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12-9-2010

TENNESSEE DEPARTMENT OF
TRANSPORTATION, Petitioner, V. TOMMY R.
McKNIGHT, Grievant

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT
OF TRANSPORTATION,
Petitioner,**

DOCKET NO: 26.22-107653J

V.

**TOMMY R. McKNIGHT,
Grievant.**

INITIAL ORDER

This contested case was heard in Nashville, Tennessee, on December 9, 2010, before Ann M. Johnson, Administrative Judge, assigned by the Secretary of State to sit for the Civil Service Commission of the State of Tennessee. Tremecca D. Doss, Assistant General Counsel with the Tennessee Department of Transportation (“Department” or “TDOT”), represented the State. In pre-hearing conferences the Grievant proceeded on his own behalf, waiving legal counsel.

DEFAULT

The Grievant was not present, having informed the Administrative Judge the day before the hearing that he would not contest the disciplinary action and did not intend to appear for the hearing. Since the Grievant received proper notice of the proceedings and failed to participate, the State was allowed to proceed in default under T.C.A. § 4-5-309.

ORDER ON THE MERITS

The subject of this hearing was the Grievant’s appeal of his dismissal from State service by the Department of Transportation. After consideration of the evidence and arguments placed

into the record, it is determined that the dismissal should be upheld. This decision is based upon the following.

SUMMARY OF THE EVIDENCE

The Department, through affidavit testimony and supporting attachments, provided testimony from four witnesses on its behalf: Charles E. (Chuck) Rychen, Michael Pittman, Marcus L. Powell, and Delaine Linville. The Grievant failed to participate or to present any proof.

SUMMARY OF DETERMINATION

It is determined that Grievant's dismissal for gross misconduct was proper and is **UPHELD**. Grievant, as a condition of employment, was required to operate State-owned motor vehicles safely, defensively, and in compliance with applicable traffic laws. Mr. McKnight signed multiple policies and acknowledgments to this effect. Grievant caused \$2,500.00 in damage to a TDOT-owned pickup truck by driving recklessly. Four days later, Mr. McKnight drove the same State motor vehicle under the influence of "five to six beers" and prescription medication, resulting in his arrest on suspicion of driving under the influence ("DUI"). In light of these events, Grievant was properly dismissed from State service for multiple acts of misconduct, including but not limited to gross misconduct. This determination is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. All TDOT employees are prohibited from using drugs and/or alcohol on the job. Employees acknowledge compliance with this prohibition through signing TDOT's Drug-Free Workplace Policy. Mr. McKnight signed this policy in 1990 and again in 2007.

2. All TDOT employees are required to operate State-owned motor vehicles legally, safely, and defensively. Employees are required at all times to comply with any and all traffic laws when operating a motor vehicle on State business. TDOT employees who misuse State-owned vehicles will be subject to disciplinary action up to and including dismissal from State service. Employees acknowledge compliance with these requirements through signing the Tennessee Department of Human Resources (“DOHR”) and TDOT’s respective motor vehicle use policies.

3. Mr. McKnight signed both the DOHR and TDOT policies in 2003 and 2007, respectively.

4. The Grievant was employed with TDOT from August 1, 1986 until November 15, 2009. At the time of his dismissal, Grievant was employed by TDOT as a Transportation Technician III in Unit 4051, Shelby County Construction Unit. Part of Grievant’s job responsibilities included the use of a State-owned motor vehicle.

5. TDOT owns a white 2004 Chevrolet Silverado pick-up truck, Tennessee License Plate Number S4-UL19 (“S4-UL19”). This motor vehicle was assigned to Grievant for his work use.

6. On October 18, 2009, while Grievant was driving S4-UL19 on duty, he struck a sign, which caused approximately \$2,500.00 in damage to the pick-up truck.

7. On October 22, 2010, four days later, the Grievant was instructed by Operations Specialist II Marcus L. Powell to inspect concrete batching for a pending construction contract. Grievant got behind the wheel of S4-UL19 and was driving it when, after probable cause, he was stopped and arrested by Fayette County Sheriff Deputy Michael Pitman on suspicion of driving under the influence (DUI).

8. In light of both of these incidents, Region IV Director Chuck Rychen issued Grievant a due process letter on October 26, 2009, advising that disciplinary action up to and including his dismissal from employment was under consideration. The disciplinary charges included gross misconduct or conduct unbecoming an employee in the State service, acts that would endanger the lives and/or property of others, reporting to work under the influence of alcohol, or partaking of such on the job, and violation of TDOT's Motor Vehicle Utilization policy.

9. On October 29, 2009, Mr. McKnight stated to Mr. Rychen that with respect to the October 18 incident, he was driving backward down an interstate median when he hit the sign post. With respect to the October 22 incident, he admitted to drinking five to six beers and ingesting numerous prescription medications prior to getting behind the wheel of S4-UL19 and driving it to inspect concrete batching.

10. After considering the available information, on November 4, 2009, Mr. Rychen sent TDOT Commissioner Gerald F. Nicely a memorandum recommending Grievant's dismissal from State service.

