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CHILDRENS SERVICES, Petitioner, v.
TIANDRA DEBNAM, Grievant.

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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

TENNESSEE DEPARTMENT OF CHILDRENS SERVICES, Petitioner,))))
v.) Docket No. 26.43-102829J
TIANDRA DEBNAM, Grievant.)))

INITIAL ORDER

This contested case came on to be heard on April 7, 2010 in Nashville, Tennessee before Administrative Judge Joyce Grimes Safley, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Civil Service Commission of Tennessee. Ms. Julie Randall Pablo, Assistant General Counsel for the Department of Children’s Services (“DCS”), represented the State or DCS. The Grievant, Ms. Tiandra Debnam, was present and was represented by Ms. Lorraine Wade, attorney, of the Nashville, Tennessee Bar.

The transcript of this matter was filed on May 20, 2010. DCS, as instructed, submitted its “Proposed Findings of Fact and Conclusions of Law” on June 24, 2010, making this matter ripe for consideration.¹

The subject of this hearing was Grievant’s appeal of her termination from the Department of Children’s Services. Grievant was terminated for allegedly violating the following Tennessee Department of Human Resources Rules and a

¹ It is noted that Initial Orders are due within ninety (90) days of the submission of the parties’ “Proposed Findings of Fact and Conclusions of Law”. The Initial Order in this matter should be issued on or before September 24, 2010.

Tennessee Department of Children’s Services Rule.: (1) TENNESSEE DEPARTMENT OF HUMAN RESOURCES RULE 1120-10-.06(2) – Negligence in the performance of duties; (2)(TENNESSEE DEPARTMENT OF HUMAN RESOURCES RULE 1120-10-.06(3) – Careless, negligent or improper use of State property or equipment; (3) TENNESSEE DEPARTMENT OF HUMAN RESOURCES RULE 1120-10-.06(7) –Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment; (4) TENNESSEE DEPARTMENT OF HUMAN RESOURCES RULE 1120-10-.06(8) – Gross misconduct or conduct unbecoming an employee in the State service; (5) TENNESSEE DEPARTMENT OF HUMAN RESOURCES RULE 1120-10-.06(12) – Participation in any action that would seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the State service or that would interfere with the ability of management to manage; TENNESSEE DEPARTMENT OF HUMAN RESOURCES RULE 1120-10-.06(15) – Acts that would endanger the life and property of others; (6) TENNESSEE DEPARTMENT OF CHILDREN’S SERVICES ADMINISTRATIVE POLICY 4.22 – Job Requirement [for a valid Driver’s License]: An employee shall maintain any qualifications required for the position he/she holds. Employees required to have licenses, permits and/or certification shall not allow the expiration to lapse.²

² At the contested case hearing, DCS also alleged that Grievant had been terminated because she had violated DCS Administrative Policy 4.12 – “ Suspension/Termination of Staff for Alleged Criminal Acts”, and asked the undersigned to take “Judicial Notice” of DCS Administrative Policy 4.12. Specifically, DCS alleged that Grievant had failed to report an “arrest” to DCS within 24 hours of its occurrence. A careful review of Grievant’s termination letter does not reveal that DCS Administrative Policy 4.12 was cited as a reason for Grievant’s

After consideration of the testimony and evidence presented, the arguments of counsel, and the entire record in this matter, it is determined

termination. Accordingly, DCS's argument that Grievant should be terminated because she was "arrested", "indicted", or "convicted" for alleged criminal acts must fail for lack notice of due process.

T.C.A. §8-30-331 provides that civil service employees (who have successfully completed their probationary period) have a property right to their positions. Because state of Tennessee civil service employees have "property rights" in their jobs, such employees must be afforded constitutional due process before the State may legally deprive the employee of his or her job. Hinson v. City of Columbia, 2007 WL 4562886 (Tenn. Ct. App. 2007). . The requirements for "minimum due process" *include proper notice*. Sanford v. Tennessee Dept. of Environment, 992 S.W. 2d 410, 414 (Tenn. Ct. App. 1998), *App. for Perm. to Appeal Denied* (Tenn. 1999). If a Grievant is not provided with adequate notice of the charges made against him or her, such a Grievant has been denied due process.

T.C.A. §8-30-331 states:

Minimum due process.---(a) Employees who have successfully completed their probationary period have a "property right" to their positions. Therefore, no suspension, demotion, dismissal or any other action which deprives a regular employee of such employee's "property right" will become effective until minimum due process is provided as outlined below.

