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DEPARTMENT OF SAFETY, v. MARVIN NORFOLK, Grievant.

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BEFORE THE CIVIL SERVICE COMMISSION OF THE STATE OF TENNESSEE

IN THE MATTER OF: **DEPARTMENT OF SAFETY,** ***v.*** **MARVIN NORFOLK,** ***Grievant.***	**DOCKET NO: 26.19-102759J**

INITIAL ORDER

This matter was heard on October 21, 2009, in Nashville, Tennessee, before Administrative Judge Mary M. Collier, assigned by the Secretary of State, Administrative Procedures Division to sit for the Tennessee Civil Service Commission. Deborah Martin represented the Tennessee Department of Safety. The Grievant, Trooper Marvin Norfolk, was represented by Florence M. Johnson.

The issue of this hearing was whether the Department of Safety properly suspended Trooper Norfolk's employment for three (3) days. After consideration of all of the evidence and arguments of counsel, it is determined that the three (3) day suspension of Trooper Norfolk's employment by the Department of Safety was proven to be appropriate by a preponderance of the evidence and should therefore be **UPHELD**. This decision is based upon the following.

PROCEDURAL HISTORY

The Department of Safety suspended Trooper Norfolk for three (3) days without pay based upon his conduct during a traffic stop on November 21, 2008. Trooper Norfolk was afforded a due process hearing, during which his three (3) day suspension was upheld.

Thereafter, the Department of Safety held a Level IV Grievance hearing. On March 30, 2009, the Department of Safety notified Trooper Norfolk that the outcome of the Level IV Hearing was to uphold his three (3) day suspension.

Trooper Norfolk filed his Level V Grievance hearing request with the Civil Service Commission on April 20, 2009. Thereafter, on May 14, 2009, the matter was referred to the Administrative Procedures Division in the Secretary of State's Office for a contested case hearing. On August 19, 2009, the Grievant filed the Level IV letter. By ORDER entered on September 14, 2009, the hearing in this matter was continued past the 120th day after filing,[1] to allow the parties sufficient time to participate in discovery. The contested case was heard on October 21, 2009. The transcript was filed on November 24, 2009. Subsequently, as requested, the parties filed proposed findings of fact and conclusions of law. Thereafter, the Department of Safety filed another copy of the DVD of the traffic stop because the copy submitted during the hearing was not readable.[2]

SUMMARY OF EVIDENCE

Testimony from seven (7) witnesses was presented at the hearing: (1) Sergeant Lowell Russell; (2) Glenda K. Lawrence; (3) Captain Robert E. Melton, Interim Captain for the Memphis District and Captain of the Jackson District; (4) Susan Cook, Safety Human Resource Manager; (5) Trooper Marvin Norfolk, Grievant; (6) Lieutenant Kevin Noel Williams; and (7) Sergeant William H. Vandergrift.

Six (6) exhibits were entered into evidence:

EXHIBIT 1 — OPR File;

EXHIBIT 2 — DHR/DOP Rules & Safety General Orders;

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[1] *See* TENN. CODE ANN. § 8-30-328(c).
[2] *See* n.3, *infra*.

EXHIBIT 3 — December 3, 2008, letter;

EXHIBIT 4 — December 17, 2008, Memorandum;

EXHIBIT 5 — Grievant's Personnel File;

EXHIBIT 6 — November 23, 2008, letter; and

LATE FILED EXHIBIT 7 — Video of November 21, 2008, traffic stop.[3]

FINDINGS OF FACT

1. Mr. Norfolk began his employment with the Department of Safety in 1998.

2. On November 21, 2008, Trooper Norfolk was involved in a short pursuit that ended at the Baptist Memorial Tipton Hospital Emergency Room. Ms. Glenda K. Lawrence was the driver of the vehicle, a truck, involved in the pursuit. Ms. Lawrence's husband, a passenger in the truck, was being rushed by Ms. Lawrence to the emergency room because they correctly thought that he was having a heart attack.

3. Trooper Norfolk used the loud speaker to instruct Ms. Lawrence to exit her truck with her hands up. Trooper Norfolk had his hand on his weapon when Ms. Lawrence exited her truck with her hands up as high as she could physically raise them.

4. Upon exiting the truck, Ms. Lawrence began to explain that her husband was having a heart attack. In response, Trooper Norfolk told Ms. Lawrence that it didn't matter what was going on and that she needed to listen to him. Trooper Norfolk repeatedly told Ms. Lawrence that she should have called an ambulance. Trooper Norfolk harshly chastised Ms. Lawrence for her failure to stop when he had his lights and siren on. Ms. Lawrence was cooperative.

