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BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION

IN THE MATTER OF:

Mark Williams

DOCKET NO: 26.19-103248J

INITIAL ORDER

This contested administrative case was heard on February 5, 2010, in Nashville, Tennessee, before Rob Wilson, 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. The Grievant, Mark Williams, was represented by Attorney Michael J. Banks.

PROCEDURAL HISTORY

The Commissioner of the Tennessee Department of Safety convened a Due Process Hearing on April 30, 2009. After considering the results of Grievant's random drug screening on March 16, 2009, and the impact of the positive test results, he terminated the Grievant's employment with the State of Tennessee.

This contested administrative proceeding was a Fifth-Step Disciplinary Hearing convened at the Grievant's request, to consider the termination of his state employment by the Commissioner of the Department of Safety for engaging in certain prohibited conduct, including *(1) Reporting to work under the influence of alcohol or illegal drugs ; (2) Gross misconduct or conduct unbecoming an employee in the State service; and (3) For the good of the service as outlined in T.C.A. 8-30-326;* and for violation of Department of Safety General Order 221, Alcohol and Drug Free Workplace, and Department of Safety General Order 220, Employee Alcohol and Drug Testing. Upon consideration of the evidence and arguments, and the entire record, it is determined that the Grievant engaged in the prohibited conduct, as charged, and that the proper disciplinary action for this offense is termination from state employment. This determination is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Grievant was employed by the Department of Safety as a Trooper with the Tennessee Highway Patrol. He was hired in 2004.
2. On April 24, 2009, Grievant was recommended for termination from the Department by Colonel Mike Walker based upon the results of [Grievant's] random drug screen.
3. The grounds for termination were for violating Department of Personnel Rule 1120-10-.06(8) gross misconduct or conduct unbecoming an employee in the state service; Rule 1120-10-.06(19) reporting to work under the influence of alcohol or illegal drugs, or partaking of such on the

job; Rule 1120-10-.06(24) for the good of the service as outlined in T.C.A. § 8-30-326; and, Department of Safety General Orders 220 and 221, *Employee Alcohol and Drug Testing*, and *Alcohol and Drug Free Work Place*.

4. Commissioner Dave Mitchell subsequently upheld the recommendation for termination following a Due Process Hearing and a Step IV Hearing.

5. Grievant has never been subject to any prior disciplinary actions for drug offenses, but had previously received one written reprimand for a vehicle accident and one written reprimand for failing to respond to a voicemail message.

6. Grievant, as part of his duties as a State Trooper, was a Drug Interdiction Officer. Drug Interdiction Officers actively seek out drug offenders.

7. On March 16th, 2009, Grievant submitted to a random drug test as part of the Federal Motor Carriers Regulations on random drug testing for people who hold Class A Commercial Driver's Licenses. Grievant tested positive for amphetamines.

8. Grievant stated that he might have taken his daughter's Adderall by accident. Photographs of Grievant's medication and his daughter's Adderall show that the pills look nothing alike.

9. Grievant did not have a valid prescription for Adderall. Additionally, none of the prescribed or over the counter medications that Grievant was taking would have caused a positive result for amphetamine.

10. Sergeant Ron Crockarell testified that at least six other State Troopers were terminated, or resigned in lieu of termination, due to failing random drug screens.

CONCLUSIONS OF LAW

1. Tennessee Department of Personnel Rule 1120-10-.06, EXAMPLES OF DISCIPLINARY OFFENSES, lists the following as examples of disciplinary offenses:

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

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

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

2. The State has proved by a preponderance of the evidence that Grievant violated Rule 1120-10-.06(8) gross misconduct or conduct unbecoming an employee in state service.

3. The State has proved by a preponderance of the evidence that Grievant reported to work under the influence of alcohol or drugs. Although there was no testimony presented to establish how long amphetamines remain psychoactive on the central nervous system, Department of Safety General Order 221, section IV. Definitions states “under the influence” means that the employee is affected by a drug...in **any detectable manner**. [*Emphasis added*] In this instance, the detectable manner was the random drug screen.

4. The State has proved by a preponderance of the evidence that Grievant’s dismissal was for the good of the service since the termination memo from Commissioner Dave Mitchell outlined in detail why the service will benefit by the termination as required by T.C.A. § 8-30-326.

“On March 16, 2009, you were on duty performing your job responsibilities as a State Trooper when you submitted to a random drug test. The fact that an amphetamine was detected as a result of the drug test placed you in a situation of being under the influence while on duty and the risk that you were possibly impaired by the amphetamine. The Tennessee Department of Safety is committed to providing the highest quality of law enforcement

services to the citizens of the State of Tennessee and public knowledge of you, as a state trooper being assigned to the Interdiction Plus unit, having tested positive for amphetamine without an acceptable medical reason, has seriously impaired your ability to perform your duties within the Department of Safety.”

5. Department of Safety General Order 220, Employee Alcohol and Drug testing, states, in

part:

It shall be the policy of the Tennessee Department of Safety to provide its employees with a safe workplace free from the effects of drugs and alcohol. The Department has a compelling interest in ensuring that the duties of its employees are performed free of any risk of impairment by the use of alcohol or controlled substances. The safety and well being of the citizens who impose their trust in this Department demands it. In order to provide for the protection of the public and the well being of its employees, the Department shall have the right and authority to require employees to submit to substance abuse testing.

6. Department of Safety General Order 221, Alcohol and Drug Free Workplace, states, in

part:

....The Department of Safety prohibits the following: ...Possession or use of prescription drugs that have not been prescribed for the employee, which may affect the employee’s performance of duties....

7. Although it does not appear Grievant intentionally ingested an amphetamine, Grievant should have been more careful to insure that what he took was not an amphetamine, particularly knowing that his daughter had a prescription for Adderall. Grievant testified that he was aware of the Department of safety’s zero tolerance policy regarding drugs and alcohol in the workplace.

8. Grievant’s drug test showed he tested positive for amphetamine. General Orders 220 and 221 allow for termination for a positive drug test. Despite Grievant not being subject to prior discipline, termination is the appropriate step of discipline in this instance. The Department has a legitimate interest that its troopers perform their duties without the influence of drugs.

It is **ORDERED** that the decision by the Department to terminate Grievant's employment with the Department be **UPHELD**.

This Initial Order entered this 20th day of April, 2010.

Thomas G. Stovall, Director
Administrative Procedures Division