

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA




FILED
OSAH

~~JAN~~ 3 2014

LINDA JORDAN,
Petitioner,

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Kevin Westray, Legal Assistant

v.

DOCKET NO.:
OSAH-SPB-DIS-1415183-121-Beaudrot

SERENITY BEHAVIORAL HEALTH
SYSTEM,
Respondent.

INITIAL DECISION

Petitioner Linda Jordan (“Petitioner”) has appealed the decision of Serenity Behavioral Health System (“Respondent”) to dismiss her from employment.

The hearing on this matter was held on November 12, 2013, at the Offices of the Richmond County Department of Family and Children Services, at 520 Fenwick Street, Augusta, Georgia. Petitioner represented herself. Respondent was represented by Dorothy H. Hogg, Esq.

For reasons stated below, Respondent’s decision to dismiss Petitioner from her employment is **AFFIRMED**.

Findings of Fact

1.

Petitioner has been employed by Respondent (or its predecessor) for approximately 21 years. Prior to the period in issue, Petitioner has not received any sanctions or unfavorable performance reviews. (Testimony of Petitioner; Testimony of Vivian Hambrick.)

2.

In 2012 and 2013, Petitioner was employed by Respondent as a Community and Social Services Technician, SP. In such capacity, Petitioner was responsible for managing and

supervising the operation of two group homes located on the same property and known as the "Lynndale" and "Walton Manor" facilities. The facilities house male residents only. (Testimony of Petitioner; Testimony of Charles Williamson.)

3.

The facilities which Petitioner is responsible for managing are residential facilities for assistance for persons suffering from various psychological disabilities. The persons residing in these homes require 24-hour assistance and supervision. They require assistance with respect to day-to-day functions and are incapable of living alone or in an unsupervised state. The management of the homes is thus subject to the highest possible standard of care as the facilities are providing care for individuals who are incapable of providing for their own needs and wants and who cannot care for themselves. (Testimony of Felicia Bell; Testimony of Charles Williamson.)

4.

In her capacity as an employee of Respondent, Petitioner has received training with respect to the financial and other policies to be followed in the operation of group homes. This training has included the training as to financial controls and the proper handling of resident funds. Procedures for handling funds are important because the residents of these facilities receive various forms of governmental financial assistance. The staff of the facilities is responsible for ensuring that such funds are properly accounted for and are made available for the use of the appropriate residents. These amounts are turned over to the staff of the homes and are made available to the residents for their personal uses and needs. (Testimony of Petitioner; Testimony of Estelle Duncan.)

5.

The events leading to the Respondent's termination of Petitioner began in August of 2013. The triggering incident was the theft of resident funds which were being held for the individual residents in the home. Although there is some dispute as to the precise amount of the theft, there is no dispute that funds in excess of \$2,600 were stolen. The funds in question were maintained in a file cabinet which was also the location in which drugs and other medications were kept. Although the cabinet was generally locked, staff of the facilities had ready access to this cabinet. (Testimony of Felicia Bell.)

6.

On or about August 15, 2013, a critical incident report was submitted by the Petitioner detailing the amounts that had been stolen. The critical incident report indicated that the funds were stolen on or about August 12. The theft was also reported to the Richmond County Sheriff's Department. (Exhibit R-1; Testimony of Felicia Bell.)

7.

In connection with the investigation of this theft, a number of additional weaknesses in the operation of the facility were identified by Ms. Bell. These included:

- (1) resident funds in the amount of \$200 were maintained in Ms. Jordan's locked desk;
- (2) problems with the entrance doors to the homes not being consistently locked;
- (3) numerous staff had access to the file cabinet where resident funds were maintained, which was also the same file cabinet where medications were maintained;

(4) another incident of potential financial exploitation where a client was potentially being exploited which had not been reported.

(Testimony of Felicia Bell; Testimony of Petitioner.)

8.

These issues were particularly troubling to management of Respondent because in December, 2012, there also been issues involving possible missing funds and lack of financial controls. (Testimony of Felicia Bell; Testimony of Charles Williamson). Specifically, according to Ms. Vivian Hambrick's written statement, at that time funds were identified as missing for three residents. (Hambrick Statement dated September 30, 2013; Testimony of Vivian Hambrick.)

9.

The testimony was disputed as to whether the Petitioner was responsible for filing a critical incident report ("CIR Report") with respect to the August incident. Both Petitioner and Ms. Hambrick testified that Petitioner's supervisor, Frances Banker undertook to file that report and their testimony on this point is credible. (Testimony of Petitioner; Testimony of Vivian Hambrick.)

10.

After review of the results of the investigation and discussion with other members of management of Respondent, Charles D. Williamson, CEO of Serenity, determined that removal of Petitioner from her employment was required. (Testimony of Charles Williamson.)

11.

Accordingly, on October 11, 2013, Mr. Williamson issued a letter (“Separation Notice”) dismissing the Petitioner from employment for “negligence and inefficiency in performing your assigned tasks.” (Filed November 2, 2013.)

12.