[3] Because the two videos that were submitted during the hearing as part of COLLECTIVE EX. 1, were not readable discs, the Department of Safety was asked to submit another copy of the video that was viewed during the hearing. Thereafter, on April 19, 2010, the Department of Safety filed a third disc, which contains a copy of the video of the November 21, 2008, traffic stop. This disc was then marked and entered into evidence as LATE FILED EX. 7.

5. Medical personnel came out of the hospital to get Ms. Lawrence's husband and take him into the hospital. Trooper Norfolk did not allow Ms. Lawrence to accompany her husband into the hospital.

6. Ms. Lawrence expressed concern for her husband's well-being and Trooper Norfolk continued to loudly and harshly lecture her.

7. Trooper Norfolk asked Ms. Lawrence to produce her driver's license, which she produced. Trooper Norfolk then walked away from Ms. Lawrence.

8. As Ms. Lawrence was asking for guidance, Trooper Norfolk called Sergeant Vandergrift and continued to talk to the Sergeant with his back to Ms. Lawrence.

9. Trooper Norfolk asked Ms. Lawrence for proof of insurance and then began talking to Trooper Ray who had arrived at the scene. Ms. Lawrence gave the proof of insurance to Trooper Norfolk and went back to her truck. Trooper Norfolk continued to talk and laugh with Trooper Ray.

10. Trooper Norfolk did not permit Ms. Lawrence to go into the hospital where her husband was being treated.

11. Trooper Norfolk again confronted Ms. Lawrence in a loud voice saying "ma'am you can't do anything I ask you."

12. During the confrontation, Trooper Norfolk points with the finger on his right hand in Ms. Lawrence's face.

13. Trooper Norfolk used a threatening demeanor toward Ms. Lawrence by pointing his finger at her and using a loud voice.

14. Ms. Lawrence was terrified during the confrontation with Trooper Norfolk.

15. The hospital chaplain came outside to tell Ms. Lawrence that her husband was having a heart attack and that she was needed inside. Understandably, Ms. Lawrence then became more upset. Trooper Norfolk interrupted the chaplain and said that Ms. Lawrence had to deal with him right now. Specifically, Trooper Norfolk told the chaplain that he had a "law issue" that she had to deal with at the moment.

16. Trooper Norfolk was rude to both Ms. Lawrence and the hospital chaplain.

17. Trooper Norfolk's conduct toward Ms. Lawrence was overbearing and rose to the point of badgering.

18. Trooper Norfolk was trained that all traffic stops are different and that troopers are to use common sense. Trooper Norfolk did not display any use of common sense during the traffic stop with Ms. Lawrence.

19. Trooper Norfolk did not adapt to the situation. Once he obtained Ms. Lawrence's driver's license, Trooper Norfolk could have let her go into the hospital and followed her in after he had finished his telephone call to his supervisor.

20. Although Trooper Norfolk knew that the medical emergency was real and that he could have talked to Ms. Lawrence after her husband received emergency medical treatment, he continued to detain Ms. Lawrence unnecessarily.

21. Ms. Lawrence was cooperative.

22. Ms. Lawrence was not drunk or disorderly which would require arrest.

23. Ms. Lawrence was not a flight risk.

24. When Trooper Norfolk determined that the medical emergency was real and that there were no aggravating factors, his detention of Ms. Lawrence should have stopped.

25. Trooper Norfolk should have been more compassionate toward Ms. Lawrence and her family.

26. A hospital doctor then came out and told Trooper Norfolk that Ms. Lawrence's husband was having a heart attack and that they were going to life flight him to another hospital. Only after the hospital doctor came out to speak to Ms. Lawrence did Trooper Norfolk allow Ms. Lawrence to go into the hospital. Once in the hospital, Trooper Norfolk did not immediately allow Ms. Lawrence to attend to her husband and his emergency medical situation.

27. Trooper Norfolk detained Ms. Lawrence in the Baptist Memorial Tipton Hospital Emergency Room parking lot for fourteen (14) minutes, during which he prevented her from going inside the hospital to care for her husband and from calling relatives on her cell phone to let them know that her husband was at the hospital.

28. Ms. Lawrence did not feel that she was free to leave the parking lot at any time during the fourteen (14) minutes Trooper Norfolk detained her.

29. The Department of Safety received a complaint from Ms. Lawrence's husband alleging that Trooper Norfolk was improper in his conduct toward Mr. and Mrs. Lawrence during the stop that occurred on November 21, 2008, in the Baptist Memorial Tipton Hospital Emergency Room parking lot.

