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4-19-2011

TENNESSEE DEPARTMENT OF SAFETY vs.  
Petitioner, MARVIN NORFOLK, Grievant.

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**BEFORE THE TENNESSEE  
CIVIL SERVICE COMMISSION**

<b>TENNESSEE DEPARTMENT OF SAFETY,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 26.19-108065J</b>
	)	
<b>MARVIN NORFOLK,</b>	)	
	)	
<b>Grievant.</b>	)	

**INITIAL ORDER**

This contested case came on to be heard on April 19, 2011, 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. Deborah Martin, Attorney for the Department of Safety, represented the Department of Safety or the State. The Grievant, Mr. Marvin Norfolk, was present and was represented by his attorney, Mr. Harold E. Dorsey, of the Alamo, Tennessee Bar.

The subject of this hearing was Grievant’s appeal of his termination from the Department of Safety. Grievant was terminated for allegedly violating the following rules and regulations: (1) RULE 1120-10-.06(8), RULES OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES (MAY, 1999, REVISED) — Gross misconduct or conduct unbecoming an employee in the State service; (2) RULE 1120-10-.06(24), RULES OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES (MAY, 1999, REVISED)— For the good of the service as outlined in T.C.A. §8-30-326;<sup>1</sup> (3) DEPARTMENT OF SAFETY, GENERAL ORDER 216-1,IX, B, 1, a (1) and (4) --- Causes for Disciplinary Action ---Conformance to Laws [set forth

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<sup>1</sup> The RULES OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES were revised in May, 2011. The current RULES have different numbers than the rules which were in effect during Grievant’s employment with the Department. The RULES which govern this matter and are cited above are the RULES which were in effect prior to May, 2011.

more fully, *infra*]; (4) . DEPARTMENT OF SAFETY, GENERAL ORDER 216-1, IX, B, 3, a (1) --- Unbecoming Conduct [[set forth more fully, *infra*]; and; and (5) DEPARTMENT OF SAFETY, GENERAL ORDER 216-1, IX, B, 5, a ---Truthfulness.

After consideration of the testimony and evidence presented, the arguments of counsel, and the entire record in this matter, it is determined that the Department of Safety met its burden of proof, by a preponderance of the evidence, that Grievant must be terminated “for the good of the service” as outlined in T.C.A. §8-30-326 . RULE 1120-10-.06(24), RULES OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES (MAY, 1999, REVISED)<sup>2</sup>

Accordingly, it is therefore **ORDERED** that the appropriate discipline in this matter is **TERMINATION**.

#### **FINDINGS OF FACT**

1. Grievant Marvin Norfolk was hired as a Tennessee Highway Patrol State Trooper on March 1, 1998 by the Tennessee Department of Safety.<sup>3</sup>

2. Grievant was assigned to various Highway Patrol Stations in West Tennessee during his tenure with the Department of Safety, including the Tipton and Crockett County Stations. Grievant’s last assignment as a State Trooper was in Fayette County, Tennessee.

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<sup>2</sup> 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”. T.C.A. §4-5-314(g). The Department’s “Proposed Findings of Fact and Conclusions of Law” were filed on August 12, 2011. Grievant’s “Proposed Findings of Fact and Conclusions of Law” were filed on August 15, 2011. Accordingly, the Initial Order is due on or before November 14, 2011.

<sup>3</sup> The Tennessee Highway Patrol (THP) is responsible for the enforcement of all federal and state laws relating to traffic. Serving the entire state of Tennessee with substations in each of its 95 counties, the THP has district headquarters in eight locations as well as scale houses in 5 additional locations. The Tennessee Highway Patrol is responsible for investigating accidents involving property damage, personal injury, and fatalities. When personal injury or fatal accidents involve drugs or alcohol, the THP is responsible for prosecution in the courts and working with the Attorney General's Office. The Highway Patrol is also active in criminal interdiction, which involves the suppression of narcotics on the roads, highways, and interstate systems in Tennessee. See <http://state.tn.us/safety/thp.htm>

3. Grievant received “exceptional” over-all scores on his performance evaluations for the last five years of his employment with the Tennessee Highway Patrol. Prior to that, all of Grievant’s performance evaluations over-all scores were either “superior” or “exceptional”, with the exception of the 2003 performance evaluation which was had the over-all score of “marginal”.

