



University of Tennessee, Knoxville
**Trace: Tennessee Research and Creative
Exchange**

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

4-26-2011

Arthur Lee Graham

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

 Part of the [Administrative Law Commons](#)

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

**BEFORE THE CIVIL SERVICE COMMISSION OF THE
STATE OF TENNESSEE**

IN THE MATTER OF:

Arthur Lee Graham

DOCKET NO: 26.41-110937J

INITIAL ORDER

This matter was heard on April 26, 2011 in Memphis, Tennessee, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State to sit for the Civil Service Commission of the State of Tennessee. Amanda Fisher, Attorney for the Board of Probation and Parole, (hereinafter referred to as “the Board” or “BOPP”) represented Petitioner. Arthur Lee Graham (hereinafter referred to as “Grievant”) was represented by his legal counsel, Elbert Jefferson, Jr.

The issue presented for consideration is whether the State carried its burden of proof of preponderance of evidence that Grievant’s conduct warranted his termination from the Board of Probation and Parole.

After consideration of all of the evidence, arguments of counsel and the entire record in this matter, it is **determined** that Grievant’s termination should be **UPHELD**.

This decision is based upon the following:

PROCEDURAL HISTORY

Prior to his termination, Grievant was employed as a Probation and Parole Officer 2 with the Board of Probation and Parole. He was arrested in the Board of Probation Office in Memphis, Tennessee on September 14, 2010. Grievant was indicted by a Grand Jury for a Class B felony theft charge. Grievant was indicted in August 2010 and arrested in September 2010.

The Board contends that Grievant's credibility and his ability to perform his job duties were seriously impaired by his indictment and arrest. Grievant's employment with the Board of Probation and Parole was terminated, effective October 6, 2010.

FINDINGS OF FACT

1. As a Probation and Parole Officer, Grievant supervised individuals released on probation. He brought the parolees in, conducted the general indoctrination, and explained to them the rules and requirements of probation. Grievant also reviewed the probation certification with the parolees, and referred them to any type of programs the court mandated them to attend. Grievant was required to make court appearances.
2. As for his parole caseload, Grievant supervised the parolees according to the conditions they were released on, and referred the parolees to whatever programs they were charged to attend by the Board. Grievant gave them drug tests.
3. Grievant was required to file warrants or violation reports. From time to time, Grievant had contact with law enforcement officers and district attorneys.
4. The indictment alleged that Grievant took State property, that being money, in the amount of about \$60,000.00 to almost \$202,000.00 in State funds, during the time from March 6, 2002 to October 31, 2003.
5. Grievant was not employed by BOPP during that time. However, Grievant was employed by BOPP at the time of his felony indictment and arrest on September 14, 2010. Grievant was rehired by the Board in 2006.
6. At the time of his arrest, Grievant was on duty at the Memphis Board of Probation and Parole Field Office. Grievant was taken into custody and escorted out the back door of the BOPP office in handcuffs.

7. Grievant was fingerprinted and had his mug shot taken. Grievant was required to go through the same booking process as every other arrestee facing criminal charges.

8. Grievant's felony theft charges are still pending at the Shelby County Courthouse. During Grievant's court appearances as a defendant in criminal court, the courtroom was open to the public. **Grievant's indictment and arrest are public records.**

9. Grievant is required to see District Attorneys, Public Defenders, defense attorneys, court personnel, law enforcement officers and other offenders when he appears in criminal court as a defendant on his pending charges. Grievant's criminal case information and court dates can be viewed on the Shelby County Court JSSI website.

10. BOPP officers' **credibility is essential** to their job duties. Probation and Parole Officers supervise felony offenders on probation and parole to ensure public safety. They monitor the behavior of offenders in the community, monitor offenders' employment, conduct home visits, administer drug tests to offenders, monitor offender fees and restitution payments, testify in court, and conduct arrest checks on offenders.

