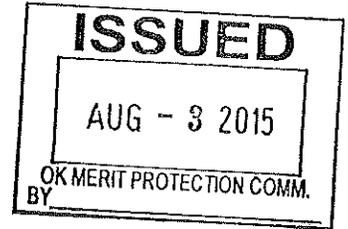


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA



JANET K. WALKER,)
Appellant)
vs.)
DEPARTMENT OF HUMAN SERVICES,)
Appellee.)

CASE NO. MPC 15-032

FINAL ORDER

Hearing on this matter was held before the undersigned duly appointed Administrative Law Judge on May 26, 2015 and July 14, 2015 at the Merit Protection Commission offices in Oklahoma City, Oklahoma. Appellant, Janet Walker, appeared in person and was represented by Ty Walker. Appellee, Department of Human Services (hereinafter referred to as "DHS" or "Appellee"), appeared by and through its counsel, Richard Resetaritz, Assistant General Counsel, and table representative, David Leewright, Administrative Field Analyst.

Appellant, a permanent classified employee of Appellee, was discharged from her position as a Child Welfare Specialist III for alleged violation of DHS: 2-1-7(i)(1) Unsatisfactory performance; (2)(B) Willful failure; (2)(F) Dishonesty; and (4) Neglect of duty; OAC 340:65-1-2(b)(2)(B) Confidential nature of case material; OAC 340:75-6-50.6(5) Case contacts; and OAC 340:75-6-48 DHS contacts with child, placement providers, parents, and service providers, after complaints from foster parents led to an

investigation of Appellant's cases and case records that uncovered alleged falsification of records, unresponsiveness to clients, and failure to perform the duties of the job.

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 is a Child Welfare Specialist III at Seminole County Child Welfare Services, where she has been employed since July 2004. Prior to joining DHS, Appellant had worked for the State of Oklahoma for approximately ten years. As a child welfare specialist or case worker, Appellant is responsible for ensuring that children placed in foster care are safe, properly cared for, and that they receive the health, educational, psychological, developmental, and other supportive services required for their healthy development. To this end, the child welfare specialist must also provide the foster parents who care for these children with assistance to meet the needs of the children. In addition to her normal duties and case load, Appellant also was appointed the court liaison for Seminole County, working as the link between the court and Child Welfare Services in Seminole County. As one of the case workers with the most longevity and experience in the office, Appellant was often the one selected to train new

case workers who joined the staff and, in fact, mentored her current supervisor when she was a new specialist¹.

On January 23, 2014, David Leewright, interim district director at the time, received a phone call from foster parent Tiffany Love complaining that Appellant would not return her phone calls and would not assist with issues involving the biological parents. Mr. Leewright contacted Appellant's supervisor, Brandy Simpson, who responded to Ms. Love. However, on February 12, 2014 Ms. Love again called Mr. Leewright with complaints that Appellant still was not returning her phone calls. After this second complaint from Ms. Love, Mr. Leewright and Ms. Simpson undertook a review of all of Appellant's case files and, along with District Director Robin Kennedy, interviewed all of the foster parents to determine if they were receiving services as provided by policy. Appellant's responsibilities as a case worker were taken away from her on February 28, 2014 and her cases distributed to other specialists in the office. The Report of Investigation, dated July 9, 2014, authored by Mr. Leewright, included reports of interviews with nine (9) foster parents, four (4) DHS specialists, an Indian Child Welfare worker with the Seminole Nation, a Juvenile Justice specialist, a counselor, and Appellant. The Report concluded that Appellant violated numerous policies and found that:

1. Appellant was not conducting visits with children in their homes.
2. Appellant would not assist in establishing counseling services for children.
3. Appellant would not return phone calls.
4. Appellant brought her children and grandchildren to visits, sometimes leaving them alone in the car and on occasion bringing them into the foster parents' home to play with the foster children.

¹ Brandy Simpson, Appellant's supervisor, testified that the stress level of case workers is high and so is their turnover rate; the average case worker in Seminole County stays in the position about two years. Appellant's 10-year tenure as a case worker is outside the norm.

Based upon the findings of the investigation, Appellee initiated the termination process against Appellant. A pre-termination hearing was held and a decision was made to discharge Appellant, effective August 19, 2014, for violation of DHS: 2-1-7(i)(1) Unsatisfactory performance; (2)(B) Willful failure; (2)(F) Dishonesty; and (4) Neglect of duty; OAC 340:65-1-2(b)(2)(B) Confidential nature of case material; OAC 340:75-6-50.6(5) Case contacts; and OAC 340:75-6-48 OKDHS contacts with child, placement providers, parents, and service providers.