Specifically in Respondent’s Separation Notice, the following actions were identified as specific grounds for Respondent’s termination of Petitioner’s employment:

“1. The theft of individual’s served personal funds totaling \$2,818.64 that was last seen between August 12, 2013 and August 15, 2013. You did not secure the funds according to protocol. You received a phone call from a young lady that said she knew who took the money and how they did it but you failed to report this critical incident relevant to this investigation. This is in violation of Policy BF 10.03 Excessive, Missing or Stolen Cash.

2. You reported during the investigation that prior to the missing money incident your daily planner was missing. It had confidential information about the individuals served yet you didn’t report that it was missing when it occurred.

3. The two homes are left unlocked when no one was present which did not ensure the safety and security of the site homes. This happened due to the fact that all employees didn’t have keys. A set of keys from a previous employee were reported to you as lost. You failed to follow protocol for missing keys. You stated you couldn’t

remember if you found the keys or had another set made. You never changed the locks after the keys disappeared. You did not complete a critical incident report.

4. A critical incident report was never presented after an allegation of financial exploitation from the same homes in December 2012. This is in violation of Policy BF 8.00 Fraud.

5. \$200.00 was found in a desk drawer instead of in the locked file.

6. There were five hydrocodone pills missing reported by the person who worked the night before the funds came up missing. You failed to follow protocol for this incident. During the investigation you said the medication key was missing but mysteriously showed up the next day. You did not report this critical incident.

7. You did not report misuse of individual's served funds that was discovered during the investigation.”

13.

On October 18, 2013, the Petitioner's appeal with supporting documentation was filed with the Office of State Administrative Hearings.

Conclusions of Law

1.

Respondent bears the burden of proof in this matter. Ga. Comp. R. & Regs. R. 616-1-2-.07. However, Petitioner bears the burden of proof as to any affirmative defenses. *See* O.C.G.A. § 24-4-1. The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. R. 616-1-2-.21(4).

2.

The credibility of witnesses is within the sole discretion of the trier of fact. In non-jury cases that discretion lies with the judge. *See Mustang Transp., Inc. v. W.W. Lowe & Sons, Inc.*, 123 Ga. App. 350, 352 (1971).

3.

Under the State Personnel Board Rules, a classified employee may be dismissed from employment for the following reasons: “*negligence or inefficiency in performing assigned duties*; inability or unfitness to perform assigned duties; insubordination; misconduct; conduct reflecting discredit on the department; commission of a felony or other crime involving moral turpitude; chronic tardiness or absenteeism; failure to report for or remain at work without justifiable cause; failure to process performance appraisals in a timely manner; or political activity in violation of 478-1-.08.” Ga. Comp. R. & Regs. R. 478-1-.24(7)(b)(4) (emphasis added).

4.

Petitioner’s conduct does, in fact, demonstrate a pattern of negligence or inefficiency in performing assigned duties justifying removal. Although not all of the complained of actions were substantiated by the evidence, there are certain uncontroverted facts which establish behavior constituting negligence and inefficiency justifying termination.

5.

First, and most important, there is a strong pattern of financial irregularities at the facilities. Against the background of the prior incident in December, there was a significant theft in August of 2013. And shortly after the theft, Petitioner reported yet another incident potential staff abuse of financial abuse involving an incident involving shoes allegedly purchased for a resident. Although there was no evidence indicating Petitioner was directly responsible for any of these irregularities, her inability to manage and supervise her staff and to ensure that the requisite policies and procedures applicable to the operation of the facilities in itself constitutes negligent failure to supervise.

6.

Petitioner's most serious failure in this regard is her demonstrated inability to maintain appropriate financial controls as to resident funds. It was uncontested that the funds that were maintained in a locked cabinet, which was the same location where medications were kept. Unfortunately, from a financial control point of view, this was not an appropriate way to house resident funds as numerous persons had ready access to this facility. Although Petitioner attempted to produce evidence indicating that this behavior may have been common in other facilities, there is no question that such laxity in caretaking of funds is not consistent with the responsibilities of the senior management for maintaining the safe keeping of resident funds in the homes.

7.

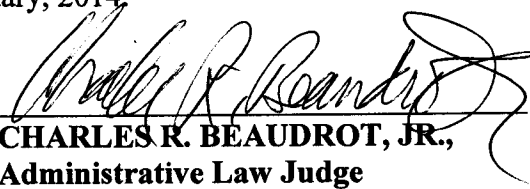
That second area where Petitioner exhibited demonstrable negligence in her management of the facilities was her inability to maintain security of the facilities by ensuring that the facilities remained locked to outside access. As noted by Ms. Hambrick in her testimony and written statement, this had been a recurrent issue that Petitioner had been repeatedly instructed to address. Yet Petitioner did not or was not able to address this issue, as evidenced by the fact of continuing incidents, including an incident reported by the Fire Marshal.

8.

In summary, the evidence supports Mr. Williamson's conclusion that Petitioner exhibited "a pattern of incompetence" constituting negligence and justifying termination.

Accordingly, for the foregoing reasons, Respondent has established that Respondent's decision to dismiss Petitioner from employment was justified and Respondent's actions in dismissing Petitioner from employment are **AFFIRMED**.

SO ORDERED, this 2nd day of January, 2014.


CHARLES R. BEAUDROT, JR.,
Administrative Law Judge
Office State Administrative Hearings