T.C.A. §8-30-331(b) specifically provides:

Minimum due process consists of the following:

(1) The employee shall be notified of the charges. Such notification should be in writing and shall detail times, places, and other pertinent facts concerning the charges.

Proper notice, for minimum due process purposes, has been defined as "notice reasonably calculated under all the circumstances to apprise interested parties of the claims of the opposing parties." Gluck v. Civil Service Commission, 15 S.W. 3d 486, 491 (Tenn. Ct. App. 1999), *App. for Perm. to Appeal Denied* (Tenn. 2000). Procedural due process does not require "perfect, error free governmental decision-making". Qualls v. Camp, 2007 WL 2198334 *4 (Tenn.Ct. App. 2007). However, it does require affording a Grievant a "relatively level playing field in a contested case hearing". *Id.* at 4. Accordingly, violation of DCS Administrative Policy 4.12 cannot be raised for the first time at the contested case hearing. To allow such would be to violate Grievant's due process rights.

Even if DCS had properly notified Grievant that her termination was based, in part, upon her violation of Administrative Policy 4.12, **the evidence is undisputed that Grievant immediately notified her DCS supervisor that she was at the police station for a traffic stop for a suspended license, and the related circumstances.** (Emphasis added.) Accordingly, Grievant certainly notified her supervisors that she was taken to the police station due to a suspended license. DCS's argument on this issue must fail.

that the Department failed to meet its burden of proof, by a preponderance of the evidence, that Grievant violated the above listed policies and procedures. The exception to the above is that Grievant, unbeknownst to Grievant and despite DCS's performing a "background check" and "verifying" the driver's license Grievant furnished to DCS, had a "suspended" driver's license. However, Grievant's discovery of the status of her driver's license (suspended) was reported to her DCS supervisors immediately *at the time*, and *was dealt with immediately by her supervisors at the time she discovered it was still suspended*.

Further, the undersigned agrees with Grievant that she cannot be disciplined twice for the same offense. See Cope v. Tennessee Civil Service Commission, 2009 WL 1635140 at 6 (Tenn. Ct. App. 2009) (The principles of fundamental fairness support that a civil service employee should not be punished twice for the same conduct.)

Accordingly, considering all the facts and circumstances of this matter, it is **ORDERED** that Grievant be **REINSTATED TO HER POSITION WITH THE DEPARTMENT OF CHILDREN'S SERVICES AND MADE WHOLE**.

FINDINGS OF FACT

1. New Visions Youth Development Center, located in the metropolitan Nashville, Tennessee area, is a "hard-wire" juvenile offender facility operated by the Tennessee Department of Children's Services (DCS).

The facility houses female juvenile felony offenders, ages 13 through 19. It is the only “hard-wire” facility for juvenile female offenders in Tennessee. In addition to the on-site school that New Visions offers, the facility also offers alcohol and drug treatment, anger management, mental health services, family therapy, and other rehabilitative services.

2. Grievant was employed with DCS as a Children’s Services Officer (CSO) at the New Visions Youth Development Center on January 7, 2007.

3. Prior to her employment with DCS, Grievant submitted an employment application along with her driver’s license and other documents required for employment.

4. DCS conducted its required pre-employment background check on Grievant: checking for any criminal record, checking to ascertain that her driver’s license was current, etc.

5. Grievant was notified that “everything checked out” and she began work as a CSO on January 7, 2007.

6. Grievant’s personnel file, including Grievant’s evaluations and any past discipline or commendations, was not offered as an exhibit by either party.³

7. As a CSO, Grievant worked the “night shift” at New Visions, monitoring students’ activities and providing security. She was required to do

³ Grievant’s personnel file would have been relevant and material to this case, and it is noted that it is usual and customary at civil service cases for one party or the other, or both parties by stipulation, to enter the personnel file into evidence.

security checks around the facility, including perimeter checks. Grievant performed the “perimeter checks” with another person for safety reasons, rather than checking the facility’s perimeter during the night shift by herself.

8. Prior to Grievant’s employment with DCS in January 2007, Grievant had a series of bumbling missteps with the Davidson County traffic court and the Tennessee Department of Safety involving traffic violations, lack of proof of insurance, failure to appear in court for traffic violations, a summons for failing to appear in court, a suspended driver’s license, being stopped for two traffic stops when she had a suspended driver’s license (one stop was for having expired tags on her car in July 18, 2005; the second traffic stop was on October 25, 2006 for speeding.

