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9-13-2010

DEPARTMENT OF CHILDREN'S SERVICES,  
Petitioner, Vs. MELODY A. EDEIGBA, Grievant

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**BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION**

**DEPARTMENT OF CHILDREN'S  
SERVICES,  
*Petitioner***

***Vs.***

**MELODY A. EDEIGBA,  
*Grievant***

**DOCKET NO: 26.43-103493J**

**INITIAL ORDER**

This matter came to be heard on September 13, 2010 before Lynn M. England, Administrative Law Judge, sitting for the Tennessee Civil Service Commission. The State of Tennessee, Department of Children's Services (hereinafter "DCS") was represented by attorney Dana Schmidt. The Grievant was present for the hearing and represented by Robert Greene of the Nashville Bar. This hearing constituted Grievant's 5<sup>th</sup> step hearing before the Civil Service Commission pursuant to T.C.A. § 8-30-328. The record was closed on December 20, 2010 with the filing of the State's proposed Findings of Fact and Conclusions of Law.<sup>1</sup>

**ISSUE FOR CONSIDERATION**

Whether it was proper for DCS to suspend Grievant for three (3) days for violation of Tennessee Department of Personnel Rules 1120-10-06 (3) Careless, negligent or improper use of state property; (4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees; (8) conduct unbecoming an employee in the state service; and (10) willful abuse or misappropriation of State funds, property or equipment.

**FINDINGS OF FACT**

1. Grievant is a Department of Children's Services Information Systems Analyst III.
2. The facts in this matter are undisputed.

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<sup>1</sup> Grievant did not file proposed findings of fact and conclusions of law.

3. On June 12, 2008, Grievant went to Kids World Day Care to visit her son. Her son was enrolled in the day care while visiting with his father for the summer. Grievant and her son do not have the same last name.

3. Upon arrival at the day care she asked Jenny Baines, the day care owner, if she could see Child Solomon. Grievant then asked Ms. Baines if she needed to see her identification. Ms. Baines replied that yes she did.<sup>2</sup> At this point Grievant showed Ms. Baines her state identification badge because Grievant had left her drivers' license in her car.

4. Ms. Baines brought the child to Grievant at which time Grievant informed Ms. Baines the child was her son. Ms. Baines then proceeded to check the child's paperwork and discovered Grievant's name was not listed as an authorized visitor. Ms. Baines called the child's father to seek approval for her to visit and approval was denied. Ms. Baines then informed Grievant that she was not listed as authorized to visit and she would have to leave. Grievant then left the day care upon request.<sup>3</sup>

5. Grievant used her state ID badge for identification. The badge was in her pocket. Her driver's license was in her vehicle. The use of the badge was not to mislead but only for identification. Her testimony is found to be credible.

#### **CONCLUSIONS OF LAW**

1. In a fifth step level hearing, an administrative law judge presides to take proof and render an initial order which is subject to review by the Civil Service Commission. T.C.A. §4-5-301.

2. It is a de novo proceeding, and no presumption of correctness attaches to the action of the agency. Big Fork Mining Co. v. Tennessee Water Quality Control Board, 620 S.W. 2d 515, at 521 (Tenn. App. 1981).

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<sup>2</sup> Why Ms. Baines did not ask to see identification rather than Grievant having to ask to show it is very problematic. This entire incident arises out of Ms. Baines' failure to ask Grievant for her identification and misconstruction of Grievant's state issued identification badge.

<sup>3</sup> Grievant is child's custodial parent and should have been identified as authorized to visit her child.

3. The burden of proof rests with the agency and the agency must prove by a preponderance of the evidence that 1) the Grievant acted or failed to act as the agency alleges; 2) the Grievant's action constitutes a disciplinary offense; and 3) the recommended discipline is appropriate for the given offense. Id. at 520. Some instances of misconduct require an elevated level of discipline, even if the employee has no history of prior disciplinary action. Berning v. State, 996 S.W.2d 828, 830 (Tenn. App. 1999).

4. The Department of Children's Services bears the burden of proof in this case. The standard of proof is a preponderance of the evidence. TN. Department of State, Administrative Procedures Division, Rule 1360-4-1-.02(3)(7).