30. Sergeant Lowell Russell, a 12 year veteran of the Department of Safety and assigned to the Office of Professional Responsibility (OPR) within the Department of Safety, investigated this matter for the department. All pursuits are reviewed by OPR.

31. Trooper Norfolk and Sergeant Russell were in the same class in 1998 at the Tennessee Highway Patrol academy.

32. The Department has been in the media for troopers violating policies and procedures.

33. Trooper Norfolk received a three (3) day suspension without pay for his conduct during the stop involving the Lawrences on November 21, 2008.

34. Trooper Norfolk and served the three (3) day suspension without pay on April 20, 21, and 22, 2009.

ANALYSIS *and* CONCLUSIONS OF LAW

Civil service appeals are heard *de novo* before an Administrative Judge. The Department of Safety, 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 on the Grievant complies with State law and the DHR/DOP RULES.[4] The Department of Safety has met this burden of proof by proving by the preponderance of the evidence that Trooper Norfolk was appropriately suspended for three (3) days without pay pursuant to the Department of Safety General Orders and the DHR/DOP RULES. It is determined that the Department of Safety properly suspended Trooper Norfolk's employment for three (3) days without pay.

I. TROOPER NORFOLK'S CONDUCT IS GROUNDS FOR DISCIPLINE UNDER THE DEPARTMENT OF HUMAN RESOURCES RULES.

DHR/DOP RULE 1120-10-.06(4) provides that the "[f]ailure to maintain satisfactory and harmonious working relationships with the public and fellow employees" is grounds for discipline. Trooper Norfolk violated this rule when he badgered Ms. Lawrence and detained her

[4] The applicable rules are entitled "Rules of the Tennessee Department of Personnel;" however, this department is now named the Tennessee Department of Human Resources. *See* TENN. CODE ANN. §§ 4-3-101(3) & 4-3-1701. Herein, the Rules of the Tennessee Department of Human Resources, TENN. COMP. R. & REGS. ch. 1120-10 (Disciplinary Action) (May 1999 (Revised)), will be referred to as "DHR/DOP RULES."

outside the hospital while knowing that her husband had a medical emergency. Trooper Norfolk had Ms. Lawrence's driver's license and knew that she was not a flight risk. Even though Ms. Lawrence was cooperative throughout their interaction, Trooper Norfolk continued to speak to her loudly and with a demeaning manner throughout the encounter, using words such as "ma'am you can't do anything I ask you" and "it doesn't matter what is going on." Trooper Norfolk repeatedly chastised Ms. Lawrence for not stopping when he turned on his emergency equipment. Trooper Norfolk continued to detain Ms. Lawrence even when the hospital chaplain came outside and told him that she was needed in the hospital. Likewise, Trooper Norfolk continued to loudly justify his actions when the doctor tried to explain to him about people's behavior under stress. Trooper Norfolk showed little concern for the urgency of Mr. Lawrence's medical emergency.

Both Captain Melton and Lt. Williams credibly testified that the incident should have been handled differently. Trooper Norfolk is a twelve (12) year veteran of the Highway Patrol, who has had the proper training to know how to handle such a situation in an appropriate manner. Trooper Norfolk was taught during his training that every situation is different and that he must adapt his behavior to fit the circumstances. Trooper Norfolk failed to do so in this situation. This failure furthered a negative image of the Department, not only with the Lawrences and the hospital staff, but also with the members of the public who became aware of the incident through an article in the local newspaper.

Trooper Norfolk failed to handle the traffic stop with Ms. Lawrence appropriately and in doing so failed to maintain a satisfactory and harmonious relationship with Ms. Lawrence or the hospital staff. It is determined that Trooper Norfolk's conduct is subject to disciplinary action under DHR/DOP RULE 1120-10-.06(4).

II. TROOPER NORFOLK'S CONDUCT VIOLATED THE DEPARTMENT OF SAFETY GENERAL ORDERS.

The TENNESSEE DEPARTMENT OF SAFETY, GENERAL ORDER 103 — OATH OF OFFICE AND OBLIGATIONS OF DOS EMPLOYEES, Section III — PROCEDURES FOR COMMISSIONED MEMBERS, subsection G.— CANNONS OF LAW ENFORCEMENT ETHICS, Article 7 — CONDUCT TOWARD THE PUBLIC provides:

> The law enforcement officer, mindful of his responsibility to the whole community, will deal with individuals of the community in a manner calculated to instill respect for its laws and its police service. The law enforcement officer shall conduct his official life in a manner such as will inspire confidence and trust. Thus, he will be neither overbearing nor subservient, as no individual citizen has an obligation to stand in awe of him nor a right to command him. The officer will give service where he can, and require compliance with the law. He will do neither from personal preference or prejudice but rather as a duly appointed officer of the law discharging his obligation.

