is qualified for Child Welfare Specialist III and it is more in keeping with DHS policy of correcting performance problems. It recognizes her shortcomings in performing full-time supervisory duties, while not unjustly penalizing her.

The undersigned has considered all of the facts and circumstances of this case and the testimony of the witnesses. DHS has met its burden that one violation of policy has occurred however, progressive discipline mandates that a lesser form of discipline is warranted. Mitigation is warranted under the facts and circumstances of this matter as discussed herein. Given the totality of the circumstances, a reduction of the discipline to a demotion to Child Welfare Specialist III is appropriate.

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 OAC 455:10-9-2 states that the Appellee 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. OAC 455:10-11-14 indicates that an employee in the classified service may be involuntarily demoted for misconduct and/or just cause.
5. The preponderance of the evidence supports DHS' allegation of unsatisfactory performance by Watson in failing to properly supervise her employees in connection with five specific cases as noted in the Notice of disciplinary action. The preponderance of the evidence does not support DHS' allegations of neglect of duty or maltreatment of clients.
6. Appellee DHS has met its burden to prove, by a preponderance of the evidence, that just cause exists to discipline Watson for her misconduct and her appeal on that ground is denied.
7. Appellee DHS has failed to meet its burden to prove, by a preponderance of the evidence, that the discipline of involuntary demotion two full levels, from a Child Welfare Specialist IV to a Child Welfare Specialist II, was just and appropriate under the circumstances and consistent with progressive discipline, Merit rules and laws. As a result, the discipline imposed is unduly harsh and unfair given the totality of the evidence.
8. In accordance with OAC 455:10-9-2 (f) (1) (C), upon the finding that just cause existed for the adverse action, but did not justify the severity of the discipline imposed, the undersigned is ordering a reduction of the discipline. In ordering the reduction of discipline, the undersigned considered, at a minimum, the seriousness of the conduct as it relates to Watson's duties and responsibilities; the consistency of action taken by DHS with respect to similar conduct by other employees; the previous employment and disciplinary records of Watson; and other mitigating circumstances as discussed herein above.

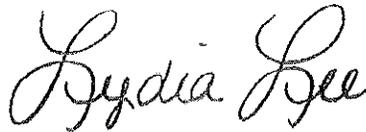
9. The record herein supports imposition of formal discipline in the form of an involuntary demotion to a Child Welfare Specialist III as just and appropriate considering all of the facts and circumstances.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant, Sheila Ann Watson, MPC 13-133 is DENIED IN PART and SUSTAINED IN PART. The discipline imposed upon Appellant is reduced to an involuntary demotion to a Child Welfare Specialist III consistent with this Order. Appellant is to receive back pay and benefits and Appellant's personnel records are to be expunged consistent with this Order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the petition of Appellant, Sheila Ann Watson, in MPC 13-163 is DISMISSED by request of the Appellant.

This Order entered this 21st day of October, 2013.



Lydia Lee, OBA #10374
Administrative Law Judge