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11-12-2009

TENNESSEE DEPARTMENT OF SAFETY,  
Department/, Petitioner, vs. VINCENT  
TUROCY, Grievant/, Respondent

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**BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION**

<b>TENNESSEE DEPARTMENT OF SAFETY,</b>	]	
<i>Department/Petitioner,</i>	]	
vs.	]	<b>DOCKET # 26.19-103467J</b>
	]	
<b>VINCENT TUROCY,</b>	]	
<i>Grievant/Respondent.</i>	]	

**INITIAL ORDER**

This contested administrative case was heard in Nashville, Tennessee, on November 12, 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, Vincent Turocy, was represented by his legal counsel, Mr. P. Brocklin Parks. Upon conclusion of the hearing, the matter was taken under advisement pending submission of the hearing transcript and the parties' Proposed Orders. Proposed Orders were filed on January 4, 2010, 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 May 20, 2009 to consider possible disciplinary action against the Grievant for failing to perform the required number of vehicle inspections during 2008. Based on his analysis of the facts, and upon applying the law, the Commissioner suspended the Grievant for one (1) day without pay. The Grievant appealed that decision.

This contested administrative proceeding is a Level V Disciplinary Hearing convened at the Grievant's request, to consider his challenge to the sanction imposed by the Commissioner of the Department of Safety for violations of State Department of Personnel Rules & Regulations, and Departmental General Orders. Upon consideration of the evidence and arguments, and the entire record, it is determined that the Grievant

failed to perform the required number of vehicle inspections, as charged, and that the proper disciplinary action for that failure is a one (1) day suspension without pay. This determination is based on the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

**Stipulated Findings of Fact:** <sup>1</sup>

1. The Grievant was employed by the Department of Safety at all times in 2008, and was on active duty until November 4, 2008.
2. The Grievant was placed on medical leave status under a doctor's care due to an in-line of duty injury [a broken finger] which occurred on November 4, 2008.
3. The Grievant remained on medical leave from November 4, 2008 until January 16, 2009.
4. Prior to November 4, 2008, the Grievant had completed 21 Level 3 vehicle inspections.
5. As a result of completing only 21 of the required 32 inspections, the Grievant lost his certification to perform Level 3 inspections.
6. After returning from medical leave, the Grievant attended and completed the 40-hour training course for Level 3 certification, and regained his certification in April of 2009.
7. In the past, troopers who have failed to maintain their certification by completing 32 Level 3 inspections annually have received a two-day suspension.
8. Prior to November 4, 2008, the Grievant's overall activity was above average.

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<sup>1</sup> At the outset of the hearing, the parties announced their stipulation of agreed-upon facts, which are restated here as the Findings of Fact.

9. The parties stipulated to the admissibility of the Department of Safety's Office of Professional Responsibility (OPR) Investigative File related to this case [Hearing Exhibit #1], and the language contained in Department of Safety General Orders 216 and 900 [Included in Exhibit #1].

**Other Findings of Fact:<sup>2</sup>**

10. The Commercial Vehicle Safety Alliance Operational Policy recommends that each inspector complete eight (8) inspections per quarter.

11. All State Troopers are required to maintain their Level 3 inspection certification because they must perform such inspections any time they stop a commercial vehicle. Doing so helps to keep the highways safe for the driving public by allowing Troopers to remove unqualified drivers from the road. Failure to do so is detrimental to the overall goals of the Department. A Trooper without the proper certification cannot perform the inspection.

12. The Department of Safety's Office of Professional Responsibility (OPR) Investigative File related to this case contains a summary of the Grievant's prior disciplinary actions. That summary shows that the Grievant received two (2) written reprimands [one in 2001 for "Acts to endanger lives of property of others;" and another in 2005 for "Violation of General Orders."] in addition to a one-day suspension in 2005 for "Failure to Obey Orders;" and a ten-day suspension in 2007 for "Unprofessional Conduct."

**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

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<sup>2</sup> Although not stipulated by the parties, these Findings are supported by the Hearing Record.

generally assigned to the party seeking to change the present state of affairs with regard 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 failing to complete 32 Level 3 vehicle inspections in 2008; and that the appropriate disciplinary response to that failure is a one (1) day suspension without pay.

2. The Department of Safety has promulgated certain General Orders that are binding on, and govern the conduct of its law enforcement officers. Those orders reflect the Department's determination that, due to the sensitive and highly visible nature of their positions, Highway Patrol officers may, in certain instances, be held to a different, and sometimes higher, standard of conduct than other State employees. Among those Orders are General Order #216-1, *Ethics, Compliments, Complaints and Disciplinary Regulations*; and General Order #900, *Commercial Vehicle Inspections*. The Department has charged the Grievant with violating the following Orders.

- **DEPARTMENT OF SAFETY, GENERAL ORDER 900**

**[24 October 2008]:**

**Commercial Motor Vehicle Inspections:**

**I. Purpose:**

\* \* \*

. . . The purpose of safety inspections is to examine and ensure compliance of Federal Motor Carrier Safety Rules and Regulations and Tennessee State Laws.

**II. Policy:**

**It shall be the policy of the Department of Safety (DOS) to establish inspection procedures for drivers and commercial vehicles and require members of the Tennessee Highway Patrol (THP) to actively enforce all applicable laws** relative to the safe operation of commercial motor vehicles. **Members are required to conduct vehicle and driver inspections in order to detect and cite any violations that represent a hazard to the motoring public. . .**

**III. Procedures for Conducting Inspections:**

\* \* \*

**B. Inspection Levels:**

\* \* \*

**3. Level III – Driver only inspection, driver license, medical certificate, duty status and other required documents;**

\* \* \*

**F. Annual Certification:**

\* \* \*

**2.** After annual certification, each member is required to complete **thirty-two (32) inspections annually** to maintain certification.

**3.** **If a member fails to complete the annually required thirty-two (32) inspections, this will be cause for disciplinary action** and the member shall be required to attend the necessary training to regain certification. Upon completion of the training, the member shall complete thirty-two (32) inspections to gain full certification.

[Bold emphasis added throughout text.]

And,

• **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;

\* \* \*

**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. 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.

\* \* \*

**21. NEGLECT OF DUTY:**

a. **Employees shall not be inattentive to duty or neglect their duties.**

\* \* \*

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

\* \* \*

**(6) Failure to submit written or verbal reports when required.**

\* \* \*

[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 his 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.

\* \* \*

(2) Negligence in the performance of duties.

The Department alleged that, in addition to violating the Department's General Order prohibiting "Neglect of Duty," the Grievant is guilty of violating the above Rule 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 rules," [General Order 216-1,IX,B,1] such as a Departmental General Order or a Department of Personnel Rule or Regulation. In this case, the Grievant violated both. General Order 900 requires all State Troopers to complete thirty-two (32) Level 3 vehicle inspections annually, and provides that failure to do so "will be cause for disciplinary action." The Grievant admits that he only completed twenty-one (21) inspections in 2008, but argues that he should not be held accountable for his failure because he broke his finger on November 4 of that year, and was on medical leave through the end of the year. The Department counters that the Grievant neglected his duties by waiting until the end of the year to complete the required inspections. Had he followed the Commercial Vehicle Safety Alliance Operational Policy, he would have completed eight (8) inspections per quarter. At that rate he would have completed at least twenty-four (24) inspections by the end of

September. Instead, he had only done twenty-one (21) by the first week in November, when he suffered the injury to his finger, and was unable to work for the rest of the year. While his injury was unfortunate, it does not excuse the Grievant's failure to keep up with his assigned tasks in a timely manner. It is concluded that the Grievant neglected his duty by failing to complete at least 24 inspections by the end of the third quarter of 2008, and by waiting until the end of the year to try to complete the requisite number of inspections for the year.

5. It must be kept in mind that the Grievant's failure to complete the required number of inspections is not merely a "technical" violation of a rule or Departmental Order - - it was a failure that had real-world consequences on the Department's mission that extended well into the following year. Because the Grievant failed to complete the required number of inspections, he lost his Level 3 Inspection Certification. He thus rendered himself unqualified to perform a vital part of his duties as mandated by General Order 900: "Members are required to conduct vehicle and driver inspections in order to detect and cite any violations that represent a hazard to the motoring public." He did not regain that certification until April 2009. During the interim, when he stopped commercial vehicles for traffic violations, he was not authorized to perform the driver safety inspections that are designed to remove unqualified drivers from the road. And, in April 2009, when his attendance at the 40-hour re-certification class required that he be relieved of his regular duties, other officers had to either work overtime or be pulled from their own assignments to assume the Grievant's duties.

6. 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. [*See*, Department of Safety General Order 216-2,IV,A, and 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. 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.) Suspension

without pay is one of those options. Rule 1120-10-.07(4), TENN. COMP. R. & REGS. Pursuant to that regulation, “After minimum due process is provided, a suspension without pay may be issued by the appointing authority<sup>3</sup> for one (1) to thirty (30) days.” Rule 1120-10-.07(4)(a), TENN. COMP. R. & REGS. The record establishes, by a preponderance of the evidence, that the Grievant’s conduct violated provisions of the Departmental General Orders, and *Rules of the Department of Personnel*. His failure, while not egregious, still warranted a measured disciplinary response. The record also reflects that, prior to his neglect of duty in the instant case, the Grievant had been employed by the Department for several years, and that in addition to a couple of written reprimands, he has been suspended twice previously: one (1) day in 2005 for “Failure to obey orders;” and ten (10) days in 2007 for “Unprofessional conduct.” Given the nature of the Grievant’s failure in this case, and the impact it had on the Department, the lesser sanctions of a verbal or written warning (*See*, Rule 1120-10-.07(2) & (3), TENN. COMP. R. & REGS.) fail to convey the seriousness of the situation. On the other hand, in light of his generally acceptable conduct during his tenure with the Department, the harsher sanctions of transfer, demotion or termination (*See*, Rule 1120-10-.07(5) & (6), TENN. COMP. R. & REGS.) would have been too severe. The disciplinary sanction imposed by the Commissioner struck a responsible balance between those two extremes. Although the Department has, in the past, suspended Troopers for two (2) days for failure to complete their required inspections, the Commissioner only imposed a one (1) day suspension in the Grievant’s case, according proper consideration to the specific facts of this case.

7. 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.

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<sup>3</sup> In this case, the appointing authority was the Commissioner of the Department of Safety.

Accordingly, IT IS HEREBY ORDERED that the Tennessee Department of Safety has established by a preponderance of the evidence that the Grievant, Vincent Turocy, acted in violation of *The Rules of the Tennessee Department of Personnel* and Department of Safety General Orders, by failing to perform the required number of Level 3 Commercial Vehicle Inspections during 2008.

IT IS FURTHER ORDERED that the appropriate disciplinary sanction for the Grievant's conduct is a one (1) day suspension without pay.

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

Entered and effective this 8th day of February, 2010.

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J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 8th day of February, 2010.



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Thomas G. Stovall, Director  
Administrative Procedures Division