5. Preponderance of the evidence simply means "the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion." Id.

6. **PURPOSE (Rule 1120-10-.01)**

To establish standards for the application of disciplinary procedures which will assure fairness and uniformity among agencies and institutions subject to the provisions of these rules.

7. **POLICY (Rule 1120-10-.02)**

A career employee may be warned, suspended, demoted or dismissed by his appointing authority whenever just or legal cause exists. The degree and kind of action is at the discretion of the appointing authority, but must be in compliance with the intent of the provisions of this rule and the Act. An executive service employee serves at the pleasure of the appointing authority.

8. **CAUSES FOR DISCIPLINARY ACTION (Rule 1120-10-.05)**

Causes for disciplinary action fall into two categories.

(1) Causes relating to performance of duties.

(2) Causes relating to conduct which may affect an employee's ability to successfully fulfill the requirements of the job.

9. **EXAMPLES OF DISCIPLINARY OFFENSES (Rule 1120-10-.06)**

The following causes are examples of those considered for disciplinary action and should not be considered the only causes of action.

(1) Inefficiency or incompetency in the performance of duties.

(2) Negligence in the performance of duties.

**(3) Careless, negligent or improper use of State property or equipment.**

**(4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees.**

(5) Habitual improper use of sick leave privileges.

(6) Habitual pattern of failure to report for duty at the assigned time and place.

(7) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment.

**(8) Gross misconduct or conduct unbecoming an employee in the State service.**

(9) Conviction of a felony.

**(10) Willful abuse or misappropriation of State funds, property or equipment.**

(11) Falsification of an official document relating to or affecting employment.

(12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the State service or that would interfere with the ability of management to manage.

(13) Trespassing on the property of any State officer or employee for the purpose of harassment.

(14) Damage or destruction of State property.

(15) Acts that would endanger the lives and property of others.

(16) Possession of unauthorized firearms, lethal weapons, alcohol or illegal drugs on the job.

(17) Brutality in the performance of duties.

(18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

(19) Reporting to work under the influence of alcohol or illegal drugs, or partaking of such on the job.

(20) Sleeping or failure to remain alert during duty hours.

(21) Betrayal of confidential information.

(22) Garnishment of wages for more than one indebtedness.

(23) Political activity prohibited by T.C.A. Title 2, Chapter 19 (The Little Hatch Act)

(24) For the good of the service as outlined in T.C.A. 8-30-326. (*Emphasis added*).

10. **PROGRESSIVE DISCIPLINARY ACTION (Rule 1120-10-.07)**

(1) The supervisor is responsible for maintaining the proper performance level, conduct and discipline of the employees under his supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the appropriate step as described.

(2) Oral Warning. The supervisor will meet privately with the employee to:

(a) Review with the employee exactly what is expected on the job and why.

(b) Explain to the employee how he has not met requirements and why present conduct or performance is unacceptable.

(c) Allow the employee to give reasons for his actions or failure.

(d) Make suggestions for correction.

(e) Record the date of the discussion and other necessary information for future reference.

(f) Written follow-up to the discussion may be forwarded to the employee but is not required. Written follow-up to an oral warning should not be construed as a written warning as described below and will not become part of the employee's official personnel file.

(3) Written Warning. The supervisor will meet with the employee and:

(a) Review the points covered in the oral warning, if an oral warning(s) was administered. The employee will be told that a significant change in his present conduct or performance must be made.

(b) Tell the employee he will receive a letter covering the significant points of the discussion to include:

1. What has been expected and how these expectations have not been met.

2. Suggestions for improvement.

3. Indication that failure to improve will lead to further disciplinary action.

(c) Review with the organizational unit head the contents of the letter prior to its delivery to the employee by the supervisor.

(d) A copy of the written warning may be placed in the employee's official personnel file in the agency personnel office at the discretion of the appointing authority. Any written warning which has been issued to an employee shall be automatically expunged from the employee's personnel file after a period of two (2) years from the date of the letter; provided, that the employee has had no further disciplinary actions with respect to the same area of performance, conduct, and discipline.

(4) Suspension Without Pay.

(a) After minimum due process is provided, a suspension without pay may be issued by the appointing authority for one (1) to thirty (30) days. No employee may be suspended without pay for disciplinary purposes for more than thirty (30) days in any consecutive twelve (12) month period. Suspensions with or without pay of more

than thirty (30) days may be issued pending the outcome of an investigation or legal action with approval of the Commissioner.