4. The incidents which form the basis for Grievant’s termination occurred on December 26, 2009.

5. Grievant had an extremely acrimonious relationship with his ex-wife.<sup>4</sup>

6. On December 26, 2009, Grievant had re-married, and was living in his new house with his new wife and step-daughter. Grievant’s nine year old son was visiting with Grievant for the holidays, for a two week “visitation”. December 26, 2009 was the first day of the son’s “visitation”.

7. Grievant’s son did not deal well with the changes in his father’s family. Prior to the holidays and the “visitation”, Grievant’s son was placed in ISS (In School Suspension) at school for misbehavior. Grievant’s son broke some dishes at Grievant’s new in-laws’ house, and had other instances of bad behavior. Grievant chastised his son and talked with him about the incidents as a means of “discipline”.

8. On December 26, 2009 Grievant’s son engaged in some annoying behavior during the “visitation” at Grievant’s home. Grievant’s son turned pictures around, moved medications, changed a home telephone’s language from English to Spanish,

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<sup>44</sup> Grievant testified, credibly, that every time they exchanged their son for visitation purposes, his ex-wife would “pick a fight”. Further, Grievant testified, believably, that his ex-wife had threatened to cause problems for him with his job as a Highway Patrol State Trooper. Grievant had called the Covington Police Department to have a police officer present at some of the past transfers of his son between him and his ex-wife in order to have a peaceful transfer without “trouble”.

and generally went out of his way to be irritating to his father, his father's new wife, and his father's new step-daughter.

9. Later in the day, Grievant discovered his step-daughter in tears and calling for her mother. Grievant learned that his son had written some "bad things" about his wife and step-daughter on a dry erase board that was in his step-daughter's room. Grievant's son hid from Grievant in a closet, but when he was found, admitted that he had written the "bad things".

10. Grievant decided to "discipline" his son because he "had talked to him as much as he could." Grievant spanked his son with a belt (his son was dressed in a shirt and jeans), and around an hour later, Grievant decided that the visitation wasn't working out and decided to take his son home.

11. Grievant took his son to his oldest daughter's house for return to his mother.

12. Later on December 26, 2009, Denise Norfolk, Grievant's ex-wife and the mother of Grievant's son, picked up her son from his sister's house, and took him to Baptist Hospital – Tipton County.

13. The Tipton County Sheriff's Department and the Department of Children's Services received a complaint of possible child abuse, and interviewed Grievant's ex-wife (Denise Norfolk) and his son at the hospital.

14. Grievant's son gave a statement that Grievant was "whipping him with a belt." Pictures were taken which show red welts on the son's back, shoulders, arms,

legs, and buttocks. Additionally, there were some pictures which showed bruises on the son's arm. One picture showed a red mark on the son's face.<sup>5</sup>

15. On December 29, 2009, Deputy Chief Donna Turner of the Tipton County Sheriff's Department contacted Grievant to question him about the spanking he had given his son.

16. Grievant Norfolk voluntarily reported to the Tipton County Sheriff's Department and provided a written statement regarding the incident. In the December 29, 2009 statement, Grievant Norfolk described the incident as follows:

I walked up to Marvin, Jr. and grabbed him by his arm and spanked him on his butt. I spanked his (sic) butt twice with my hand and he was wearing blue jeans.

17. On January 15, 2010, Grievant Norfolk voluntarily went to the Tipton County Sheriff's Department and amended his earlier statement regarding the incident with his son. Grievant Norfolk informed Chief Turner that his earlier statement was not correct because he had whipped his son with a belt. He also related that his son was jumping around and kicking at him as Grievant was trying to spank him.

18. The Tipton County Sheriff's Department notified the Department of Safety in January, 2010 that Grievant was being investigated on charges of child abuse and making a false police report.

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<sup>5</sup> Grievant objected to the pictures' introduction into evidence, stating that Grievant had admitted to spanking his son, and the pictures were not relevant. As the basis for Grievant's objection, Grievant argued, by and through counsel, that the pictures themselves were not relevant as the Civil Service charges relate to whether or not public confidence has been eroded to the point that the Department of Safety should terminate the Grievant. Grievant is correct that the Civil Service hearing in this matter was not a "re-adjudication" of the allegations of child abuse. For that reason, the pictures were admitted as part of the Office of Professional Responsibility's file only for the limited purpose that the pictures were included in the information submitted to Grievant's superiors and considered by Grievant's superiors in deciding to terminate Grievant. The pictures are relevant for that reason. The pictures reflect red welts on Grievant's son which are not consistent with being spanked by a hand. Such pictures are relevant pursuant to TENN. R. EVID. 401.