9. After the first citation for a suspended driver’s license⁴ and expired tags, Grievant somewhat cavalierly and erroneously believed that she did not have to appear in court on the citation. Rather, sometime after the court date, Grievant sent in the amount of the “fine”, and believed that the matter was “taken care of.”

10. After Grievant’s October 25, 2006 traffic stop for “speeding”, and her second citation for “driving on a suspended driver’s license”, Grievant finally began to understand that she was in a legal situation which wouldn’t just “go away” on its own, but which she would need to address.

⁴ Neither party introduced any material evidence which explained why Grievant had a “suspended license” to begin with when she was stopped by the police for a traffic stop on July 18, 2005. Grievant made some vague references to an earlier traffic mishap or accident which occurred sometime prior to her license being suspended, which involved her not having proof of insurance and later having to pay \$7000 .

11. Accordingly Grievant hired attorney Paul Walwyn to “straighten out” her legal predicament.

12. According to Grievant, she paid “\$7000.00”, and attorney Walwyn “took care of” her traffic citations and fines, and told her the case was closed. Grievant believed the matter was concluded, and she believed her driver’s license was restored and “everything had been handled.”⁵

13. On August 2, 2007, Grievant was the subject of a traffic stop by Metro Nashville - Davidson County police. When Grievant was pulled over by the police, the police informed her that she was driving on a suspended license. The police would not release her to drive, but took her to the police station. After Grievant arrived at the police station, the police called her attorney, Mr. Walwyn, received an explanation from attorney Walwyn, and released Grievant without booking her or requiring her to post bond.

14. Grievant called her immediate DCS supervisor, Mr. Jeffrey Moore, from the police station. Grievant told Mr. Moore what had happened. Mr. Moore sent two CSO’s to pick up Grievant during the CSOs’ break period.

15. At the time of Grievant’s August 2, 2007 incident, Darrell Taylor was the Security Manager at New Visions, and Kwan Hancock was the Superintendent of New Visions.

⁵ After Grievant was later stopped for her third traffic stop with a suspended license, Grievant testified that after attorney Walwyn told her everything was “taken care of” she “didn’t know [she] was supposed to go to Foster Avenue [Tennessee Department of Safety] to get [her] license reinstated.” Should the Grievant have shown a little bit more “get up and go” and “initiative”, and followed up to make sure everything was indeed “okay”? The answer is obviously “yes”. However, that is not the issue in this case. It is hoped that Grievant has learned a valuable lesson from her lack of initiative back in 2006.

16. After Grievant's August 2, 2007 traffic stop, Superintendent Kwan Hancock was also notified of the incident. Superintendent Hancock consulted "Personnel" about the proper action to take, and was advised by "Personnel" that Grievant must have her driver's license reinstated within thirty (30) days or she would be terminated from her position at DCS. Based upon their instructions from Superintendent Hancock, both Security Manager Taylor and Mr. Moore also instructed Grievant to get her driver's license reinstated within thirty days or she would be terminated.

17. Grievant went through the proper steps with the Tennessee Department of Safety to have her driver's license reinstated before thirty days had expired.

18. Superintendent Hancock was the person who made the "corrective action" to require Grievant to have her driver's license reinstated within thirty days of August 2, 2007 or be terminated.

19. The Security Manager at the time, Darrell Taylor, testified that "Ms. Debnam met all the criteria in regards to getting her license back current and, to my understanding, it was over." Mr. Moore testified that Grievant "got her license back, she showed it to me, we made a copy of the license and put it in her file." Mr. Moore thought "it was over and done with."

20. Thereafter, Grievant thought everything was "fine". Her driver's license was "current", and she continued working as a CSO at New Visions.

21. Around a month after Grievant had her driver's license reinstated, a new position, "Recreational Officer", became available. Grievant applied for the new position, and received the Recreational Officer position. According to Grievant and Mr. Taylor, the new "Recreational Position" was a promotion. Dr. Keisha Bean, the regional Psychologist for DCS Juvenile Justice, stated that she "couldn't speak exactly about [whether the recreational position] was a promotion."

22. Grievant's job at New Visions continued without incident until several months later when Grievant was asked to testify at a May 13, 2008 Step 4 Civil Service Hearing involving Darrell Taylor's termination.