11. Probation and Parole officers are also required to have regular contact with victims, members of the public, offenders' employers, attorneys, law enforcement officers, and judicial officials. **The public places a significant amount of trust in BOPP employees.**

12. A Probation and Parole Officer 2 is required to appear in court and at BOPP hearings to testify about the offenders that he/she supervises. Public safety would be jeopardized, and the offender may not be put back in jail, **if the defense attorney or the offender is able to show that the officer is not a credible witness.**

APPLICABLE LAW

1. In a fifth step level hearing, an administrative law judge presides to take proof and render an initial order which is subject to review by the Civil Service Commission.
2. The Board of Probation and Parole, as the party that initiated these proceedings, is the Petitioner and has the burden of proving this matter to a “preponderance of the evidence.”
3. BOPP must prove, by a preponderance of the evidence, that BOPP appropriately terminated Grievant’s employment as a Probation Parole Officer 2 for his violation of Rule 1120-10.06, Tenn. Comp R. & Regs. (1999), his violation of the BOPP Code of Ethics, or for the good of the service pursuant to T.C.A. §8-30-326.

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. Rule 1120-10-.05, Tenn. Comp. R. & Regs. (1999) As stated in the Rules, “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. (1999) Although the law prescribes implementation of progressive discipline for State employees, it also provides that disciplinary action must be administered at the step that is most appropriate for the misconduct. See Rule 1120-10-.07, Tenn. Comp. R. & Regs. (1999) and T.C.A. §8-30-330.

The Tennessee Department of Human Resources has promulgated rules that list certain offenses by State employees that might lead to disciplinary action, up to and including termination. Specifically, Rule 1120-10-.06 lists the following offenses that are prohibited for State employees: “(4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees; (8) ...conduct unbecoming of an employee in the State

service; (12) Participation in any action that would in any way 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; and (24) For the good of the service as outlined in T.C.A. 8-30-326.” Rule 1120-10-.06, Tenn. CompR. & Regs. (1999)

A State employee can be terminated “for the good of the service” if the employee’s ability to do his job is impaired. *Reece vs. Tennessee Civil Service Commission*, 699 S.W.2d 808 (Tenn Ct. App. 1985). The *Reece* Court held that the right of the State to maintain an efficient, effective correction institution for the protection of the public must prevail over the right of the individual employee to retain his position until he has been proven guilty of the misconduct. *Id.*

Further, the Court held that an employee can be discharged solely on the basis of impairment or destruction of the employee’s usefulness by factors independent of the misconduct. *Id.*

ANALYSIS

A BOPP officer’s credibility is critical to his/her job responsibilities. BOPP officers supervise felony offenders on probation and parole to ensure public safety. The public places a significant amount of trust in BOPP employees. Unfortunately, BOPP no longer has confidence in Grievant’s ability to perform his job duties as a Probation and Parole Officer 2.

Although Grievant was not terminated based upon his failure to perform the duties of his position as a Probation and Parole Officer, Grievant’s credibility as a Probation and Parole Officer is now severely impaired. Since Grievant’s arrest and indictment is a matter of public record, victims, members of the public, offenders’ employers, attorneys, law enforcement

officers and judicial officials can readily learn more about the details of Grievant's indictment and arrest if they choose to.

Petitioner successfully argued that Grievant's termination correlates to his inability to effectively perform the duties of a Probation and Parole Officer 2. At revocation hearings, Grievant will be required to testify under oath and present evidence to the Court or the Parole Board. Unfortunately, **Grievant's arrest and indictment placed him in an ineffective position to revoke or supervise offenders.** Offenders will be able to make more effective arguments concerning Grievant's trustworthiness and credibility, thus undermining the work of BOPP and the safety of the public.

CONCLUSIONS OF LAW

1. Petitioner has proven by a preponderance of the evidence that Grievant's termination was warranted. It is **determined** that Grievant was properly terminated for violating the Department of Human Resources Rule 1120-10-.06, Tenn. Comp. R. & Regs. (1999), and the BOPP Code of Ethics Policy #202.01. Further, it is **determined** that Grievant was appropriately terminated for the good of the service pursuant to T.C.A. §8-30-326.
2. It is **concluded** that Petitioner has proven by a preponderance of the evidence that Grievant has violated the BOPP Code of Ethics and the Rules of the Tennessee Department of Human Resources.
3. It is **concluded** that Grievant's termination is warranted under Rule 1120-10-.06 of the Tennessee Department of Human Resources for the following reasons: (4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees; (8)...conduct unbecoming an employee in the State service; (12) Participation in any action that would in any way 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; and (24) For the good of the service as outlined in T.C.A. 8-30-326.

4. Based on the above, it is **ORDERED** that the termination of Grievant's employment with the Board of Probation and Parole be **UPHELD**.

IT IS SO ORDERED.

This Initial Order entered and effective this 29 day of September, 2011

Joyce Carter-Ball
Administrative Judge