19. Thereafter, Grievant was placed on “Administrative Leave with Pay” by the Department of Safety pending an investigation by the Department of Safety’s Office of Professional Responsibility.

20. On January 25, 2010, Denise Norfolk (Grievant’s ex-wife) petitioned the Tipton County General Sessions Court for an “*Ex Parte* Order of Protection” on behalf of Grievant’s and her son. The *Ex Parte* Order of Protection was issued and served on Grievant on January 25, 2010.<sup>6</sup>

21. On February 9, 2010, the Department of Safety assigned Grievant to perform administrative duties at the Millington Driver Services Station until further notice. Grievant was instructed that he was prohibited from performing any Trooper duties at Millington.

22. A hearing giving Grievant an opportunity to respond to the petition for Protective Order was set for February 11, 2010. By order of February 24, 2010, Judge Janice Craig dismissed the Order of Protection on the basis “That Petitioner has failed to prove by a preponderance of the evidence the allegations contained in the Petition for Order of Protection.”

23. On March 1, 2010, Grievant was indicted by a Tipton County Grand Jury for the charge of Child Abuse (T.C.A. §39-15-401) and the charge of Filing a False Report to Law Enforcement (T.C.A. §39-16-502). Both charges were dismissed by Order of the Criminal/Circuit Court of Tipton County, Tennessee on August 27, 2010.

24. When Grievant was indicted on March 1, 2010, the Tipton County Sheriff’s Office issued a press release regarding the incident and the indictment. The

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<sup>6</sup> Sgt. Johnson and Colonel Tracy Trott testified that if an Ex Parte Order of Protection is issued, a Trooper is not permitted to carry a firearm.

press release stated that Grievant was facing charges of “Child Abuse” and “Filing a False Police Report” in “a December 2009 criminal investigation.” It also identified Grievant as a “Tennessee Highway Patrol Trooper”. The press release reported that Grievant and his wife “lied in their statements to Detectives and Agents about their role in the incident.” The press release also related that Grievant had been arrested and was free on bond. The Tipton County Sheriff’s Department released photographs of Grievant being led into the Sheriff’s Department in handcuffs.

25. Following the press release, West Tennessee television stations reported the story of Grievant’s arrest; and the story also ran in area newspapers, including newspapers’ online websites.

26. After Sgt. Johnson finished his investigation, he turned in his “summation of the investigation” to Colonel Trott and Colonel Mike Walker with the Department of Safety.

27. Sgt. Johnson did not make any recommendations regarding discipline for Grievant Norfolk.<sup>7</sup>

28. Colonel Tracy Trott testified on behalf of the Department of Safety. He has been employed by the Tennessee Highway Patrol, Department of Safety, for thirty-three years.

29. Colonel Trott testified that he was the person in the command staff that made the recommendation to terminate Grievant Norfolk.

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<sup>7</sup> Grievant attempted to show bias on the part of Sgt. Johnson, by establishing that Sgt. Johnson is friends with Grievant’s ex-wife Denise Norfolk’s brother, Sheriff Melvin Bonds, and that Sgt. Johnson has a close relationship with Denise Norfolk’s sister. No evidence was presented that Sgt. Johnson has discussed this case with Denise Norfolk. Sgt. Johnson testified, credibly, that he has not discussed this case with Sheriff Bonds or with Denise Norfolk’s sister. A careful review of the facts and Sgt. Johnson’s report shows that Sgt. Johnson simply investigated and reported the facts in this matter.



30. Colonel Trott testified that he took the facts of criminal charges and Grievant's previous disciplinary record into consideration when recommending termination. However, Colonel Trott did not review or consider Grievant's "exceptional" scores from his performance evaluations.

31. Colonel Trott received copies of news reports and newspaper headlines reporting Grievant's criminal charges. He testified, credibly, that such reports are "detrimental to our [the Highway Patrol] public mission, and image for the people of this state."

32. Colonel Trott also asserted that a major consideration in the decision to terminate Grievant was the fact that Grievant lied to an investigator during the child abuse investigation by the Tipton County Sheriff's Department.

33. Colonel Mike Walker<sup>8</sup> issued a minimum due process letter on April 1, 2010 in which he recommended Grievant's termination.