23. On May 21, 2008, Ted Martinez, Executive Director of Administration and Compliance, requested "an investigation" via e-mail to Mr. David Shoemaker based on CSO Debnam's testimony that "she was not 'arrested' during the event in question, but was rather picked up by the police, taken to the station, but never processed (arrested). CSO Debnam indicated that she had previously lost her driver's license, not informed the facility and driven a state vehicle with an invalid license." Mr. Martinez also expressed concern about other employees' testimony at the Level IV Hearing for Mr. Taylor: "I am also very concerned that all staff were coached in how to respond during the hearing and question if they were tampered with by Mr. Taylor and/or his lawyer."

23. The current case against Grievant “re-opened” in May 2008 because Mr. Martinez asked Internal Affairs to re-open an investigation into Grievant’s August 2, 2007 traffic stop incident.

24. Ms. Christina Daughtery, Internal Affairs Investigator for DCS, stated that the current case (against Grievant) started when she was asked to look into testimony given by four employees in the Level IV hearing regarding Mr. Taylor’s termination.

25. Grievant denied driving a state vehicle with the knowledge that she did not have a valid driver’s license.

26. DCS entered a “log” into evidence. On July 9, 2007, the log reflected that “TDebnam” took a student to Vanderbilt Medical Center. On October 18, 2007 the log reflected that “TDebnam” did a “perimeter check”. Ms. Debnam denied signing the log or driving a state vehicle on the above dates.

27. Ms. Daughtery, Internal Affairs Investigator, did not ask Grievant Debnam if she had signed the log on the dates in question, nor did she ask Grievant Debnam if she drove a state car without a valid driver’s license.

28. Ms. Daughtery testified that she had no personal knowledge that Grievant Debnam had transported any student to Vanderbilt Medical Center by herself, nor does she have personal knowledge that Grievant Debnam drove a state vehicle while not possessing a valid driver’s license.

29. Grievant's testimony that she thought her lawyer, Mr. Walwyn, had "taken care of everything" regarding her suspended license, was credible. Frankly, Grievant did not act in a very mature or responsible fashion by letting Mr. Walwyn and Grievant's mother "take care of everything" concerning her traffic tickets, paying monies owed, and dealing with the court actions regarding her suspended license; however, Grievant's testimony was credible that she blithely accepted that everything regarding her suspended license was "taken care of".

30. The portion of the "log" which DCS offered into evidence to support its contention that Grievant drove a state vehicle while she did not have a valid driver's license was not identified by Grievant. In fact, Grievant specifically stated that one of the signatures was "not her writing". The signature did not look like the signature which occurred later in the log which Grievant identified as her "writing".

31. DCS did not show that Grievant intentionally misled DCS about the status of her driver's license when she was hired. Rather, Grievant's assertion-+ that she was reassured that everything was "okay" with her driver's license was supported when DCS did its background and criminal check on Grievant pre-hiring, found nothing amiss, and then hired her.

CONCLUSIONS OF LAW

1. The Department of Children's Services bears the burden of proof in this matter to show that Grievant violated Tennessee Department of Human Resources Rules and DCS Administrative Policies,

2. Rule 1120-10.02 of the *Rules of the Tennessee Department of Personnel* provides as follows:

A career [civil service] employee may be warned, suspended, demoted or dismissed by his appointing authority *whenever legal or just 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. An executive employee serves at the pleasure of the appointing authority. (Emphasis added)

3. As defined by the *Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies*, Rule 1360-4-1-.02(7), "preponderance of the evidence" means the greater weight of evidence, or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion.

4. The Petitioner, Department of Children's Services, charges Grievant with violating the following rules and regulations: (1) TENNESSEE DEPARTMENT OF HUMAN RESOURCES RULE 1120-10-.06(2) – Negligence in the performance of duties; (2)(TENNESSEE DEPARTMENT OF HUMAN RESOURCES RULE 1120-10-.06(3) –Careless, negligent or improper use of State property or equipment; (3) TENNESSEE DEPARTMENT OF HUMAN RESOURCES RULE 1120-10-.06(7) –Failure to obtain or maintain a current license or certificate or other

qualification required by law or rule as a condition of continued employment;

(4) TENNESSEE DEPARTMENT OF HUMAN RESOURCES RULE 1120-10-.06(8) – Gross misconduct or conduct unbecoming an employee in the State service; (5) TENNESSEE DEPARTMENT OF HUMAN RESOURCES RULE 1120-10-.06(12) – Participation in any action that would seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of the State service or that would interfere with the ability of management to manage; TENNESSEE DEPARTMENT OF HUMAN RESOURCES RULE 1120-10-.06(15) – Acts that would endanger the life and property of others; (6) TENNESSEE DEPARTMENT OF CHILDREN’S SERVICES ADMINISTRATIVE POLICY 4.22 – Job Requirement [for a valid Driver’s License]: An employee shall maintain any qualifications required for the position he/she holds. Employees required to have licenses, permits and/or certification shall not allow the expiration to lapse.