Trooper Norfolk's conduct on November 21, 2008, failed to adhere to this ethical standard. As a trooper for the Tennessee Highway Patrol, Trooper Norfolk is held to a high standard of conduct, which he failed to maintain during his traffic stop of Ms. Lawrence. Trooper Norfolk's conduct toward Ms. Lawrence and the hospital staff reflects negatively upon the Department of Safety and the Tennessee Highway Patrol. Trooper Norfolk's conduct destroys the public's trust in law enforcement. A trooper functions under a public trust and is held to a higher standard than the ordinary citizen as his actions reflect on law enforcement and our system of justice.

No Tennessee State Highway Patrol Trooper, especially not one with the training and experience level of Trooper Norfolk, needs to chastise and badger a cooperative citizen of Tennessee who is upset and concerned for her husband during a medical emergency in the manner demonstrated by Trooper Norfolk. No reasonable person would believe that Ms. Lawrence was free to leave the presence of Trooper Norfolk and go inside the hospital. Trooper Norfolk was cavalier in his treatment of Ms. Lawrence — he turned his back to her to talk and

laugh with another trooper, he called his supervisor for instructions in front of her, and he instructed her to do unnecessary things such as turn off her cell phone. Trooper Norfolk bullied Ms. Lawrence throughout his interaction with her. Actions like those of Trooper Norfolk cause the Tennessee Highway Patrol to lose the public's trust.

This incident should have been handled differently and professionally. Ms. Lawrence was not a flight risk. Trooper Norfolk should have permitted her to go inside the hospital to speak to the medical staff and to be with her husband. Allowing Ms. Lawrence to attend to her husband's medical needs would not have imposed upon Trooper Norfolk's duty to enforce the law. Compassion, in these types of incidences, goes a long way in instilling good will with the public. Trooper Norfolk missed this opportunity to inspire confidence and trust in the Highway Patrol. Trooper Norfolk's conduct warrants disciplinary action.

The TENNESSEE DEPARTMENT OF SAFETY, GENERAL ORDER 103 — OATH OF OFFICE AND OBLIGATIONS OF DOS EMPLOYEES, Section III — PROCEDURES FOR COMMISSIONED MEMBERS, subsection G. — CANNONS OF LAW ENFORCEMENT ETHICS, Article 8 — CONDUCT IN ARRESTING AND DEALING WITH LAW VIOLATORS provides:

> . . . His office gives him no right to persecute the violator nor to mete out punishment for an offense. He, shall at all times, have a clear appreciation of his responsibilities and limitations regarding detention of the violator; he shall conduct himself in such a manner as will minimize the possibility of having to use force. . . .

Trooper Norfolk's conduct on November 21, 2008, failed to adhere to this ethical standard. Trooper Norfolk appeared to be persecuting Ms. Lawrence for her audacity in not stopping for his emergency equipment. Ms. Lawrence did not deny that she broke traffic laws. Ms. Lawrence was dealing with a medical emergency. Any reasonable person might react the same way. Ms. Lawrence, right or wrong, was trying to get to the emergency medical help that she

believed her husband needed immediately. Once they had arrived in the hospital emergency room parking lot, there was no reason for Trooper Norfolk to chastise, badger and detain Ms. Lawrence. Once Trooper Norfolk had Ms. Lawrence's driver's license, there was no reason for him to detain her any longer. Trooper Norfolk did not know Ms. Lawrence's husband's condition and, because of his detention of her, neither did Ms. Lawrence. Even when faced with hospital staff who said that Ms. Lawrence was needed inside, Trooper Norfolk still detained Ms. Lawrence. Trooper Norfolk's conduct warrants disciplinary action.

The TENNESSEE DEPARTMENT OF SAFETY, GENERAL ORDER 103 ─ OATH OF OFFICE AND OBLIGATIONS OF DOS EMPLOYEES, Section III ─ PROCEDURES FOR COMMISSIONED MEMBERS, subsection G.─ CANNONS OF LAW ENFORCEMENT ETHICS, Article 11 ─ ATTITUDE TOWARD PROFESSION provides:

> The law enforcement officer shall regard the discharge of his duties as a public trust and recognize his responsibility as a public servant. By diligent study and sincere attention to self-improvement, he shall strive to make the best possible application of science to the solution of crime, and in the field of human relationships, strive for effective leadership and public influence in matters affecting public safety. . . .