(b) Before issuance, a written notice of the suspension without pay will be prepared. The notice will contain an account of the circumstances which led to the decision to issue the suspension, the beginning and ending dates of the suspension and information to the employee concerning his rights of appeal as outlined in Chapter 1120-11 of these rules. A copy of the notice will be placed in the employee's official personnel file and a copy will be sent to the Department.

(5) Dismissal.

(a) After minimum due process is provided, an employee may be dismissed by the appointing authority from his position for unacceptable conduct or performance of duties.

(b) Before an employee is dismissed, a written notification detailing the circumstances leading to the decision to dismiss will be prepared. The notice will indicate the effective date and inform the employee of his rights to appeal as outlined in Chapter 1120-11 of these rules. A copy of the notice will be placed in the employee's official personnel file and a copy will be sent to the Department.

(c) Before an employee can be dismissed, he must be given ten (10) calendar days paid notice. During the notice period an employee will not be required to report for duty. The employee's accumulated annual leave balance may be used during this notice period only if dismissal is for gross misconduct.

(6) Transfer or Demotion. If it is determined by the appointing authority that an employee's ability to satisfactorily perform his duties is beyond the capabilities of the employee or the employee has been compromised by notorious conduct to the extent that he is ineffective in his position, the employee may be demoted or transferred to a position that is more appropriate after minimum due process has been provided.

11. The Tennessee Civil Service statute at T.C.A. 8-30-330 provides in relevant part as follows:

(a) The supervisor is responsible for maintaining the proper performance level, conduct, and discipline of the employees under the supervisor's supervision. **When corrective action is necessary, the supervisor must administer disciplinary action beginning at the lowest appropriate step for each area of misconduct.** *Emphasis added.*

12. "Tennessee's civil service statutes and rules incorporate the doctrine of progressive discipline. Accordingly, supervisors are expected to administer discipline beginning at the lowest appropriate step. See T.C.A. §8-30-330(a), (c) (1993); Tenn.Comp.R. & Regs. 1120-10-.07 (1996). Progressive discipline does not require a supervisor to begin at the lowest level of discipline regardless of the nature of the employee's conduct. It simply means that the supervisor should impose the lowest appropriate punishment taking into account the nature or severity of the employee's behavior. Accordingly, supervisors have the discretion to determine what punishment fits the offense. See, Berning v. State Dep't of Correction, 996 S.W.2d 828, 830 (Tenn. Ct. App.1999)." Kelly vs. Tennessee Civil Service Commission, 1999 WL 1072566 (Tenn. Ct. App. 1999).

### ANALYSIS

Grievant is an employee in the IT division of the Department of Children's Services. She used her state ID badge for identification when she visited her son's day care. It is not uncommon for state employees to use their ID badges for identification. It is an acceptable form of identification because it is a picture ID. What Grievant should have realized is that as a DCS employee, her badge might be interpreted differently when visiting places like a day care. For that reason Grievant's supervisor should have reviewed with the Grievant exactly why her badge could have been misconstrued in a day care setting.

It is determined that DCS has met its burden of proof as to Grievant's careless use of state property and for that she should receive an oral warning. Grievant has no prior disciplinary actions and it is determined that an oral warning is the lowest appropriate

discipline for a careless mistake. It is determined that DCS has **failed** to meet its burden of proof regarding Grievant's failure to maintain satisfactory and harmonious working relationships with the public and fellow employees. Ms. Baines readily admitted that once she asked Grievant to leave Grievant was friendly and left as requested. It is further determined that DCS has **failed** to meet its burden of proof as to its allegations of conduct unbecoming an employee in the state service and willful abuse or misappropriation of State funds, property or equipment.

It is therefore **ORDERED** that an oral warning is the lowest appropriate discipline for Grievant's actions. Grievant shall be reimbursed for the three (3) days she was suspended without pay. Further, pursuant to T.C.A. 8-30-328(f), the Grievant shall be awarded attorney fees and costs as the prevailing party in this matter.

It is so ORDERED.

This Order entered and effective this 4th day of January, 2011.

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Lynn M. England  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the \_\_\_\_\_ day of \_\_\_\_\_ 2010.

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THOMAS G. STOVALL, DIRECTOR  
ADMINISTRATIVE PROCEDURES DIVISION