

IN THE MATTER OF THE ARBITRATION BETWEEN

Department of Developmental
Disabilities
Employer
And

Grievance No:DMR-2022-06097-04

Ohio Civil Service Employees
Association
Union

AND

Grievant: Alisha Jones

Arbitrator: Meeta Bass

OPINION AND AWARD

APPEARANCES FOR THE PARTIES

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PROCEDURAL HISTORY

Ohio Department of Developmental Disabilities is hereinafter referred to as "DODD," "Department," or "Employer." Ohio Civil Service Employees Association is hereinafter referred to as "Union." Alisha Jones is hereinafter referred to as the "Grievant."

This grievance is a termination case. By letter dated August 26, 2022, the Department terminated the Grievant from employment as a Therapeutic Program Worker for Disregard of Duty, failure to report criminal charges, and physical abuse of a patient and patient neglect effective August 30, 2022. The Department served the Removal Order on August 30, 2022. The Union submitted Grievance Number DMR-2022-06097-04 to the Employer on September 1, 2022, pursuant to Article 25 of the parties' Collective Bargaining Agreement, effective April 21, 2021 - February 28, 2024. The Statement of Grievance reads that the Grievant was removed without just cause, and the Union requested the Grievant be made whole and reinstated to her position as a therapeutic program worker with all back pay accruals. The Step 2 Response denied the grievance and found the Department substantiated the abuse.

According to the CBA between the Employer and the Union, the parties have designated this Arbitrator to hear and decide said grievance. The parties presented and argued their positions on Friday, December 15, 2023, via a virtual hearing.

The parties stipulated the issue as follows:

Did the Employer violate Article 24.01 of the Collective Bargaining Agreement when they removed the Grievant, Alisha Jones, for violating the Employer Rules A1 And L9?
If so, does the Grievant have the right to the remedy sought (reinstatement with all back accruals)?

The parties stipulated to the following facts:

1. The Employer hired the Grievant on December 28, 2020, as an Intermittent Therapeutic Program Worker and became permanent on April 25, 2021.
2. The Grievant was placed on administrative leave on November 8, 2021.
3. The Grievant was removed from her position as a TPW on August 30, 2022.
4. The Grievant was removed for violating the Ohio Department of Developmental Disabilities Standards of Employee Conduct rules:
 - i. AI- Physical Abuse: Abuse of any type or nature to an individual under the supervision or care of the Department or State, including but not limited to physical, as defined by Ohio Administrative Code 5123-17-02.
 - ii. L9 - Disregard of Duty: Failure to follow a policy, work rule, or practice of the Employer.
5. The Grievant had no active discipline on record at the time of the termination.
6. The photo of the resident's face displayed no obvious injuries.

The parties stipulated to the following Joint Exhibits:

1. 2021-2024 OCSEA Collective Bargaining Agreement
2. Grievance Trail
3. Notice of Discipline
4. Investigation Packet
5. Ohio Administrative Code 5123-17-02
6. Medicaid Regulations

Management's Exhibits

1. Voluntary Consent to Registry Placement
2. Criminal Court Journal Entry
3. Hearing Office Report
4. Audio recordings
 - a. Alisha Jones Interview
 - b. RN Edward interview by Trooper Worner

Union Exhibits

1. Seven Tests of Just Cause
2. Bruises- What the Black and Blue is Telling You

During the hearing, this Arbitrator allowed both parties to present evidence, examine and cross-examine the witnesses, and make an oral argument. The following individuals testified at the hearing:

The State called the following individuals:

Patricia Nixon
Chris Vanscoy
Trooper Ȧără Worner

The Union called the following individuals:

Alisha Jones, Grievant

The parties agreed to submit closing statements via email by the close of business on January 13, 2024, when the record was closed.