Trooper Norfolk's conduct on November 21, 2008, failed to adhere to this ethical standard. Tennessee highway patrolmen are held to a higher standard of conduct than the average citizen. From a human relationship standpoint, Trooper Norfolk failed the Department, the Lawrences, and the hospital staff. In doing so, Trooper Norfolk also failed the public he is sworn to protect and serve. Trooper Norfolk's PE's reflect that, in the past, his conduct toward the public and in the public arena has been cause for disciplinary action. Repeated misconduct in this regard warrants additional disciplinary action.

The TENNESSEE DEPARTMENT OF SAFETY, GENERAL ORDER 216-1 — ETHICS, COMPLIMENTS, COMPLAINTS AND DISCIPLINARY REGULATIONS, Section IX — CAUSES FOR DISCIPLINARY ACTION, subsection B. 3. UNBECOMING CONDUCT provides:

> 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.

Trooper Norfolk's conduct on November 21, 2008, was unbecoming. Trooper Norfolk's conduct in chastising, badgering and detaining Ms. Lawrence did not reflect favorably upon him or the Department. State Troopers should be seen as public servants who assist when needed. State Troopers, including Trooper Norfolk, have been trained to adapt themselves to each situation so that they may provide what is required in the particular situation. In this incident with the Lawrences, Trooper Norfolk should have known that assistance and compassion were required. Because Trooper Norfolk did not provide assistance or compassion, the Lawrences, the hospital workers, and the members of the public who read the local newspaper have cause to think that the Highway Patrol only cares about, in the words of Trooper Norfolk, "law issues" and not emergency medical issues. Trooper Norfolk's unbecoming conduct warrants discipline.

The TENNESSEE DEPARTMENT OF SAFETY, GENERAL ORDER 501 — ENFORCEMENT POLICY AND PROFESSIONAL CONDUCT, Section IV — MEMBER/VIOLATOR RELATIONS, subsection C., 2 & 3 provides:

> Once communication begins, the interaction between the member and the violator has been activated. Members shall:
>
> . . .

> 2. Present a professional image in dress, grooming, language, bearing and emotional stability;
>
> 3. Identify themselves and greet the violator with an appropriate title and in a courteous manner;
>
> . . .

The TENNESSEE DEPARTMENT OF SAFETY, GENERAL ORDER 501 – ENFORCEMENT POLICY AND PROFESSIONAL CONDUCT, Section V – CONDUCT TOWARD THE PUBLIC provides:

> A. All employees, mindful of their responsibilities to the citizenry of the state, will deal with individuals in a manner that will project an atmosphere of respect and courtesy toward the general public. A citizen's business dealings with the Department to obtain driver license, traffic crash reports, general information, etc., may be the only contact the individual has with the state government. All business should be handled as quickly, professionally, and courteously as possible.
>
> B. Employees will be courteous in their interactions with the public avoiding harsh, violent, threatening, profane, or insolent language or manner, and employees will maintain objective attitudes, regardless of provocation.

Trooper Norfolk's conduct on November 21, 2008, warrants discipline under GENERAL ORDER 501. Trooper Norfolk's conduct of badgering, chastising and detaining Ms. Lawrence did not project an atmosphere of respect and courtesy toward the general public. For Ms. Lawrence, the encounter with Trooper Norfolk was demeaning and terrifying. There was nothing Trooper Norfolk did during the fourteen minute encounter with Ms. Lawrence that could not have been done after Ms. Lawrence had accompanied her husband into the hospital emergency room. As Captain Melton explained, just because one has the right to do an act does not mean that the act should be done. Trooper Norfolk had an opportunity to handle the encounter with Ms. Lawrence quickly, courteously and professionally. It was not professional for him to chastise Ms. Lawrence in a demeaning manner, to detain her while her husband needed emergency medical treatment, to turn his back to her, to hold conversations with Trooper Ray and his

supervisor while she waited, nor to be confrontational with the chaplain and the doctor. Trooper Norfolk lost his objectivity from the beginning of the traffic stop at the emergency room to its conclusion fourteen minutes later.

Based upon the forgoing, Department of Safety has met this burden of proof by proving by the preponderance of the evidence that Trooper Norfolk was appropriately suspended for three (3) days without pay for his violation of the Department of Safety General Orders and the DHR/DOP RULES. It is determined that the Department of Safety properly suspended Trooper Norfolk's employment for three (3) days without pay. It is further determined that the Department of Safety was lenient in its discipline of Trooper Norfolk for his unprofessional conduct on November 21, 2008.

Accordingly it is hereby **ORDERED** that Trooper Norfolk's appeal is **DENIED** and the three (3) day suspension of Trooper Norfolk's employment is **UPHELD**.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 6th day of August, 2010..

MARY M. COLLIER
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 6th day of August, 2010..

THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE