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TENNESSEE DEPARTMENT OF SAFETY, Department/, Petitioner, vs. DORIS MURRELL, Grievant/, Respondent

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BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION

TENNESSEE DEPARTMENT OF SAFETY,	]	
Department/Petitioner,	]	
vs.	]	**DOCKET # 26.19-102826J**
	]	
DORIS MURRELL,	]	
Grievant/Respondent.	]	

INITIAL ORDER

This contested administrative case was heard in Nashville, Tennessee, on November 9, 2009, before J. Randall LaFevor, Administrative Judge, assigned by the Secretary of State, and sitting for the Civil Service Commission for the State of Tennessee. Ms. Deborah Martin, Staff Attorney for the Department of Safety, represented the Department/Petitioner. The Grievant/Respondent, Doris Murrell, appeared *pro se*. Upon conclusion of the hearing, the matter was taken under advisement pending submission of the hearing transcript and the parties' Proposed Orders. As directed in the Post-Hearing scheduling Order, those documents were filed by February 19, 2010,[1] and the matter was declared ready for consideration.

PROCEDURAL HISTORY

The Commissioner of the Tennessee Department of Safety convened a Level IV Disciplinary Hearing on February 5, 2009 to consider possible disciplinary action against the Grievant for violations of Department of Safety General Orders and Department of Personnel Rules. Based on his analysis of the facts, and upon applying the law, the Commissioner terminated the Grievant's employment with the State. The Grievant appealed that decision.

This contested administrative proceeding is a Level V Disciplinary Hearing convened at the Grievant's request, to consider her challenge to the sanction imposed by the Commissioner of the Department of Safety. Upon consideration of the evidence and

[1] The Department's Proposed Order was filed on January 11, 2010. The Grievant did not file one
.

arguments, and the entire record, it is determined that the Grievant violated the Department of Safety General Orders and Department of Personnel Rules, as charged, and that the proper disciplinary action for those violations is termination of her State employment. This determination is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Grievant was first hired as a State employee on January 16, 2007, and was employed by the Department of Safety as a Driver License Examiner for less than 17 months, from October 1, 2007 until her employment was terminated on February 22, 2009. Her job duties required that she handle money on behalf of the State, as well as sensitive identification documents and other information related to Tennessee citizens.

2. During her employment with the Department, the Respondent lived with her boyfriend, Marquette Walker ("Walker"), in Memphis, Tennessee.[2] On January 8, 2009, officers with the Memphis Police Department went to the Grievant's home to speak with Walker about his possible involvement in a homicide that they were investigating. Walker had a history of criminal activity and drug involvement and was, at that time, out of jail on bond for drug charges in Mississippi.

3. When the officers arrived at her home, the Grievant's boyfriend was not there. While talking to the Grievant, the officers saw drugs openly visible on a table in the living room. They asked for permission to search the rest of the house, and the Grievant consented. A search of the home produced additional drugs, and digital scales with powder residue. Although no marijuana was found, the Grievant testified at the hearing that she had smelled marijuana when she arrived home after work that day, and assumed that Walker had smoked it before he left, as he had done several times in the past.

4. In the living room, kitchen and bedroom, the officers found quantities of crack cocaine, powder cocaine, ecstacy tablets and Xanax pills. The Grievant was arrested and

[2] The Grievant and her boyfriend have a 19-year-old son, and the two have lived together off-and-on for more than twenty years. At the time of this incident, they had been living together for about four years.

charged with possession of drugs with intent to sell, and possession of drug paraphernalia.[3]

5. The Department of Safety, Office of Professional Responsibility ("OPR"), learned of the arrest from the Memphis Police Department on January 12, 2009, and began its own investigation. An OPR Investigator went to the Grievant's work place on January 14, 2009, to interview her. By the date of that interview, six days after her arrest, the Grievant had still not informed her supervisor of the incident. After taking the Grievant's statement, she was placed on administrative leave pending the results of the OPR investigation.

6. During her short tenure with the Department, she had received no prior disciplinary actions, and her Performance Evaluation rated her as a "good" employee, earning her an overall rating of "3" on a scale of 1-to-5.