PERTINENT PROVISIONS OF COLLECTIVE BARGAINING AGREEMENT AND POLICY AND REGULATIONS

ARTICLE 24 – DISCIPLINE 24.01 - Standard Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.05. Employees of the Lottery Commission shall be governed by ORC Section 3770.021.

OAC 5123-17-02 Addressing major unusual incidents and unusual incidents to ensure health, welfare, and continuous quality improvement is incorporated herein as if entirely rewritten.

(C) Definitions

16 (a) (vi) Physical abuse. "Physical abuse" means the use of physical force that can reasonably be expected to result in physical harm to an individual. Such physical force may include, but is not limited to, hitting, slapping, pushing, or throwing objects at an individual.

W127 (Rev. 135. Issued: 02-27-25, Effective: 04-27-15, Implementation: 04-27-15) § 483.420 (a) (5) Ensure that clients are not subjected to physical, verbal, sexual, or psychological abuse or punishment) is incorporated herein as if entirely rewritten.

Guidance Sec. 483.420(a)(5)

Identification of patterns or isolated instances of physical, verbal, sexual, or psychological abuse or punishment without prompt identification and corrective action by the facility would result in a non-compliance determination for this Standard and Condition level non-compliance.

Physical abuse refers to any action intended to cause physical harm or pain, trauma, or bodily harm (e.g., hitting, slapping, punching, kicking, pinching, etc.). It includes the use of corporal punishment as well as the use of any restrictive, intrusive procedure to control inappropriate behavior for purposes of punishment.

Policy HR-013 Standards of Conduct, Rule Violations, and Penalties for Classified Employees (Department-wide), effective March 18, 2019, is incorporated herein as if entirely rewritten.

Purpose:

To ensure that employees of the Ohio Department of Developmental Disabilities (DODD) are aware of the expectations of the Department and the consequences of inappropriate behavior, that discipline is imposed in a fair and consistent manner, and when appropriate, that employees are afforded the opportunity to correct inappropriate behavior or performance.

A1 Abuse of a Client, Abuse of any type or nature to an individual under the supervision or care of the Department of State including but not limited to physical or verbal as defined by Ohio Administrative Code Section 123-17-02 Addressing major and unusual incidents and unusual incidents to ensure health, welfare, and continuance quality of improvements. The First Offense is a removal.

L9 Failure to follow a policy, work rule, or practice of the Employer. The First Offense is a written reprimand. The Second Offense is a 2-day Time/Working Suspension/Fine/to Removal. The Third Offense is a 5-day Time/Working Suspension /Fine/to Removal. The Fourth Offense is a removal.

Individual Rights for Individuals Who Have Developmental Disabilities, Section 5123.62 Bill of Rights is incorporated herein as if entirely rewritten.

Warrensville Developmental Center Policy PR-4, Management of Conduct Between Individuals and Staff, effective October 15, 2021, is incorporated herein as if entirely rewritten.

Warrensville Developmental Center Policy PR-19, Individual Rights and Rights Advocacy, effective November 8, 2021, is incorporated herein as if entirely rewritten.

Warrensville Developmental Center Policy AD-6, Incident Reporting, effective August 31, 2020, is incorporated herein as if entirely rewritten.

Rule 5123-2-02 of the Administrative Code Background Investigations for Employment is incorporated herein as if entirely rewritten and has an attestation clause which reads,

I agree to notify the Ohio Department of Developmental Disabilities within fourteen calendar days if, while employed within the Department, I am ever formally charged with conviction of or plead guilty to any of the offenses listed or described above. I also acknowledge that failure to report formal charges, a conviction, or a guilty plea may result in being terminated from employment. I understand that the Department may conduct a background check/inquiry at any time while I am employed.

STATEMENT OF FACTS:

The Department hired the Grievant as an Intermittent Therapeutic Program Worker on December 28, 2020, and became permanent on April 25, 2021. On November 8, 2022, Grievant worked first and second shift. The Grievant was assigned to a one-on-one interaction with the Resident. When the Grievant arrived at the unit, the Resident was fully dressed in her wheelchair. The Grievant denies changing the Resident during her shift. She denies seeing the Resident with her top off that day but confirms that when she saw her with her "bottoms off," she only observed the scars on her legs.