In January 2014, Tiffany Love was a new foster parent of less than two months, and had four sibling foster children in her care, ranging in age from three to eleven years old. Ms. Love testified that the children's biological parents began attending the same church as she and her family attended and that the children sat with their parents. However, the parents became angry if the children wanted to sit with her instead of with them. Ms. Love needed some guidance on how to handle this new situation, but Appellant was not responsive. Ms. Love stated that she was frustrated and felt abandoned by Appellant. Her new case worker returns her phone calls and routinely visits her in her home, unlike Appellant.

Ms. Love was impressed, however, that on Christmas day Appellant did take the kids to see their parents. In her experience it was unusual for a DHS case worker to use her own personal holiday time for the foster kids.

Michelle Smith has been a foster care parent since 2011. In 2013 Appellant was the case worker for her three sibling foster children. Ms. Smith testified that in November 2013, Appellant asked her to take in two additional siblings of the other three

children, and she agreed. However, from the beginning she had major problems with the 15-year old brother. He was constantly getting into fights and had been expelled from school; he tried to set the home on fire. Ms. Smith wanted him removed and repeatedly asked Appellant to obtain counseling for him, but Appellant failed to get him or her any help, and reported that everything was fine in the home and that there were no behavior problems, which was untrue.

Ms. Smith testified that Appellant did not “really” make monthly visits and did nothing to try to foster a relationship with the children. She came in the home a few times and spoke to the kids if they were passing through the living room where she and Appellant were talking. Once they met at The Bridge Church during after-school activities and Appellant spoke with the children there. She also attended a birthday party for one of the children and “ate ice cream” but did not speak with the kids; on another occasion they met in Ms. Smith’s sister’s driveway, but the kids were not present; and another time they met at the food bank. Ms. Smith reported that Appellant *never* spoke with two of the foster children. (Joint Ex. 11)

Ms. Smith testified that she complained about Appellant to her supervisor, Brandy Simpson, to Child Protective Services worker Billy Boyd (see: Joint Ex. 11), and to other case workers. Unlike the other case workers who showed up and did what they said they would do, Appellant could not be counted on to follow through. She never answered her phone, would not keep appointments with the kids, failing to show up at a glaucoma examination for one of the children and at the emergency room when another one of the children had a severe allergic reaction. To her credit, however, Appellant brought Christmas presents to all of the kids on her own personal initiative, when DHS

didn't have anything to give them. Ms. Smith concluded by saying that the case worker is supposed to be a safe place for foster children to call if they need help, but Appellant failed to fulfill this role, as well.

Karen Barnhart has been a foster parent since 2011. From December 14, 2012 to March 13, 2014 she cared for two siblings who were on Appellant's caseload. From a very young age the children were sexually acting out with each other and with other children. One of the siblings was caught having oral sex with another child at daycare. The following morning Ms. Barnhart caught one of the siblings trying to force his way under the bed covers of the other to touch his genitals. (Joint Ex. 17, page 4) Ms. Barnhart testified that Appellant was not responsive to her attempts to contact her; that she was supposed to arrange counseling for the children, but never did. Ms. Barnhart stated that Appellant was not helpful when dealing with disturbed children in need of services. Since she was assigned a new case worker, Ms. Barnhart indicated she has been receiving regular in-home visits, phone calls are being returned timely, and her foster kids are receiving needed services.

Debbie Chitwood has been a foster parent for eight years and has worked with a variety of DHS case workers. Appellant was the assigned case worker to a child placed in her home from February 13, 2013 to March 13, 2014. When the child was placed in the Chitwood home, Ms. Chitwood testified, Appellant did not show up for quite a while, did not conduct a walk-through, did not perform a home visit, and during the 13 months she was the case worker, Appellant came by the home very rarely. The child was in need of counseling services, but Appellant would not obtain a counselor and Ms. Chitwood finally obtained counseling services on her own. When Appellant wouldn't

assist in arranging for the child to visit siblings, Ms. Chitwood had to do it. Ms. Chitwood asked Appellant repeatedly to get an Indian card for the child, but again, had to obtain it herself. Ms. Chitwood testified that she never had problems with any case worker on any of her foster children other than Appellant. Appellant did come by at Christmas 2013 and give the child \$50.