7. On February 12, 2009, following Departmental Due Process proceedings, the Commissioner of Safety notified the Grievant that her employment with the Department would be terminated effective February 22, 2009. She appealed that decision, resulting in the instant hearing.

CONCLUSIONS OF LAW and ANALYSIS

1. The Tennessee Department of Safety is the Petitioner in this matter, the party that initiated the proceedings, and as such, is assigned the "burden of proof." The burden of proof is the duty imposed upon a party to establish, by a preponderance of the evidence, that an allegation is true, or that an issue should be resolved in favor of that party. A "preponderance of the evidence" means the "greater weight of the evidence," or "the more probable conclusion, based on the evidence presented." The burden of proof is generally assigned to the party seeking to change the present state of affairs with regard

[3] At the hearing, the Grievant produced a document stating that those charges were dismissed and expunged. It contained no information indicating the reason for the dismissal. The State stipulated that the charges filed against the Grievant had been dismissed and expunged.

to any issue. *See*, Rule 1360-4-1-.02(7), TENN. COMP. R. & REGS. In the instant case, that means that the Department of Safety must prove, by a preponderance of the evidence, that the Grievant violated Tennessee Department of Personnel Regulations, and/or Department of Safety General Orders, by associating with a known criminal throughout the course of her employment with the Department; by allowing illegal drugs and paraphernalia to be kept in her home, by leading to her arrest; by failing to report her arrest to her supervisor; and, by compromising her ability to function in her position with the Department; and, that the appropriate disciplinary response to that conduct is termination of her employment with the Department of Safety.

2. The Department of Safety has promulgated certain General Orders that are binding on, and govern the conduct of its employees. Those orders reflect the Department's determination that, due to the sensitive and highly visible nature of their positions, Department of Safety employees may, in certain instances, be held to a different, and sometimes higher, standard of conduct than other State employees. Among those Orders is General Order #216-1, *Ethics, Compliments, Complaints and Disciplinary Regulations*. The Department relies upon the following relevant provisions of that Order.

- **DEPARTMENT OF SAFETY, GENERAL ORDER 216-1**
  [30 June 2008]:
  Ethics, Compliments, Complaints and Disciplinary Regulations:
  *** * ***
  II. Policy:
  * * *
  It is the policy of the Department of Safety to warn, suspend, demote or dismiss any employee whenever just or legal cause exists.
  * * *
  IX. Causes for Disciplinary Action:
  A. Causes for disciplinary action fall into two (2) 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;
  * * *
  B. It is not feasible to itemize every cause in which disciplinary action may be taken. The following causes are examples of those considered for disciplinary action and should not be considered the only causes.
  * * *

1. CONFORMANCE TO LAWS:

a. Each employee shall obey the laws of the United States, the State of Tennessee, and of local jurisdictions.

(1) If facts revealed by a thorough investigation indicate there is evidence an employee has committed acts, which constitute a violation of a civil or criminal law, ordinance, or infraction other than a parking ordinance, then the member may be deemed to have violated this subsection even if the member is not prosecuted or is found not guilty in court.

(2) Each employee shall immediately report to the employee's supervisor or if unavailable, the on-duty supervisor, any time the employee is subject to an investigation by the THP or any other law enforcement agency for any acts that could constitute a felony or misdemeanor.

* * *

2. VIOLATION OF RULES:

a. Employees shall not commit any act or fail to perform any act, which would constitute a violation of any of the Directives, Orders, policies, and/or procedures of the Department and State Department of Human Resources Rules, whether or not they are stated in this Order.

* * *

(4) Employees are expected to be a good example to the public in abiding by and complying with all traffic laws, rules and regulations and other laws.

* * *

3. UNBECOMING CONDUCT:

a. Employees shall conduct themselves at all times, on and off duty, in a manner as to reflect most favorably upon themselves and/or the Department.

(1) Unbecoming conduct shall include any conduct which tends to bring the Department into disrepute; or which reflects discredit upon the Department or any employee(s) of the Department; or which tends to impair the operation and efficiency of the Department or an employee; or which violates Departmental policy.

* * *

10. USE OF DRUGS:

*** * ***

d. employees shall not possess any illegal controlled substance or any controlled substance without a prescription other than of evidentiary purposes and then only in conformance with policy and procedures.

