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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
JOYCE L. FREEMAN)
Employee)
)
)
v.)
)
DEPARTMENT OF HUMAN)
SERVICES)
Agency)
_____)

OEA Matter No. 1601-0067-98P01

Date of Issuance: April 19, 2004

OPINION AND ORDER
ON
PETITION FOR REVIEW

Agency charged Employee with insubordination and, as a result, suspended her for 30 days. Employee, a Youth Treatment Team Coordinator, DS-11 in the Career Service, timely filed a Petition for Appeal with this Office.

The charge stemmed from an incident that occurred on Saturday, October 18, 1997, at Agency's Oak Hill Youth Center (OHYC) located in Laurel, Maryland.¹ In keeping with her duties, Employee had authorized a visit on that date between a mother and her son who resided at the facility and the mother's sister. When the mother and her sister arrived to visit the mother's son, the two got into an argument with the guard at the entrance gate. Employee did not witness the argument but during the course of the day, she became aware of it. After the two had completed their visit, Employee met with the mother to discuss the incident. The meeting concluded with the mother filling out an incident report.

On that following Monday, October 20, 1997, OHYC's Acting Superintendent became aware of the incident. On Friday, October 24, 1997, because city officials had also become aware of the incident and had begun inquiring into the matter, the Acting Superintendent met with Employee and asked her to submit a written statement regarding the incident. Employee responded that she would submit the statement but requested that, due to a medical condition, she be allowed to first eat lunch. The Acting Superintendent acquiesced to Employee's request. Thereafter, at approximately 4:45 p.m. that day, Employee completed her statement and submitted it to OHYC's Deputy Superintendent who then immediately submitted the statement to the Acting Superintendent.

¹ Agency's Oak Hill Youth Center is organizationally located within Agency's Youth Services Administration.

On October 27, 1997, the Acting Superintendent again met with Employee to discuss the events of October 18th. At this meeting there was also present other Agency officials and the mother and the mother's sister who had been involved in the incident. At the conclusion of that meeting, the Acting Superintendent wrote a memo to Employee and in it, directed Employee to prepare an incident report documenting the events of October 18, 1997. The memo went on to state that Employee was to submit the report directly to him and that it was due "before you leave duty today, Monday, October 27, 1997. . . ." Employee received the memo at 5:00 p.m. At 6:15 p.m. that same day, Employee completed the incident report and slid a copy of the report under the office door of the Acting Superintendent who had left the OHYC and gone to another location. Believing that Employee had not complied with his October 27, 1997, directive, the Acting Superintendent, on behalf of Agency, charged Employee with insubordination and suspended her for 30 days.

Following an evidentiary hearing in this appeal, the Administrative Judge issued an Initial Decision on June 28, 2001. In that decision, the Administrative Judge held that Agency had failed to prove its charge against Employee. Thus the Administrative Judge reversed Agency's action and ordered that Employee be reimbursed all of the pay and benefits she lost as a result of the suspension.

In order to sustain a charge of insubordination, Agency bore the burden of proving that Employee had wilfully or intentionally refused or failed to comply with a reasonable and lawful order given by an official superior. The Administrative Judge found that, based on the evidence

adduced at the hearing in this appeal, Employee had in fact complied with the Acting Superintendent's October 24, 1997 directive when she completed her statement at 4:45 p.m. on that day and submitted it to the Deputy Superintendent. According to the Administrative Judge, "Agency presented no evidence showing that it was inappropriate for [Employee] to submit [the statement] to [the Deputy Superintendent]." Initial Decision at 13. Thus, the Administrative Judge held that Employee had not wilfully or intentionally disregarded the October 24, 1997 directive.

With respect to the October 27, 1997, directive, the Administrative Judge again held that Employee had done as she was instructed. The Administrative Judge found that based on the evidence, Employee completed the incident report, gave it to the appropriate Agency official, and slid a copy of the report under the office door of the Acting Superintendent. Even though Employee did not give the incident report to the Acting Superintendent, the Administrative Judge nonetheless held that what Employee had done was "[i]n keeping with the accepted practice at OHYC . . ." and that this "action constituted reasonable compliance with the directive to bring the document 'directly to him.'" Initial Decision at 13. Thus, the Administrative Judge concluded that Employee was not insubordinate as charged.

Agency has since timely filed a Petition for Review with this Board. In its Petition for Review, Agency alleges that the Initial Decision is based on an erroneous interpretation of statute, regulation, or policy, that the findings contained within the Initial Decision are not based on substantial evidence, and that the Initial Decision did not address all of the issues

properly raised in the appeal. In support of its claim, Agency argues that Employee's failure to submit an incident report on the date of the incident, as required by Agency regulations, was a wilful disregard of a lawful order and thus constituted insubordination. Further, Agency argues that because Employee failed to include in the October 24, 1997 incident report all of the information required by Agency regulations, Employee failed to comply with the October 24, 1997 directive. This failure, according to Agency, constituted insubordination. Lastly, Agency argues that because Employee failed to deliver the October 27, 1997 incident report directly to the Acting Superintendent, she wilfully and intentionally disregarded a lawful and reasonable order of her superior and thus was insubordinate.

With respect to Agency's first two claims of error, the Administrative Judge found that the usual and customary practice at OHYC "called for any eyewitness to an unusual incident to complete . . ." an incident report and to submit that report to the appropriate official "prior to the eyewitness leaving the grounds of OHYC at the conclusion of his/her tour of duty." Initial Decision at 6. Employee was not an eyewitness to the October 18th incident.² Thus, according to the Administrative Judge, Employee was not expected to complete an incident report on October 18, 1997 nor did any Agency official order her to do so until October 24, 1997, nearly one week after the incident. Moreover, despite Agency's claim that Employee had

² Agency attempts to argue that there were two incidents on October 18, 1997, the second incident being when Employee met with the mother of the resident and her sister after the two had completed their visit. We find no merit in this argument. The evidence is clear that the argument the two women had with the guard at the entrance gate is the only incident that occurred on that day and was the subject of the subsequent incident reports.

failed to include in the October 24, 1997 incident report all of the requisite information, there is no evidence in the record to suggest that Agency ever asked Employee to correct the statement or that Agency was not satisfied with the statement.

Finally, regarding Agency's last argument that Employee's failure to deliver the October 27, 1997 incident report directly to the Acting Superintendent constitutes insubordination, we disagree. By the time Employee completed the October 27, 1997 incident report, the Acting Superintendent had left the grounds of the OHYC and gone to another location. This being the case, the Administrative Judge found that the accepted practice was to slide a copy of the report under the office door of the Acting Superintendent. Because Employee followed this practice, the Administrative Judge found that Employee had complied with the directive that the report be given to the Acting Superintendent. We see no reason to disturb this finding. Finding no basis upon which to reverse the Initial Decision, Agency's Petition for Review is denied.