Appellant filed an appeal to her discharge, stating that she was dealing with stress in her personal life and needed help with her caseload, and indicated:

I feel like I did not receive actions under the merit protection plan. I believe there are several areas where I was not given the direction and help I needed, such as staffings, updated OPM-111s, redirectioning [sic] and help by supervisor. I had asked for help and did not receive it. I did not knowingly or willingly falsify any records. I documented in KIDS how I was advised to do it, by Brandy Simpson. I feel like this was a witch hunt, I did see the children on my caseload face to face monthly. I do not believe I breached confidentiality. I have never had anything against me during my almost 20 years with the State.

Joint Ex. 20, page 1

More specifically, Appellant presented what purports to be her personal phone records indicating a 32-minute phone call to a certain telephone number in Oklahoma City on January 20, 2014, at 7:34 p.m., a 1-minute call, an 8-minute call, and a 7-minute call to that same number on January 26, 2014 between 7:33 pm and 7:42 p.m., and a 3-minute call on January 27, 2014 at 6:24 pm. Appellant identifies the number called as that of Tiffany Love and disputes Ms. Love's accusation that she was not responsive to her phone calls in January 2014. Joint Ex. 20, pages 2-3.

Appellant also points out the inconsistency in timing of Michelle Smith's complaint about her to Child Protection Services worker Billy Boyd on April 4, 2014

(Joint Ex 2, page 4), at least 10 days after Casey Yandell contacted Ms. Smith to introduce herself as her new case worker. Joint Ex. 2, page 4

Concerning Ms. Chitwood's allegations that Appellant did not visit her every month, Appellant agrees and states that because there were several foster children in the home, with several different case workers, the workers agreed they each did not need to visit the home each month and took turns making and documenting the visits.

Appellee alleges that the visits were falsely documented as "in home" or "face-to-face" visits when they were not. Appellant vehemently denies any intent to falsify or deceive anyone with her documentation. She defends this documentation as proper based on her supervisor's instruction. Joint Ex 20, page 5. The June Monthly Report from Robin Kennedy to Zane Gray, dated July 17, 2014 seems to confirm that supervisory instructions allowing out-of-home visits to be counted as home visits, and references a practice with Ms. Simpson's workers of "having more than one visit per quarter outside the foster home." The Report documents that "Ms. Simpson has since stopped this practice and she has required her workers to make all visits in the home." Appellant Ex.1, page 287 of 289.

Appellant indicated that she was never told that taking her children with her on foster home visits was a breach of confidentiality. There are times when employees' children are encouraged to attend events with foster parents and foster children, such as the annual Christmas party. Appellant also indicated that she is aware of other child care specialists who have taken their children with them on home visits without any repercussions. She has taken her children or grandchildren on home visits only when necessary, when she did not have anyone to look after them.

Witnesses testified that in some instances Appellant has gone out of her way, and beyond the requirements of her job for her foster children. She has worked beyond the normal work hours in order to accommodate foster families and the demands of the job; has provided Christmas presents to her foster children when DHS did not have the resources to do so; and worked through Christmas Day to ensure that her foster children received their gifts or were able to visit siblings who lived in separate foster homes. Additionally, Appellant has served as a mentor and resource to other child welfare specialists in the Seminole County office, was selected as liaison to the Seminole County Court and has been a model employee for most of her 10 years with DHS.

In her most recent Performance Management Process (PMP), from February 16, 2012 to June 30, 2012, Supervisor Brandy Simpson states in Section B: Accountabilities:

Mrs. Walker is diligent with ensuring the children on her caseload have a worker visit on a monthly basis. Her monthly statistics are at least 95% each month. For the last four months Mrs. Walker has had 100% in her child worker visits.

Joint Ex. 22, pg 1, 2. Program Responsibilities

Ms. Simpson goes on to state:

She responds to requests from service providers, other team members, clients and foster parents within appropriate time.

Joint Ex. 22, pg 2, Section D. Behaviors, 3. Customer Service Orientation

Mrs. Walker is responsive to her customers and will respond to them within an appropriate amount of time. She is able to work with other coworkers to solve problems and will help other workers when asked. Mrs. Walker has been willing to accept new and difficult assignments anytime her supervisor has asked.