The Resident has an obsessive-compulsive behavior disorder. Her behaviors include physical aggression, pinching, grabbing, scratching, hitting, spitting, pushing/pulling others, etc. Staff is directed to talk to the Resident in a firm tone to calm her and redirect her when she is agitated.

The Resident began experiencing issues with wetting her pants despite the Foley catheter being inserted, leading to her transfer to the hospital. The Grievant stated that another staff member, Amber, had assisted in dressing the Resident before she went to the hospital. Amber was not interviewed by the investigator nor testified at the arbitration.

Upon arrival at the emergency room, the Resident's vitals were checked, and she was taken to a room where nurses began their assessment. The Resident was attended by a team of nurses who struggled to administer medical procedures due to her combative behavior; the Resident exhibited combative behavior, including spitting and grabbing, which the Grievant described as typical for her. The Grievant stated she did not assist in undressing the Resident at the hospital but was involved in providing information to the medical staff about the Resident's behavior. The nursing team of six had to restrain the Resident for treatment. The Resident

was admitted, and when her relief arrived at the emergency room, the Grievant left.

On November 8, 2021, the Department received a call from the hospital social worker, and it is recorded that the social worker stated documentation in the ER nurse notes indicated that the Grievant was physically and verbally abusive towards the Resident and the Resident had injuries on her upper arms which "resembled fingerprints." The ER Nurse completed an incident report with the Clinic Police. The ER Nurse wrote, "the Caregiver sent with the Patient was witnessed verbally and physically abusing the Patient. The Caregiver (Aisha) was seen pulling the Patient's arms above her head, twisted them behind her back, and pinned them while the Patient screamed and cried. I also heard the caretaker yelling at the Patient to "just, stop, you're doing too much!...." There was no mention of injuries that resembled fingerprints mentioned in the incident report. Since these allegations were made by one of the ER nurses on the team, the Grievant was immediately placed on administrative leave, and the case was assigned for investigation.

The Patrol conducted a recorded interview with the ER nurse. The ER Nurse stated she observed the Grievant exhibiting behaviors toward the Resident that concerned her. The ER Nurse explained at one point to prevent the Resident from grabbing, the Grievant attempted to restrain the Resident by crossing her arms behind her back from above her head, but the ER Nurse did not describe any screaming and yelling with this technique during the interview. The ER Nurse discussed the restraining technique with the assistant nurse manager, who was also present. Following the conversation with the assistant nurse manager, the ER Nurse stated she understood "some of the practices for keeping a patient with strain. It's kind of different in other places, so it's kind of like, okay, I guess I can see that." The investigation does not include any interview with the assistant nurse

manager, whose name was provided by the ER Nurse. According to the ER Nurse, during a blood draw procedure, the Grievant threw a blanket over the Resident's head and hit her once despite the Resident already being physically restrained. The ER nurse stated she then intervened and stopped the procedure due to the Grievant's aggressive behavior. The ER Nurse informed the assistant nurse manager and attending physician about the situation and intended to have security remove the Grievant. However, before this action could be taken, the Grievant had left the facility. The medical records indicate there was no visible injury to the Patient's mouth, face, head, or neck area. The Trooper asked, "Did you see any bruising or marks on the Patient? The ER nurse responded, "The Patient had bruising because she is combative, but nothing I can distinguish came from the Grievant.

It is noted the other hospital staff, who are mandatory reporters, did not report, nor were they interviewed during this investigatory process. No one from the hospital staff testified at the arbitration. The Grievant denied any physical aggression towards the Grievant but acknowledged verbally calming her down.

