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Civil Service Commission vs. Monica L. Hinton

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**BEFORE THE CIVIL SERVICE COMMISSION OF THE
STATE OF TENNESSEE**

IN THE MATTER OF:

Monica L. Hinton

DOCKET NO: 26.43-110517J

INITIAL ORDER

This matter was heard on April 12, 2011 in Nashville, Tennessee, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State to sit for the Civil Service Commission of the State of Tennessee. Kristi M. Faulkner, Staff Attorney, represented the Tennessee Department of Children's Services (hereinafter referred to as the "Department"). Monica Hinton (hereinafter referred to as "Grievant") did not appear at the hearing, either in person or through legal counsel.

The issue in this hearing is whether the State carried its burden of proof of preponderance of evidence that Grievant's conduct warranted her termination from the Tennessee Department of Children's Services.

Counsel for the Department made an oral motion pursuant to T.C.A. §4-5-309, requesting that Grievant be held in default. The motion for default was granted and Counsel for the Department proceeded uncontested.

After consideration of all of the evidence, arguments of counsel and the entire record in this matter, it is determined that Grievant's **termination was proper and is UPHELD.**

This decision is based upon the following:

PROCEDURAL HISTORY

Grievant was hired as a social worker by the Department in 1995. She was promoted to a Team Coordinator in the Special Investigations Unit and served in this position for approximately five (5) years. The Department contends that Grievant worked for another for profit entity during the time she worked for the Department, and that Grievant falsified her

documentation for the request from the Sick Leave Bank. Grievant's employment with the Department was terminated on September 28, 2010.

FINDINGS OF FACT

1. Grievant's first disciplinary action was a written warning, issued on June 14, 2008, for insubordination.
2. A second written warning was issued on May 29, 2009, for failure to follow the Department's guidelines and document all face-to-face documentation within thirty (30) days of the initial contact.
3. Grievant also received a one (1) day suspension on June 30, 2009 because she failed to respond to her cell phone when a case manager called to inform her of a child fatality.
4. Several of Grievant's co-workers overheard Grievant's conversations and saw activities in the parking lot that indicated Grievant was opening or owned a restaurant business.
5. On one occasion, Grievant called the Department and informed the secretary that she was sick. Carla Aaron, Executive Director for the Department, later learned that Grievant appeared before the Clarksville Beer Board requesting a beer permit for the Mel'Rose restaurant, on the day she called in sick.
6. July 7, 2009 was the last day Grievant worked and started using her FMLA leave. She exhausted all of her compensatory leave, annual leave and her sick leave balances on August 7, 2009.
7. Grievant applied four (4) times to the Sick Leave Bank (SLB): September 4, 2009, December 22, 2009, January 26, 2010, and February 23, 2010.
8. The withdrawal request application is an official state document employees use to request withdrawal from the sick leave bank.

9. On the application, Grievant's response to the question of whether Grievant received income from additional employment was "no".
10. Grievant was **ineligible to use the Sick Leave Bank** from October 27, 2009, through December 8, 2009, because she was earning or receiving income from other employment.
11. A certified letter from the Sick Leave Bank, dated May 10, 2010, also confirmed Grievant's denial of sick leave because she was earning or receiving income from additional employment. Despite the denial of sick leave, Grievant never returned to work for about six (6) months.
12. Christina Daughtery, Special Investigator for the Department, conducted an investigation into whether Grievant falsified an official document when she applied for the Sick Leave Bank.
13. Ms. Daughtery received documentation showing that Grievant requested a license from the Clarksville Beer Board. Ms. Daughtery also obtained a written statement from her partner, Mr. Ronald Morris, who verified that Grievant worked at Mel'Rose restaurant.
14. Ronald Morris, a Regional Special Investigator with the Department's Internal Affairs Division, went to the Mel'Rose restaurant, where Grievant served him lunch and chatted with him until she had other customers to serve.
15. In an interview with Ms. Daughtery, Grievant admitted to working at the restaurant, however she refused to complete an additional employment form, pursuant to the Department's Policy 4.10.
16. Policy 4.10, section E, requires all employees to complete a form to request approval to have additional employment. The policy also requires that the additional employment must not interfere with or create a conflict of interest with the Department's employment.

17. A certified letter from the Sick Leave Bank, dated May 10, 2010, also **confirmed Grievant's denial of sick leave because she was earning or receiving income from additional employment.**

18. The Human Resources Department sent Grievant an Intentions of Employment letter on June 18, 2010. This letter informed Grievant she had until June 25, 2010 to report to work. Her failure to do so would result in job abandonment.

19. Grievant did not report to work on June 25, 2010 as requested.

20. On June 22, 2010, Grievant's attorney called Ms. Aaron and requested a due process hearing. The first due process hearing was set for July 8, 2010. No one showed up for the due process hearing.

21. A second due process hearing was set for September 27, 2010. Again, Grievant did not come for the due process hearing, and she still had not reported back to work with the Department.

22. Samantha West, Regional Supervisor for the Internal Affairs Division with the Department, investigated the allegation of Grievant damaging State property.

23. Grievant damaged State property by being careless with her State-issued cell phone. She dropped the cell phone in a puddle of water while getting out of her personal vehicle.

Grievant's actions violated Tennessee Department of Personnel Rule 1120-10-.06(3): Careless, negligent, or improper use of State property.

24. Russell Winters, Headquarters Supervisor for Internal Affairs, conducted an investigation into Grievant losing her badge.

25. Mr. Winters explained to Grievant that someone could use her stolen badge to improperly gain access to another person's house. Grievant then agreed to file a police report on her missing badge.

26. Grievant's failure to protect her badge violated Tennessee Department of Personnel Rule 1120-10-.06(3): Careless, negligent, or improper use of State property and equipment.

APPLICABLE 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.

2. The Department bears the burden of proof, which is a preponderance of the evidence standard, to show that Grievant's termination was appropriate for the given offense.

3. Preponderance of the evidence 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."

4. Tennessee Department of Human Resources Rule 1120-10-.06(2): Negligence in the performance of duties.

5. Tennessee Department of Human Resources Rule 1120-10-.06(3): Careless, negligent or improper use of State property or equipment.

6. Tennessee Department of Human Resources Rule 1120-10-.06(11): Falsification of an official document relating to or affecting employment.

7. Tennessee Department of Human Resources Rule 1120-10-.06(12): For the good of the service as outlined in T.C.A. §8-30-326.

8. The Department of Children's Services Policy 4.10: Conflicts of Interest.

CONCLUSIONS OF LAW

1. It is **concluded** that the Department has proved by a preponderance of the evidence that Grievant **violated** the Tennessee Department of Human Resources Rules and the Department of Children's Services Policies as set forth above.
2. It is **concluded** that Grievant was working at Mel'Rose café while employed with the Department.
3. It is **concluded** that Grievant violated the Department's Policy 4.10 when she refused to complete the request for approval of additional employment.
4. It is **concluded** that Grievant intentionally falsified the request for withdrawal from the sick leave bank form when she checked "no" when asked if she received income from other employment.
5. It is **concluded** that Grievant was careless and negligent in the use of State property.
6. It is **concluded** that Grievant abandoned her job.
7. Based on the above, it is determined that the Grievant's **termination** for violation of rules and policies was **proper**. Therefore, it is **ORDERED** that Grievant's **termination be UPHELD**.

This Initial Order entered and effective this 24th day of June, 2011.

Joyce Carter-Ball
Administrative Judge