11. In accordance with Mr. Rychen's recommendation, Commissioner Nicely notified Grievant by letter of November 5, 2009 that he was to be dismissed from employment effective November 15, 2009.

RELEVANT LAW

1. The Department, as the party "seeking to change the present state of affairs," has the burden of proof under Rule 1360-4-1-.02(7) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, TENN. COMP. R. & REGS. ch. 1360-4-1 (June 2004 (Revised)), to prove by a preponderance of the evidence that the discipline imposed

was appropriate under State law and regulations. TDOT asserted that the Grievant violated the Department's Motor Vehicle Utilization Policy, and DOHR Rules 1120-10-.06 (2), (3), (8), (10), (14), (15), and (19).

2. The Department's Motor Vehicle Utilization Policy contains the following relevant provisions:

PURPOSE: To establish policy for utilization of motor vehicles assigned to bureau and divisions of the Department or dispatched out on a temporary basis; to ensure that when employees of State-owned or private motor vehicles on State business, they do so legally and safely; and to assure the safe, efficient, or economical utilization of State-owned motor vehicles.

POLICY: . . . Employees are required, at all times, to comply with any and all traffic laws when operating any motor vehicle on State business.

Employees who misuse State-owned vehicles will be subject to disciplinary actions, including . . . dismissal, depending on the magnitude of the misuse and the frequency with which it has occurred.

Misuse may include, but is not limited to:

- Violations of traffic laws (this will include the utilization of radar detection devices in State vehicles, as well as exceeding a posted speed limit, reckless driving, illegal parking, etc.).
- Careless operation that results in damage to vehicle or injury to person.
- Use of a State-owned vehicle for personal business.

3. The Rules of the Tennessee Department of Human Resources ("DOHR") provide the overall policy for imposing disciplinary action in Rule 1120-10-.02:

POLICY. 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. . . .

4. T.C.A. § 8-30-330 contains the following relevant provisions:

(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.

. . .

(c) When corrective action is necessary, the supervisor must administer disciplinary action beginning at the step appropriate to the infraction or performance. Subsequent infractions or poor performance may result in more severe discipline in accordance with subsection (a).

5. DOHR Rule 1120-10-.06, in pertinent part, provides that the following are disciplinary offenses:

- (2) Negligence in the performance of duties.
- (3) Careless, negligent or improper use of State property or equipment.
- . . .
- (8) Gross misconduct or conduct unbecoming an employee in the State service.
- . . .
- (10) Willful abuse or misappropriation of State funds, property or equipment.
- . . .
- (14) Damage or destruction of State property.
- (15) Acts that would endanger the lives and property of others.
- . . .
- (19) Reporting to work under the influence of alcohol or illegal drugs, or partaking of such on the job.

ANALYSIS and CONCLUSIONS OF LAW

TDOT employees are responsible for the safe, efficient, and legal operation of motor vehicles in furtherance of State business. Driving while impaired by drugs and/or alcohol places multiple lives at risk, including the life of the driver.

The weight of the evidence provided by the State in this matter is incontrovertible. On October 18, 2010, the Grievant drove backward down an interstate median and struck a sign post, causing significant damage to the TDOT-owned pick-up truck, License Plate Number S4-UL19.

Only four days later, the Grievant admittedly drank “five to six beers” and consumed prescription medications shortly prior to getting behind the wheel of the same State vehicle and driving it while on State duty. It is undisputed that regardless of whether the Grievant committed

the crime of DUI beyond a reasonable doubt, it is much more likely than not he committed misconduct of a gross nature warranting his dismissal from State service. Accordingly, the State has shown, by a preponderance of the evidence, that the Grievant was guilty of the violations with which he was charged.

TDOT did not have an alternative to dismissal under the circumstances of this case. The instant grievance arises from a situation that posed such risk to public safety that termination of employment was required. *See Lynn v. Camp*, No. M2002-02708-COA-R3-CV, 2003 WL 22401280 at *5 (Tenn. Ct. App. Oct. 22, 2003) at *5 (upholding employee's dismissal as his violation of policy, sleeping on the job, caused "significant risk to the citizens assigned to his care.").

There is no justification for Grievant's misconduct. The Grievant's actions caused damage to State property, and endangered lives, including his own. Tommy R. McKnight operated a State vehicle while intoxicated. An employee's operation of a State vehicle under the influence of alcohol and/or drugs is so dangerous that it cannot be tolerated. TDOT's decision to terminate Grievant for gross misconduct was justified.

IT IS THEREFORE ORDERED that the Department of Transportation's decision to terminate Grievant from his employment is fully **UPHELD**.

This Initial Order entered and effective this 17th day of March, 2011.

Ann M. Johnson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
17th day of March, 2011.

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, looped initial 'T' and 'S'.

Thomas G. Stovall, Director
Administrative Procedures Division

Prepared for entry by Tremecca D. Doss, TDOT Assistant General Counsel