On April 6, 2022, a true bill of indictment by the empaneled juror of the Cuyahoga County Court of Common Pleas for Patient Abuse, F4, Section 2903.34 (A) (1) based on the facts and circumstances of this incident. On April 7, 2022, the Trooper notified the Department of the true bill. The Grievant did not inform the Department.

On July 19, 2022, the investigator substantiated physical and verbal abuse. He wrote the allegations are substantiated based on the criminal investigation that resulted in charges being filed, and the Resident had injuries consistent with the allegation of abuse.

Management initially scheduled a pre-disciplinary meeting for August 11, 2022, but the meeting was rescheduled for August 22, 2022. The

Grievant did not appear under the advice of counsel. The hearing officer found just cause for discipline for violating Abuse of Client, A-I and Disregard of Duty (L-9), Failure to follow a policy, work rule, or practice of the Employer. There are additional inconsistencies in the hearing officer's discussion in her written report versus the audio testimony of the ER nurse. After reviewing the grievance information and pre-disciplinary report and recommendation, the Appointing Authority recommended removal, and the Grievant was terminated on August 30, 2022. At the time of her removal, the Grievant had no active discipline on her record.

On April 19, 2023, the Grievant pled guilty to an assault charge in violation of ORC Section 2903.13. The Journal Entry also reflects the Grievant, with counsel, agreed to sign a Voluntary Consent to Registry Placement. The Grievant was sentenced to three (3) days in jail, given credit for three (3) days of jail time, and was placed on one (1) year of community control, with monthly supervision fees and a fine. On April 19, 2023, the Grievant, represented by counsel, signed the Voluntary Consent to Registry Placement in which she admitted in the document she hit Resident in the head. By signing this document, the Grievant acknowledged she is no longer permitted to be employed by DODD. The Grievant, with legal counsel present, signed the Voluntary Consent to Registry Placement. The form states the Grievant understood "that placement of my name on the Registry of developmental disability employees guilty of abuse, neglect or misappropriation established by section 5123.52 of the Revised Code means I am no longer permitted to be employed by the Ohio Department of Developmental Disabilities, a county board of developmental disabilities or any other entity that provides specialized services to individuals with developmental disabilities."

Position Statement of the Department

The Department's decision to discipline the Grievant under Article 24.01 is justified for multiple reasons. First, the Grievant was fully aware of the Standards of Conduct and their consequences. Second, these rules are crucial to the Department's operations and employee performance standards. Third, an impartial administrative investigation confirmed the breach. Fourth, the Grievant was provided all necessary rights during the investigation. Fifth, the Hearing Officer found the charges supported and uncontested. Moreover, consistent disciplinary actions for similar offenses were observed. Lastly, the discipline imposed aligns with the severity of the actions. Regarding Article 24.06, the Employer followed prescribed procedures and timelines, promptly communicating the decision to the Grievant and the Union. In the Department's opinion, the termination was justified as per the Department's assessment of just cause.

The Department also contends the Grievant physically abused the Resident in her care. The Department asserts the Grievant was not truthful during this Arbitration hearing. The Department argues the Grievant refuted the same incident she had previously acknowledged in a public court by pleading guilty, as well as when she signed the Voluntary Consent to Registry Placement. Consequently, the Department maintains the Grievant violated departmental rules and regulations by allegedly abusing the Resident under her care and failing to report criminal charges arising from the incident.

In addition the Department contends the documented statements attributed to the ER Nurse in the resident's medical file suggest a professional commitment to accuracy, as falsifying medical records could result in serious repercussions under the Ohio Nurse Practice Act. Similarly, fabricating information given to law enforcement, as indicated in the Cleveland Police Department report, would not only imperil her nursing license but also potentially lead to criminal charges under relevant statutes. The Department argues there absence of evidence or motive presented by either the Union to suggest the ER Nurse falsified her report. The Department notes there is no documented history of discord or altercation between the Grievant and the

ER Nurse to even support such an allegation. The Union's contention regarding Nurse Edwards' statements as hearsay lacks merit, considering they had ample opportunity to present her testimony by calling her as a witness or requesting the Arbitrator to subpoena her, both of which they neglected to do.

