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Department of General Services, Petitioner, v. Patrice Sherrell, Grievant.

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BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION

IN THE MATTER OF: **Department of General Services,** **Petitioner,** **v.** **Patrice Sherrell,** **Grievant.**	**DOCKET NO: 26.10-101697J**

INITIAL ORDER

This matter was heard on April 28, 2010, before Bettye Springfield, Administrative Judge, assigned by the Secretary of State, and sitting for the Tennessee Civil Service Commission. Thaddeus Watkins, General Counsel, the Department of General Services, and Toni Stuart, Assistant General Counsel, the Department of General Services, represented the State. The Grievant, Patrice Sherrell, represented herself.

The subject of this hearing was the Grievant's appeal of the termination of her employment, pursuant to Tennessee Department of Personnel Policy (TDOP) No. 1120-10-.06 (24) "For the good of the service," as outlined in T.C.A. 8-30-326.

After consideration of the evidence adduced at the hearing, argument of the parties, and the record in this matter, it is determined that the decision to terminate the Grievant's employment should be **upheld**.

This determination is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Grievant, Patrice Sherrell, was employed by the Department of General Services as a Storekeeper 1 in the Warehouse Administration Division on September 13, 2004. She was promoted to Storekeeper 2 on March 16, 2005. The Grievant remained in the position as Storekeeper 2 until she was terminated on November 11, 2008.

2. On November 27, 2006, the Grievant sustained a job related injury while lifting a case that weighed in excess of 60 pounds. After undergoing rehabilitation and therapy, she received a weight lifting restriction of 5 pounds. The Grievant reached her maximum rehabilitation and has been diagnosed with a permanent partial disability. Her weight restriction was increased to 15 pounds.

3. The duties of Storekeeper 2 position include quality control and verifying order from warehouse products. The Storekeeper 2 processes orders placed by State agencies, which requires the items to be pulled from a "picklist" and packed. The employee is required to move and lift items that can range from a few pounds up to 75 pounds.

4. The Grievant testified that she can still do her job, and points out as evidence of such that she did the job for approximately 18 months after her injury before she was terminated. She acknowledged that she cannot do heavy lifting, but states work in the warehouse is a team effort and other employees can assist with the lifting.

5. The Grievant requested an accommodation for her disability, including a transfer, demotion, or reclassification. She did not think the Department was willing to provide her a work accommodation, since it did not even provide access to the handicap entrance.

6. The Department tried to accommodate the Grievant by having her check items that weighed fewer pounds and using other employees to help her. The latter created a morale problem because employees became upset over doing the extra work. Grievant's job performance slowed down productivity. It also raised an issue of fairness because others had to do their work and pick up the Grievant's slack. The Grievant used a power lift sometimes, but operated it so slowly that it was not considered adequate. The Department considered it a security risk for the Grievant to use the handicap entrance, therefore, did not provide her with a key to that door.

7. The Department terminated the Grievant pursuant to the Tennessee Department of Personnel Rule regarding for the good of the service. The Department based its decision to terminate on it determination that the Grievant was unable to perform the essential functions of the job of Storekeeper 2, and its need to hire someone capable of performing the duties.

8. The Grievant was on the State register for five (5) other positions, but there was either no vacancy or her ranking was too low to hire for the position.

CONCLUSIONS OF LAW

1. The Department has the burden to prove, by a preponderance of the evidence, that it properly terminated the employment of the Grievant. Tennessee Department of State, Administrative Procedures Division, Rule 1360-4-1-.02(3)(7).

2. Pursuant to Tenn. Code Ann. §8-30-201 (a), the State of Tennessee established for its employees a system of personnel administration that governs the removal, discipline and other incidents of state employment. Section 8-30-330 provides, in pertinent part, regarding discipline imposed on state employees:

> (c) When corrective action is necessary, the supervisor must administer disciplinary action beginning at the step appropriate to the infraction or performance. Subsequent infractions or poor performance may result in more severe discipline.

3. Tennessee Department of Personnel Policy (TDOP) No. 1120-10-.06 lists causes for disciplinary actions, including for the good of the service.

4. Pursuant to Tennessee Department of Personnel Policy Rule §1120-10-.05, the causes for disciplinary action are:

> 1. <u>Causes relating to performance of</u> duties . . .
> [Emphasis added.]

5. The Department terminated the Grievant for the good of the service because she was unable to perform the essential functions of the job of Storekeeper 2. The State contends that it should be able to employ someone who can perform the duties of that position.

6. The Grievant worked in the Department or General Services as a Storekeeper 1 and Storekeeper 2 for over four (4) years. The Storekeeper 2 position requires moving and lifting items that weigh up to 75 pounds, which Grievant did without any apparent problems until she was injured on the job. It is not disputed that, after sustaining her injury, the Grievant required assistance from coworkers because she was no longer able to do heavy lifting. This not only slowed down productivity, but also created a problem with morale.

7. State statute provides that an "appointing authority may dismiss any employee in the authority's division when the authority considers that the good of the service will be served thereby." T.C.A. 8-30-326.

8. In *Reece v. Tennessee Civil Service Commission*, 699 S.W.2d 808 (Tenn.App.1985), the Court also addressed the question of what is required to justify a termination "for the good of the service" under T.C.A. § 8-30-326(a). Any termination that is done "for the good of the service," must relate to an employee's performance of duties:

> It must be conceded that the public payroll cannot be made a haven for those who with or without fault have become unable to perform the duties for which they were employed. It must likewise be conceded that "the good of the service" may in proper cases justify or require the discharge of public employees when their efficiency or usefulness in their positions has been seriously impaired by their own fault, by the fault of others, or by blameless misfortune. [Emphasis added.]

9. While it is unthinkable that the Department failed to provide the Grievant use of the handicap entrance, the State, nevertheless, established that the efficiency or usefulness of the Grievant in her position as Storekeeper 2 had been seriously impaired. Unfortunately, the Grievant is a perfect example of persons who, "without fault have become unable to perform the duties for which they were employed." Therefore, it is concluded that her termination was for the good of the service.

10. Based on the foregoing, it is determined that the decision of the Department to terminate the Grievant's employment is **upheld**.

11. It is so ORDERED.

Entered and effective this 27th day of July, 2010.

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Bettye Springfield
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 27th day of July, 2010.

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Thomas G. Stovall, Director
Administrative Procedures Division