



6-9-2010

DEPARTMENT OF SAFETY, Petitioner, v.
MAURICE DeVORE, Grievant

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BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION

IN THE MATTER OF:

DEPARTMENT OF SAFETY

Petitioner

V.

MAURICE DeVORE

Grievant

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Docket No. 26.19-106884J

INITIAL ORDER

This matter came to be heard on June 9 and 10, 2010, before Thomas G. Stovall, Administrative Judge, sitting for the Tennessee Civil Service Commission in Nashville, Tennessee. The Department of Safety (Department) was represented by Ms. Deborah Martin, Staff Attorney. The Grievant was not represented by counsel.

The subject of this hearing was the grievance filed by the Grievant as a result of the termination of his employment by the Department for negligence, insubordination and for the good of the service. After consideration of the record it is determined that the Grievant's termination should be **UPHELD**. This decision is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Grievant was a Programmer/Analyst 4 in the Department's Information Systems Division and had been employed by the Department since August 2001.
2. Throughout his tenure with the Department the Grievant had a history of disciplinary action based upon poor work performance and not following the directives of

his supervisors. On December 13, 2004, the Grievant received a written warning and on March 17, 2005, he served a one (1) day suspension, both for tardiness and insubordination.

3. Wayne Wilkerson is the Information Systems Manager and became the Grievant's supervisor in April 2008. The Grievant was working on a project to create a computer based system to be used by departmental personnel involved in school bus inspections known as the Pupil Transportation Project.

4. Mr. Wilkerson found the Grievant's work to be incomplete and filled with errors. He repeatedly sent the Grievant emails requesting that he be updated on the Grievant's progress with the project. He requested the Grievant provide him with task lists that would outline the tasks that needed to be completed and a timeline for their completion. The Grievant's responses to Mr. Wilkerson were either non-existent or incomplete. As a result of the Grievant's behavior Mr. Wilkerson issued him a Written Warning on May 28, 2008, for failure to follow directives and complete assigned tasks.

5. Upon issuing the Written Warning, Mr. Wilkerson met with the Grievant in the office of Paul Battenfield, the division director. Mr. Wilkerson and Mr. Battenfield discussed the Written Warning with the Grievant and what their expectations were for his future performance. The Grievant was instructed to provide Mr. Wilkerson with a task list by May 30, 2008. The Grievant failed to adequately comply with this directive and as a result a second Written Warning was issued to him by Mr. Wilkerson on June 5, 2008.

6. Mr. Wilkerson met with the Grievant on September 10, 2008, to discuss his annual performance evaluation. Mr. Wilkerson was critical of both the Grievant's job

performance and attendance. The Grievant became upset and told Mr. Wilkerson that he was “an idiot and a fool.” The Grievant declared “the meeting was over” and left the room.

7. As a result of this behavior, the Grievant received a three (3) day suspension on December 22, 2008, for insubordination and conduct unbecoming a state employee. The suspension was served January 7-9, 2009.

8. The Grievant’s job performance continued to be unsatisfactory. He failed to complete assignments timely or satisfactorily, usually offering unjustified excuses for his performance: lack of training, miscommunication, not understanding instructions, etc. He continued to be non-responsive to the emails sent him by Mr. Wilkerson, who orally advised the Grievant that he was subject to further discipline if his behavior continued.

9. On January 15, 2010, the Grievant was notified that he was being terminated for negligence, insubordination and for the good of the service. The effective date of the termination was February 18, 2010.

10. Throughout 2008 and 2009, the Grievant filed numerous complaints with the Department’s Human Resources Director alleging mistreatment by his supervisors. It would appear there was a pattern of the Grievant filing a complaint in response to some action being taken against him by his supervisors, whether it be formal discipline or an oral or email communication.¹

¹ Exhibit #11

RELEVANT LEGAL AUTHORITY

1. **Department of Human Resources Rule 1120-10-.06 Examples Of Disciplinary Offenses**
 - (2) Negligence in the performance of duties
 - (18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).
 - (24) For the good of the service.
2. **Department of Safety General Orders Nos. 102 and 216²**

CONCLUSIONS OF LAW

1. The Department has carried its burden of proof by a preponderance of the evidence that the Grievant's conduct constituted negligence and insubordination in violation of the Department of Human Resources rules and Department of Safety general orders and that his termination is justified for the good of the service.

2. The Grievant exhibited a consistent pattern of refusal to complete his assignments in a timely and satisfactory manner, to follow the instructions of his supervisors and to treat them with the respect and courtesy expected of a state employee. The record is replete with examples of the Grievant's failure to complete his required tasks and refusal to respond to Mr. Wilkerson's repeated requests for information on his work. Even after his suspension in January 2009, for his disrespectful comments to Mr. Wilkerson, his performance and attitude showed no improvement. This lack of change in behavior was in spite of Mr. Wilkerson's repeated warnings that the Grievant could be subjected to further discipline if his poor performance continued. When viewed in the

² Insubordination, unsatisfactory job performance, actions that reflect negatively on image of Department.

context of the Grievant's long disciplinary record with the Department for essentially the same behavior, the decision to terminate his employment was clearly appropriate for the good of the service.

3. Based upon the foregoing, it is hereby **ORDERED** that the Grievant's termination be **UPHELD**.³

This Initial Order entered and effective this 26th day of August, 2010.

Thomas G. Stovall
Administrative Judge

³ Attached to the Department's Proposed Findings of Fact and Conclusions of Law was the case of *Devore v. Deloitte & Touche*, 1998 WL 68985 (Tenn. Ct. App.) Reference was also made to this case in the Department's argument contained within the Proposed Findings. The case pertains to the Grievant's work history in the private sector prior to his employment by the Department and has no relevance to this proceeding. Moreover, the Department did not make the Grievant's employment history prior to his work for the Department an issue in the hearing. Accordingly, the case of *Devore v. Deloitte & Touche* was not considered by this Judge and has no bearing on the decision made in this Initial Order.

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
26th day of August, 2010.

Thomas G. Stovall, Director
Administrative Procedures Division