Further, the Department contends it met its obligation to provide the Grievant with a fair pre-disciplinary meeting, clearly outlining the time, date, and purpose. But, the Union waived the meeting rights due to ongoing criminal proceedings. The Department argued management has no contractual obligation to present the pre-disciplinary report and recommendation to the Union unless the Union specifically requested the document in accordance with Section 25.09 of the parties' CBA. According to the Department, the hearing officer made an appropriate determination to substantiate violation of Rules A1 and L-9.

Moreover, the Department contends the Appointing Authority appropriately concluded there existed just cause for disciplinary action, as outlined in the relevant documentation. The Appointing Authority clarified that she had not received any written submissions from the Union or the Grievant prior to reaching her determination and her decision was based on the information provided to her at that time. Her decision to impose the termination aligns with the prescribed Standards of Conduct and is proportionate to the actions attributed to the Grievant.

Lastly, the Department asks this Arbitrator to deny the grievance in its entirety.

POSITION STATEMENT OF UNION

The Union contends the burden of proof lies with the Department to demonstrate the Grievant violated the Standards of Conduct, Rule Violations. In accordance with Article 24.01, the Union contends the Department has failed to establish just cause for discipline. The Union further argues the evidence presented is not sufficient to prove the Grievant's guilt. According to the Union, this lack of proof is attributed to various factors, including an incomplete investigation, uncertainties surrounding the evidence, the absence of key testimony, and the introduction of new information after the Department terminated the Grievant. Consequently, the Union emphasizes there was no just cause for discipline and termination.

The Union also contends the investigation raises significant concerns regarding its fairness and objectivity. The Union points out the investigator did not interview the Grievant, the nurse who initially reported the abuse allegations, the other nurses at the hospital who attended to the patient. The Union challenges the integrity of the investigation when the investigator claims to have interviewed the Grievant and the evidence establishes the Grievant was interviewed by someone else. The Union suggests the failure to interview key witnesses and the misrepresentation of interview procedures cast doubt on the fairness and objectivity of the investigation. Consequently, there was no just cause to discipline the Grievant.

Furthermore, the Union contends the pre-disciplinary meeting officer failed to procure substantial evidence of the Grievant's alleged misconduct. The Union argues that the hearing officer's decision relied on evidence presented by management, which included allegations of physical and verbal aggression towards a patient on November 8, 2021, and a criminal charge of Patient Abuse and Neglect on July 17, 2022, all stemming from an incomplete investigation. Notably, the hearing officer acknowledged uncertainty regarding the timing of certain images presented as evidence, and the Union argues without clear timestamps, establishing a definitive timeline of events becomes challenging, thus undermining the credibility of the evidence provided. Additionally, the hearing officer noted the inability to obtain direct testimony from a key witness in the case.

The Union contends the evidence casts doubt on the Department's claim of clear and convincing evidence of patient abuse. The Union points out the nurse suggested the patient's bruises may have been caused by her own combative behavior, rather than by the Grievant. Furthermore, the patient had pre-existing bruises and scratches upon arrival at the hospital. The Union asserts the absence of injuries on the Resident's face, despite allegations of abuse to the head and neck, further weakens the Department's case. Additionally, the presence of bruises and scratches on various parts of the Resident's body raises questions about their source and timing, making it difficult to attribute them solely to the Grievant's actions. Without first hand observation directly linking the Grievant to the alleged abuse, the Union maintains it would be unjust to hold the Grievant responsible based on the testimony presented.

The Union asks the Arbitrator to sustain the grievance, and order the Grievant to be made whole and be granted the requested remedy including but not limited to reinstatement as Therapeutic Program Worker (TPW) to the shift, assignment and days off before removal, receive all backpay from removal date until resolution date minus deductions for union dues and retirement contributions, payment for all medical, dental and vision expenses incurred from removal date until reenrolled, receive all vacation, sick and personal leave accruals from removal date, remove all entries in EHOC (Employee History Report) referring to this removal. The Union respectfully requests that the Arbitrator retain jurisdiction for sixty (60) days.

Discussion

The Department terminated the Grievant for violations of the Ohio Department of Developmental Disabilities Standards of Employee Conduct rules:

- i. AI- Physical Abuse: Abuse of any type or nature to an individual under the supervision or care of the Department or State, including but not limited to physical, as defined by Ohio Administrative Code 5123-17-02.
- ii. L9 - Disregard of Duty: Failure to follow a policy, work rule, or practice of the Employer.

ARTICLE 24 of the parties' CBA states, "Standard disciplinary action shall not be imposed upon an employee except for just cause." "Just cause" is the benchmark guiding management actions when disciplining or terminating an employee. This standard requires employers to justify disciplinary measures with fair and reasonable grounds, ensuring that actions are equitable and justified. This standard considers the reasonableness and notice of policy, rules, and regulations, the fairness of an investigation, proof of misconduct, equal treatment, and the appropriateness of penalty. In this instance, the Union contests the fairness of the investigation, questions the establishment of misconduct, and challenges the severity of the termination penalty.

The ideal investigation of employee misconduct leading to termination follows a fair and thorough process. The investigation typically begins when a complaint is filed or when management observes suspicious behavior. Relevant evidence, such as documents, emails, witness statements, and physical evidence, is preserved to ensure its integrity and admissibility. The investigator interviews the complainant, witnesses, and the accused employee. Interviews are conducted in a neutral and non-confrontational manner, allowing each party to explain the events. Any relevant

documentation, such as performance evaluations, attendance records, or past disciplinary actions, is reviewed to provide context to the investigation. The investigator seeks to corroborate the information the witnesses and the accused provided through additional evidence or witness statements. Based on the evidence gathered during the investigation, a decision is made regarding whether the alleged misconduct occurred and whether it warrants termination. Company policies, legal standards, and applicable collective bargaining agreements should guide this decision. The investigation process, including findings, actions taken, and reasons for termination, is thoroughly documented to provide a clear record of the proceedings.

The Just Cause Standard focuses on the fairness of the investigation. A fair investigation focuses primarily on ensuring the process is impartial, equitable, and just for all parties involved and adopts most of the strategies outlined above. However, the Just Cause Standard emphasizes principles such as due process, equal treatment, and respect for the rights of the individuals participating in the investigation. While fairness is a fundamental aspect of any investigation, a fair investigation may not always achieve the ideal outcome in terms of uncovering every detail or resolving the matter entirely as in the ideal investigation. A fair investigation prioritizes fairness and adherence to procedural due process throughout the investigative process.

From the testimony presented at the arbitration, it is evident the investigation failed to meet the standards of a thorough and fair inquiry into the allegations of misconduct against the Grievant. The Union identified several deficiencies in the investigation at the arbitration. The investigation lacked comprehensive documentation of the steps taken, and evidence gathered, making it difficult to assess the thoroughness and objectivity of the process. There were demonstrated concerns regarding the depth and scope of the interviews conducted during the investigation; certain key

witnesses were not interviewed. The Department presented its investigation as evidence of misconduct rather than proving the misconduct through eyewitness testimony. There was a conspicuous absence of efforts to corroborate the evidence gathered during the investigation. Without corroboration, the allegations' reliability and credibility are questioned.

In reviewing the presented evidence and circumstances surrounding the case, the Department's case against the Grievant appears to lack the necessary substance to establish a violation of Rule A-1. Despite conducting an investigation, the Department failed to produce any witnesses to corroborate the ER Nurse's allegations. The Grievant has the right to cross-examine witnesses whose statements have been relied upon to establish the misconduct. That right is not waived because she did not attend a pre-disciplinary meeting.

While medical documentation does show bruises on the Resident, there was a notable absence of conclusive evidence linking these injuries to the Grievant's actions. From the evidence adduced at the arbitration, this Arbitrator cannot attribute bruises sustained by the Resident to the Grievant. Additionally, the revelation there were no unusual incident reports addressing the unexplained aging bruises suggests potential oversight in documentation procedures, which cannot be solely attributed to the Grievant. The Grievant's denial of the alleged abuse further complicates the matter. Moreover, the absence of hospital staff witnesses during arbitration weakens the agency's position. Considering the burden of proof, which lies with the Department according to the parties' collective bargaining agreement, it becomes evident the Department failed to meet this burden convincingly. Therefore, in light of the evidence and principles governing disciplinary actions, the Department did not meet its burden of proof of a violation of A-1.

Arbitrators typically maintain a dismissal should be judged based on the facts known at the time of termination. Many factors beyond guilt can influence the decision to plead guilty to a criminal offense. Coercion, lack of resources, fear, risk assessment, mental health issues, and social pressures all play a role in shaping defendants' choices in the legal process. However, post-termination actions or evidence are permissible to introduce and evaluate as additional proof of pre-disciplinary misconduct, which can influence the determination of appropriate remedies. Her conviction disqualifies her from reinstatement to her position.

While on administrative leave, the Grievant failed to report to her employer that she was charged with Patient Abuse. However, the Trooper who had been monitoring the case notified the Department. The relevant policy, the annual Attestation clause, obligates the Grievant to report any formal charges, convictions, or guilty pleas related to certain offenses within fourteen days. Failure to comply may result in termination. Notably, the clause lacks explicit language such as "shall result in termination," which could have indicated immediate dismissal to the Grievant and could also be interpreted as lacking clarity regarding the consequences. Therefore, the policy work rule L9 is relevant, as it outlines the consequences for failing to adhere to employer policies. For a first offense, a written reprimand is issued, followed by a 2-day Time/Working Suspension/Fine/Removal for the second offense, a 5-day Time/Working Suspension/Fine/Removal for the third offense, and removal for the fourth offense.

Having proven a violation of L-9, the question of which level of discipline is appropriate. Since the Grievant had no active discipline, the standard procedure would be to issue a written reprimand. However, given the seriousness of the offense and potential patient safety concerns, this Arbitrator would have considered a stricter disciplinary action if the investigation had more corroboration. In addition, the CBA allows the

disciplinary process to be held in abeyance until the criminal action is completed. There was no evidence the Grievant caused any delay in the criminal procedure. Without the substantiation of the violation of Rule A1, the penalty is reduced to a written reprimand for the L-9.

AWARD

This Arbitrator partially upholds the grievance in part after carefully examining the testimony, documentary evidence, and submissions. The Department has convincingly demonstrated the Grievant failed to report criminal charges related to patient abuse, violating L9 of the departmental-wide policy. However, the Department has not sufficiently established cause for disciplining the Grievant for violating Patient Abuse, A-1.

Considering the Grievant's disciplinary history and the facts and circumstances established during this arbitration, this Arbitrator reduces the penalty to a written reprimand. Due to her legal disqualification, this Arbitrator cannot reinstate the Grievant to her former position as a Therapeutic Program Worker. This Arbitrator directs the Department to convert the termination to a resignation effective April 18, 2023. The Grievant shall sign all necessary documents to effectuate this resignation.

Moreover, the Grievant is granted her Administrative leave payments, which she received before the termination, and any other entitled benefits up to April 18, 2023, the day preceding the Grievant's guilty plea, accounting for any offset relating to outside earnings.

This Arbitrator shall retain jurisdiction on remedy for thirty (30) days.

February 29, 2024

Meeta A. Bass
Arbitrator

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of this Opinion and Award was served on the following individuals this 29th day of February, 2024:

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