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6-22-2010

DEPARTMENT OF CHILDREN'S SERVICES, Petitioner, v. THOMAS D. PARKER, Grievant

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BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION

IN THE MATTER OF:	)	
	)	
	)	
DEPARTMENT OF CHILDREN'S SERVICES	)	
	)	
Petitioner	)	**Docket No. 26.43-105147J**
V.	)	
	)	
	)	
THOMAS D. PARKER	)	
	)	
Grievant	)	

INITIAL ORDER

This matter came to be heard on June 22, 2010, before Thomas G. Stovall, Administrative Judge, sitting for the Tennessee Civil Service Commission in Nashville, Tennessee. The Department of Children's Services (DCS) was represented by Ms. Julie Pablo, Assistant General Counsel. The Grievant Thomas Parker was present and not represented by counsel.

The subject of this hearing was the grievance filed by the Grievant over his demotion by DCS. After consideration of the entire record in this matter it is determined that the Second Amended Motion To Dismiss filed by DCS should be **GRANTED** as the Grievant's demotion was voluntary and his grievance was not timely filed.

MOTION TO DISMISS

On March 5, 2010, DCS filed a Second Amended Motion To Dismiss (Motion) this action. On March 9, 2010, an Order was entered which denied in part and took under advisement in part the Motion. The portion of the Motion taken under advisement until the proof was taken at the hearing sought the dismissal of this action on two grounds:

1. The Grievant's demotion was voluntary and thus not grievable pursuant to Department of Human Resources Rule 1120-11-.07.

2. The grievance filed by the Grievant was not timely filed pursuant Department of Human Resources Rule 1120-11-.04.

The decision to grant the Motion and to dismiss this case is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. In January 2009, the Grievant was employed by DCS as a Case Manager 4 in the Central Intake Office. This office is responsible for receiving all reports of potential child abuse or neglect coming into the department and then assigning the cases to investigators throughout the state.

2. In 2008, the Grievant and his supervisors had discussions about problems with his performance. On January 26, 2009, the Grievant agreed to a voluntary demotion from a Case Manager 4 to a Case Manager 3, to be effective February 15, 2009.[1]

3. Joseph Saladino was the Grievant's immediate supervisor prior to his demotion. The Grievant felt intimidated by Mr. Saladino who was, by agreement of almost everyone, a very poor manager. Mr. Saladino was terminated June 28, 2009, and replaced by Thomas Jones.

4. Shortly after replacing Mr. Saladino, Mr. Jones met with the Grievant who expressed concerns about his demotion. The Grievant stated he felt pressured into accepting the demotion and did not file a grievance for fear of being terminated by Mr. Saladino. Mr. Jones advised him to file a grievance if he felt he had been treated unfairly.

5. The Grievant filed a grievance over his demotion on September 29, 2009.[2]

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[1] Exhibit #10

[2] Exhibit #7

6. The Grievant contended that he and other employees were the victims of a concerted effort by Mr. Saladino to target them for harassment and unfair treatment. The Grievant called numerous employees as witnesses, none of whom substantiated his allegations.

RELEVANT LEGAL AUTHORITY

1. **Department of Human Resources Rule 1120-11-.04(1)**: A complaint or grievance must be filed at the appropriate step in the grievance procedure within fifteen (15) workdays…of the action which is the basis for the grievance, otherwise it will be considered untimely and invalid.

2. **Department of Human Resources Rule 1120-11-.07 Grievable Matters (1)**: Disciplinary suspension or demotion

CONCLUSIONS OF LAW

1. DCS has carried its burden of proof by a preponderance of the evidence that the Grievant's demotion was voluntary and not grievable pursuant to Rule 1120-11-.07(1), and that his grievance was untimely pursuant to Rule 1120-11-.04(1) as it was not filed within fifteen (15) days of the job action.

2. The Grievant signed the memorandum indicating that he agreed to a voluntary demotion. Therefore, the demotion is not a disciplinary demotion grievable under the rules. Moreover, the Grievant had fifteen (15) days from February 15, 2009, the effective date of the demotion, to file a grievance. He did not file his grievance until September 29, 2009, more than seven months after his demotion. Even if the Grievant was justified in not filing his grievance while Mr. Saladino was employed for fear of retribution, he still waited three months after Mr. Saladino's termination before filing his grievance. This delay was even after he was advised by Mr. Jones in early July 2009, that he should file a grievance if he believed he had been treated unfairly.

3. Based upon the foregoing, it is hereby **ORDERED** that the Second Amended Motion To Dismiss be **GRANTED.**

This Initial Order entered and effective this 8th day of July, 2010.

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Thomas G. Stovall
Administrative Judge

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

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Thomas G. Stovall, Director
Administrative Procedures Division