5. T.C.A. §8-30-331 provides that civil service employees (who have successfully completed their probationary period) have a property right to their positions.

6. Because State of Tennessee civil service employees have “property rights” in their jobs; such employees must be afforded constitutional due process before the State may legally take an adverse action against an employee’s job. Hinson v. City of Columbia, 2007 WL 4562886 (Tenn. Ct. App. 2007). Grievant was afforded due process and timely filed her appeal of her termination.

7. On August 2, 2007, Grievant called her immediate DCS supervisor, Mr. Jeffrey Moore, from the police station to tell him that she had been taken to the police station due to her license being suspended. Grievant told Mr. Moore what had happened. Mr. Moore sent two CSO's to pick up Grievant during the CSOs' break period.

8. At the time of Grievant's August 2, 2007 incident, Darrell Taylor was the Security Manager at New Visions, and Kwan Hancock was the Superintendent of New Visions. Security Manager Taylor met with Grievant and discussed her suspended driver's license.

9. Immediately after Grievant's August 2, 2007 traffic stop, Superintendent Kwan Hancock was also notified of the incident. Superintendent Hancock consulted "Personnel" about the proper action to take, and was advised by "Personnel" that Grievant must have her driver's license reinstated within thirty (30) days or she would be terminated from her position at DCS. Based upon their instructions from Superintendent Hancock, both Security Manager Taylor and Mr. Moore also instructed Grievant to get her driver's license reinstated within thirty days or she would be terminated.

10. Superintendent Hancock took the "corrective action" to require Grievant to have her driver's license reinstated within thirty days of August 2, 2007 or be terminated. Because Grievant's three supervisors discussed Grievant's lack of a valid license, counseled her regarding her driver's license suspension, ordered her to drive no State vehicles until she had a valid driver's

license, and gave her a deadline to comply (thirty days) or be terminated, discipline was taken against Grievant in August 2007.

11. The evidence preponderates that Grievant was disciplined in August 2007 for her failure to have a valid Tennessee driver's license.

12. Thereafter, Grievant received a new job position for which she had applied. There is no indication from the record that Grievant engaged in any kind of misconduct after the August 2, 2007 incident which would have prevented her from getting the new position.

13. Principles of fundamental fairness dictate that a civil service employee should not be punished twice for the same conduct. Cope v. Tennessee Civil Service Commission, 2009 WL 1635140 at 6 (Tenn. Ct. App. 2009). *See also* Ladnier v. City of Biloxi, 749 So. 2d139 (Miss. Ct. App. 1999) (If a civil servant is disciplined once for certain misconduct, good cause would not then exist to sustain the employee's later discharge for the same event and misconduct.)

13. Grievant cannot be terminated in December 2008 for conduct which occurred in 2007, when she was disciplined for the same conduct in 2007.

14. DCS presented no transcripts of any Level IV hearings or other documents and writings which would indicate that Grievant gave conflicting statements or misinformation. While Grievant did not impress the undersigned with her initiative and acumen in addressing her earlier traffic violations woes,

the evidence preponderates that Grievant believed the traffic violations had been taken care of before she applied for her CSO position at DCS. Grievant's belief that "everything was fine" was reinforced by DCS's criminal and background check which failed to indicate any problem with Grievant's driver's license or any arrests/traffic violations. In short, Grievant's testimony was credible.

15. The Department of Children's Services has failed to meet its burden of proof.

16. Because the evidence does not preponderate that Petitioner has engaged in later misconduct or violated Human Resources' or DCS's policies and procedures, it is not necessary to address discipline, because no discipline is required.

17. For all the above reasons, Petitioner shall be **REINSTATED TO HER POSITION WITH DCS, AND MADE WHOLE WITH REGARD TO SALARY AND BENEFITS.**

It is so ordered.

Entered and effective this 11th day of August, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division