34. The "minimum due process" letter from Colonel Walker stated that The recommendation to terminate Grievant is based upon the indictments for child abuse and a false police report. The letter also outlined reasons why Grievant should be terminated "for the good of the service."

35. The Commissioner of Safety issued a termination memorandum on April 27, 2010 upholding the recommendation for Grievant's termination based upon the facts and reasons set forth in the "minimum due process letter".

36. Grievant's termination was effective May 7, 2010.

37. Grievant timely filed his civil service appeal.

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<sup>8</sup> Colonel Walker did not testify at the hearing. He retired prior to the civil service hearing.

38. After Grievant's charges for child abuse and filing a false police report were dismissed in August, 2010, Grievant's ex-wife, Denise Norfolk, then swore out a warrant against Grievant alleging "Domestic Abuse" for the same December 26, 2009 incident.

39. Grievant filed a "supplemental exhibit" showing that Grievant was found "not guilty" of the charge of domestic abuse in a trial by jury which occurred on May 5-6, 2011. Grievant's records were expunged of the charged offense following the jury's finding of innocence.<sup>9</sup>

40. Colonel Trott testified, at the April 19, 2011 hearing of this matter that the fact that the child abuse and "false report" charges had been dismissed against Grievant "did not have a bearing on our decision" to terminate Grievant.

41. However, Colonel Trott also testified at the hearing that he was "aware" of a new assault charge being filed stemming from the same December 26, 2011 incident.

42. Because Colonel Trott's testimony reflects that he knew about the August, 2010 dismissal of the original against Grievant prior to the hearing on the merits, and knew about the pending assault charge during the hearing, in the interests of fairness, Grievant is allowed to file the "late filed" exhibit regarding the domestic assault trial being found in Grievant's favor, and his record expunged.

43. Colonel Trott also agreed that a misdemeanor conviction for child abuse would not prevent Grievant Norfolk from possessing a firearm, but a domestic assault conviction would. Because all such charges against Grievant were eventually

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<sup>9</sup> Colonel Trott testified, at the hearing that he was aware that the original charges against Grievant had been dismissed. Colonel Trott also testified that he knew there was a new indictment since Grievant's termination which was an "assault" charge based on the December 26, 2009 events.

dismissed, and because such dismissal affected Grievant's ability to carry a firearm as part of his Trooper duties, such dismissals impacted the State's "dismissal for the good of the service" argument. In the interests of fairness and completeness, it is necessary and important to consider the jury verdict and finding of "not guilty" on the domestic assault charge in this civil service case.

### **CONCLUSIONS OF LAW**

1. The Department of Safety bears the burden of proof in this matter to show that Grievant Norfolk violated Department of Human Resources Rules and/or the Department of Safety's written rules, policies or procedures, and that the discipline imposed was the appropriate discipline for his violation of such rules.

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. Turning to the charges against Grievant, the Department argues that Grievant violated the following rules and regulations: (1) RULE 1120-10-.06(8), RULES

OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES (MAY, 1999, REVISED) — Gross misconduct or conduct unbecoming an employee in the State service; (2) RULE 1120-10-.06(24), RULES OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES (MAY, 1999, REVISED)— For the good of the service as outlined in T.C.A. §8-30-326;<sup>10</sup> (3) DEPARTMENT OF SAFETY, GENERAL ORDER 216-1, IX, B, 1, a (1) and (4) --- Causes for Disciplinary Action ---Conformance to Laws [set forth more fully, *infra*]; (4) . DEPARTMENT OF SAFETY, GENERAL ORDER 216-1, IX, B, 3, a (1) --- Unbecoming Conduct [[set forth more fully, *infra*]; and; and (5) DEPARTMENT OF SAFETY, GENERAL ORDER 216-1, IX, B, 5, a ---Truthfulness.

5. With regard to the Department’s assertion that Grievant was guilty of gross misconduct or conduct unbecoming an employee in the State service, the charges against Grievant for “child abuse” and for “filing a false police report” were dismissed. Later, Grievant was found innocent of charges of domestic abuse in a jury trial.