* * *

21. NEGLECT OF DUTY:

a. Employees shall not be inattentive to dury or negect their duties.

b. Examples of neglect of duty include but are not limited to the following:

* * *

(1) Engaging in any activity or personal business which would cause the employee to neglect or be inattentive to duty or which would impair the employee's ability to perform such duty.

* * *

22. ASSOCIATIONS:

a. Employees shall avoid regular or continued association or dealings with persons whom they know, or should know, are under criminal investigation or indictment or who have a reputation for ongoing involvement in felonious or criminal behavior, except as necessary in the performance of official duties.

* * *

[Bold emphasis added throughout text.]

3. Additionally, *The Rules of the Tennessee Department of Personnel*, Disciplinary Action, Chapter 1120-10, TENN. COMP. R. & REGS, describe certain prohibited conduct for all State employees that may result in disciplinary action being taken against them. As a State employee, the Grievant knew, or should have known, of the application of those *Rules* to her conduct. Those *Rules* contain the following provision:

> **1120-10-.06 EXAMPLES OF DISCIPLINARY OFFENSES**. The following causes are examples of those considered for disciplinary action and should not be considered the only causes of action.
>
> * * *
>
> (4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees.
>
> * * *
>
> (8) Gross misconduct or conduct unbecoming an employee in the State service.
>
> * * *
>
> (24) For the good of the service as outlined in T.C.A. 8-30-326.

The Department alleged that, in addition to violating Department of Safety General Order 216-1, the Grievant is guilty of engaging in conduct prohibited by the above Rules of the State Department of Personnel.

4. It was clearly the intention of Department of Safety General Order 216-1 to place all Departmental employees on notice that they would be subject to disciplinary sanctions for committing any act or failing to perform any act, "which would constitute a violation of any Departmental or State "Directives, Orders, policies, and/or procedures . . . or . . . [departmental] Rules," [General Order 216-1,IX,B,2] such as a Departmental General Order or a Department of Personnel Rule or Regulation. In this case, the Grievant violated both.

5. The Grievant violated multiple provisions of General Order #216-1, *Ethics, Compliments, Complaints and Disciplinary Regulations*, and the Department of Personnel Rules and Regulations:

a. By living with a known criminal with a history of drug activity, and who was out of jail on bond for a drug charge in another state when the police came to the Grievant's home to question him about his involvement in a homicide case, the Grievant violated the Department's prohibition against associating with persons involved in "felonious or criminal behavior." [General Order #216-1,IX,B,22]

b. Even though the criminal charges against her were later dismissed, by allowing the presence of illegal drugs and paraphernalia in her home, and by allowing her boyfriend to use drugs in her home, the Grievant violated General Order #216-1,IX,B,10,d. General Order #216-1,IX,B,1,a makes it clear that a criminal conviction is not necessary to a violation of this Order. Likewise, that behavior amounts to "conduct unbecoming an employee in the state service," as prohibited by *The Rules of the Tennessee Department of Personnel*. [Rule 1120-10-.06(8), TENN. COMP. R. & REGS.]

c. By failing to report her arrest to her supervisor for six (6) days, between the date of her arrest and the arrival of the OPR investigator at her workplace, the Grievant violated the mandate of General Order #216-1,IX,B,1,a,(2).

d. The Grievant's arrest and her actions related to that arrest resulted in the loss of trust and respect by her supervisors, her co-workers, the public, and members of the law enforcement community with whom she is required to work on a regular basis. This has necessarily resulted in an inability to perform her job, rendering her in violation of General Order #216-1, IX,B,21; *Neglect of Duty*. Additionally, that conduct disrupted

the "satisfactory and harmonious working relationships with the public and fellow employees," in violation of *The Rules of the Tennessee Department of Personnel*. [Rule 1120-10-.06(4), TENN. COMP. R. & REGS.]

Thus, the Department has satisfactorily established the Grievant's violation of both its own General Orders, and the Department of Personnel's Rules and Regulations.

6 Having established the Grievant's violations of the General Orders and Departmental Regulations, attention must be directed to the appropriate sanction to be imposed. A State employee may be disciplined for (1) causes relating to performance of duty, or (2) causes relating to conduct which may affect an employee's ability to successfully fulfill the requirements of the job. Rule 1120-10-.05, TENN. COMP. R. & REGS. "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. . ." Rule 1120-10-.02, TENN. COMP. R. & REGS. Although the law prescribes implementation of progressive discipline for State employees, it also provides that disciplinary action must be administered at the step which is most appropriate for the misconduct. (*See*, *Tennessee Code Annotated* § 8-30-330; and Rule 1120-10-.07, TENN. COMP. R. & REGS.) As the courts have recognized in other cases dealing with these provisions,

> . . . the key word in the statute is 'appropriate.' . . . (T)he language of these provisions does not mandate application of discipline in a routine fashion without regard to the nature or severity of the behavior it is intended to address. The supervisor has discretion to determine what punishment fits the offense.
> *Berning v. State*, 996 S.W.2d 828, 830 (Tenn. App. 1999).
> requir

Without a doubt, some employee conduct is so serious that immediate termination from employment may be warranted, even if no previous disciplinary actions have been required. The Grievant's actions in this case arise to that level.

7. When the Commissioner considered the issue of punishment in this case, he had a wide range of options at his disposal. (*See*, Rule 1120-10-.07, TENN. COMP. R. & REGS.) Dismissal from employment is one of those options. Rule 1120-10-.07(5), TENN. COMP. R. & REGS. Pursuant to that regulation, "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." Rule 1120-10-.07(5)(a), TENN. COMP. R. & REGS. In this case, the Grievant's conduct was unacceptable, and warranted a significant sanction. The Grievant was employed as a Department of Safety Driver License Examiner, a position that requires adherence to a high standard of conduct, and must command the respect and confidence of other employees of the Department, as well as the public at large. She was entrusted on a daily basis with handling money and sensitive documents related to members of the public. In the past, Driver License Examiners have abused and violated that trust, resulting in scandals that tarnished the reputation of the entire department. The Commissioner is not required to wait for another such scandal before taking disciplinary action against an employee.

8. "An appointing authority[4] may dismiss any employee in the authority's division when the authority considers that the good of the service will be served thereby." *Tennessee Code Annotated* § 8-30-326.[5] The egregious nature of the Grievant's conduct and the resulting loss of the respect of the law enforcement community, the Department's inherent loss of confidence in and respect for the Grievant's judgment and efficacy, and the negative impact of her conduct on the Department's mission, all weigh heavily in favor of dismissal from employment as the appropriate sanction in this case, "for the good of the service."

> It must be conceded that the public payroll cannot be made a haven for those who with or without fault have become unable to perform the duties for which they were employed. It must likewise be conceded that "the good of the service" may in proper cases justify or require the discharge of public employees when their efficiency or usefulness in their positions has been seriously impaired by their own fault, by the fault of others, or by blameless misfortune.

Reece vs. Tennessee Civil Service Commission, 699 S.W.2d 808, 813 (Tenn. App. 1985).

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[4] In this case, the appointing authority was the Commissioner of the Department of Safety.

[5] *See also*, Rule 1120-10-.06(24), TENN. COMP. R. & REGS., *Rules of the Tennessee Department of Personnel*.

9. The issues presented for consideration in this case are (1) whether the Department proved, by a preponderance of the evidence, that the Grievant engaged in acts or omissions prohibited by The Rules of the Tennessee Department of Personnel and/or the Department of Safety General Orders; and (2) if so, whether the disciplinary sanction imposed by the Commissioner was appropriate. With respect to both issues, the Department has met its burden of proof.

Accordingly, IT IS HEREBY ORDERED that the Tennessee Department of Safety has established by a preponderance of the evidence that the Grievant, Doris Murrell, acted in violation of The Rules of the Tennessee Department of Personnel and Department of Safety General Orders, as detailed above.

IT IS FURTHER ORDERED that the appropriate disciplinary sanction for the Grievant's conduct is termination of her employment with the Department of Safety.

IT IS FINALLY ORDERED that the Grievant's appeal of the Commissioner's decision is hereby DISMISSED.

Entered and effective this 12th day of April, 2010.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 12th day of April, 2010.

Thomas G. Stovall, Director
Administrative Procedures Division