Joint Ex. 22, pg 4, Section D. Behaviors, 2. Teamwork

Mrs. Walker shows the ability to have strong leadership. She is able to model the appropriate behavior and attitudes with lower level workers. She helps mentor new workers. ... She is cognizant of DHS policy and tries to ensure herself [sic] as well as others follow that policy to safeguard clients i.e. ensuring restricted cases remain confidential and taking steps to ensure information remains confidential. ...

Joint Ex. 22, pg 4, Section D. Behaviors, 4. Leadership

Ms. Simpson concludes:

Performance Strengths: Mrs. Walker has a solid work ethic and is dependable. ... She is able to demonstrate in simple language how to complete forms and KIDS documentation or finding needed information in the KIDS system.

Joint Ex. 22, pg 5, Section F. Summary/Development Plan

This PMP evaluation of Appellant's performance in June 2012 is in stark contrast to the performance described 18 months later in the Report of Investigation. Appellant attributes her failure to respond to the needs of foster children and the concerns of foster parents largely to personal issues that were affecting her at the time, along with a heavy caseload. In January 2014 Appellant had a child welfare case filed against her relating to her two adopted daughters. This caused her a great deal of stress and concern, as well as fear about how it might affect her job. Appellant notified supervisor Brandy Simpson of her issues; Supervisor Simpson responded that she felt she needed to advise Mr. Leewright of her situation.

Appellant believes that Mr. Leewright has been out to get her for years and seized the complaint from Ms. Love as an excuse to act on his desire to discharge her. However her PMP from Mr. Leewright for July 1, 2010 to June 30, 2011 might suggest otherwise. Mr. Leewright was her immediate supervisor during that evaluation period and ranked her Overall Performance Rating as *Exceeds Standards*, stating:

Ms. Walker presents herself in a professional manner and treats her coworkers and customers with respect and dignity. Ms. Walker has become a good bridge builder with services providers; foster/bridge resources, and co-workers. She is well respected in these areas and works hard to provide good customer services with dignity and respect to those she serves.

Joint Ex. 24, D. Behaviors, 1. Customer Service Orientation, page 3

Additionally, Mr. Leewright indicated:

Ms. Walker assists her co-workers when additional help is requested. She works effectively with others to resolve common issues or problems. She has been a resource for all new staff to turn to for answers on how to do different parts of the job when her supervisor and CWSIII aren't available.

Joint Ex. 24, D. Behaviors, 2. Teamwork, page 4

Her *Summary / Development Plan* states:

Performance Strengths: Ms. Walker has working knowledge of her caseload and good working relationship with the children. She has assisted the families in initiating their services. She has the ability for detail and issues that need attention.

Joint Ex. 24, page 5, Section F.

The evidence indicates that the difficulties identified – non-responsiveness to clients, failure to obtain needed services, failure to conduct monthly visits, and bringing her children and grandchildren with her on home visits – were performance related based on (1) personal circumstances creating unusual stress, (2) extensive caseload and other work-related responsibilities, and (3) miscommunication or lack of knowledge about certain policies. Appellant has a proven record of high performance in her position as a child welfare specialist. Her unsatisfactory performance appears to be an anomaly about which Appellant's supervisors apparently did not bother to inquire, nor did they apprise Appellant of her unsatisfactory performance and give her an opportunity to make corrections. No plan for improvement was established. This

administrative law judge distinguishes between record documentation that is sloppy, in error or incorrect from record documentation that is made to intentionally deceive or falsify records. The preponderance of the evidence fails to convince this administrative law judge that Appellant's actions fall into the latter category. Additionally, while Appellant admits to taking her children and grandchildren with her on home visits, this administrative law judge found no agency policy that prohibits or addresses this situation. If Appellee wants to prohibit this behavior, it must first give notice to Appellant and its other employees that this is a prohibited action. That was not done in this case.

The preponderance of evidence presented in this case supports the allegations by Appellee that Appellant violated DHS: 2-1-7(i)(1) Unsatisfactory performance, DHS: 2-1-7(i)(4) Neglect of duty, and OAC 340:75-6-40.6(5) Case contacts, by failing to timely respond to calls from foster parents in need of assistance for their foster children, and by failing to assist in providing counseling and other services for the children. The preponderance of evidence does not support allegations that Appellant violated DHS:2-1-7(i)(2)(B) Willful failure, DHS:2-1-7(i)(2)(F) Dishonesty, and OAC 340:65-1-2(b)(2)(B) Confidential nature of case material. The alleged violation of OAC 340:75-6-48 OKDHS contacts with child, placement providers, parents, and service providers, is insufficiently identified to determine whether a violation may have occurred. This administrative law judge finds that just cause exists for discipline of Appellee for her actions but that the discipline imposed in this case was not just under the circumstances.

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, suspended without pay, or demoted for misconduct, inefficiency, inability to perform the duties of her position, willful violation of Merit Rules, and 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. OKDHS:2-1-7(i)(1) **Unsatisfactory performance** states that an employee may be disciplined when performance fails to meet established standards and criteria for the position to which the employee is assigned, and further states that in most instances unsatisfactory performance is correctable and efforts to identify and correct the performance problems normally precede any disciplinary action.

5. OKDHS:2-1-7(i)(2) **Misconduct** states that an employee may be disciplined for failure to comply with statute, policy, practice, directives, standards or procedure directly governing performance and conduct, and states that supervisory personnel are responsible for ensuring that employees are informed of and have available for review all applicable policy.

6. OKDHS:2-1-7(i)(2)(B) **Willful failure** is a form of misconduct for which an employee may be disciplined, and includes failure to follow established DHS policy and failure to complete required forms and reports.

7. OKDHS:2-1-7(i)(2)(F) **Dishonesty** is a form of misconduct for which an employee may be disciplined, and includes making false reports or claims, making false entries to misrepresent work performed, and falsifying official forms or other documents.

8. OKDHS:2-1-7(i)(4) **Neglect of Duty** states that an employee may be disciplined for inexcusable failure to perform an assigned duty, and inexcusable inattention to assigned duties.

9. OAC 340:65-1-2(b)(2)(B) **Confidential nature of case material** provides that case information, including electronic data, must be safeguarded and stored in secure, locked rooms and containers, may not be stored on equipment that is not the property of the State of Oklahoma, may not be sent via email unless encrypted, and must maintain reasonable privacy or restricted viewing on computer screens or mobile devices. Information which must be safeguarded includes names and addresses, lists, information contained in applications, reports of investigation, medical data, correspondence or other records concerning the condition or circumstances of a person, and provides that disclosure to unauthorized persons violates federal and state agency regulations.

10. OAC 340:75-6-40.6(5)² **Case contacts** provides that Targeted Case Management (TCM) services requires that in each contact with a child, parent, placement provider, or other person involved in services to the child the child welfare specialist must (1) discuss the services the child needs, (2) determine how the service can be accessed, (3) review the progress of each service provided and document the information in KIDS.

² The Final Notice provided to Appellant misidentifies this OAC as OAC 340:75-6-50.6(5), (page 8 of the Final Notice) however, the correct policy itself was included with the Final Notice to Appellant.

11. OAC 340:75-6-48 **OKDHS contacts with child, placement providers, parents, and service providers** is a body of regulations which in part deals with instructions to child welfare specialists concerning their contacts with parents, service providers, and others.

12. Appellee, Department of Human Services, has met its burden to prove, by a preponderance of the evidence, that Appellant, Janet Walker, has violated DHS: 2-1-7(i)(1) Unsatisfactory performance, DHS: 2-1-7(i)(4) Neglect of duty, and OAC 340:75-6-40.6(5) Case contacts and that just cause exists for discipline. However, Appellee has failed to meet its burden of proof with regards to DHS:2-1-7(i)(2)(B) Willful failure, DHS:2-1-7(i)(2)(F) Dishonesty, and OAC 340:65-1-2(b)(2)(B) Confidential nature of case material. Appellee has failed to identify with sufficient specificity for this Administrative Law Judge to determine what portion of OAC 340:75-6-48 OKDHS contacts with child, placement providers, parents, and service providers is alleged to have been violated, and insufficient specificity for Appellant to address and to effectively defend against. Appellee has failed to meet its burden to prove by a preponderance of the evidence that discharge in this case and under these circumstances is just discipline.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant is hereby **GRANTED IN PART**. Appellant's discipline is reduced from discharge to five (5) work

days suspension without pay. Appellant is reinstated to her former grade and pay with backpay and benefits, less any other income received; and

IT IS FURTHER ORDERED THAT Appellant will be placed on a plan for improvement that will outline behavior that must be corrected, what Appellant must do to correct that behavior, and a reasonable time within which to make the corrections.

DATED this 30th day of July, 2015.

A handwritten signature in black ink, appearing to read "Annita M. Bridges", is written over a horizontal line.

Annita M. Bridges, OBA # 1119
Administrative Law Judge
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