6. It is true that Grievant administered corporal punishment with a belt to his nine year old son. Grievant admits this. It is noted that there are very few, if any, parents who have not at one time or another lost their temper with a child and punished the child while angry. It is also noted that corporal punishment or “spankings” of children by parents whether by hand, switch, belt, fly swatter, or hairbrush, are not uncommon. Some parents are vehemently opposed to “spanking” or corporal punishment, while other parents are not. The undersigned is not called

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<sup>10</sup> The RULES OF TENNESSEE DEPARTMENT OF HUMAN RESOURCES were revised in May, 2011. The current RULES have different numbers than the rules which were in effect during Grievant’s employment with the Department. The RULES which govern this matter and are cited above are the RULES which were in effect prior to May, 2011.

upon to decide whether Grievant's spanking of his son rose to the level of "child abuse" or "domestic abuse". The charges have been dismissed, Grievant's record has been expunged, and the undersigned accepts that any factual issues regarding criminal charges of "abuse" have been resolved in other courts.

***Charge of Gross Misconduct/Conduct Unbecoming  
an Employee in State Service***

7. The Department has failed to prove, by a preponderance of the evidence, that Grievant is guilty of "gross misconduct or conduct unbecoming an employee in the State service".

8. Rule 1120-1-.01(42) of the RULES OF THE DEPARTMENT OF PERSONNEL defines "gross misconduct" as "*any job related conduct* which may subject an employee to criminal prosecution."

9. Grievant's acts or the conduct at issue (the spanking and the statements given to the Sheriff's office) were not "job related conduct". They were not undertaken during the course and scope of Grievant's employment with the Tennessee Highway Patrol.

10. A review of Tennessee statutes, regulations, and case law does not reveal a definition of "conduct unbecoming an employee in the State service." However, cases which have found violations of Rule 1120-10-.06(8) have typically dealt with employees who *committed* crimes, were *guilty* of assault, abuse, or sexual harassment, or who *committed* gross misconduct. There is no finding or determination by a court that Grievant committed a crime, was guilty of assault, or abuse, etc.

11. Accordingly, the Department has not proved, by a preponderance of the evidence, that Grievant was guilty of “gross misconduct or conduct unbecoming an employee in the State service.”

***DEPARTMENT OF SAFETY, GENERAL ORDER 216-1, IX, B, 3, a---  
Causes for Disciplinary Action --- Unbecoming Conduct***

12. The Department also relies upon its assertion that Grievant violated its own *DEPARTMENT OF SAFETY, GENERAL ORDER 216-1, IX, B, 3, a--- Causes for Disciplinary Action --- Unbecoming Conduct* which provides as follows:

3. Unbecoming Conduct

a. Employees shall conduct themselves at all times, *on and off duty*, in a manner as to reflect most favorably upon themselves and/or the Department.

(1) Unbecoming conduct shall include any conduct which tends to bring the Department into disrepute; or which reflects discredit upon the Department or any employee(s) of the Department; or which tends to impair the operation and efficiency of the Department or an employee; or which violates Departmental Policy.

(Emphasis added.)

13. With all due respect, Grievant committed the “belt spanking” at issue in the privacy of his home. It was not a public spectacle. The Department did not show that Grievant committed an improper act in a public place, nor did the Department show that Grievant’s acts in his home “tended to impair the operation and efficiency of the Department.”

14. The incident only became a matter of public interest when the Tipton County Sheriff's Department issued a press release two months later on March 1, 2010.

15. The Department of Safety failed to prove, by a preponderance of the evidence, that Grievant committed a violation of *DEPARTMENT OF SAFETY, GENERAL ORDER 216-1,IX, B, 3,a*.

***Charge of Violating DEPARTMENT OF SAFETY, GENERAL ORDER 216-1,IX, B, 1, a (1) and (4) --- Causes for Disciplinary Action ---Conformance to Laws***

16. DEPARTMENT OF SAFETY, GENERAL ORDER 216-1,IX, B, 1, a (1) and (4) --- Causes for Disciplinary Action ---Conformance to Laws states, in pertinent part:

Causes for Disciplinary Action

1. Conformance to Laws

a. Each employee shall obey the laws of the United States, the State of Tennessee, and of local jurisdictions.

(1) If facts revealed by a thorough investigation indicate there is evidence an employee has committed acts, which constitute a violation of a civil or criminal law, ordinance, or infraction other than a parking ordinance, then the member may be deemed to have violated this subsection, even if the member is not prosecuted or is found not guilty in court.

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(4) Employees are expected to be a good example to the public in abiding by and complying with all traffic laws, rules and regulations and other laws.

17. The Department has failed to prove, by a preponderance of the evidence, that the Grievant *violated* criminal or civil laws. There was no finding by the OPR investigator that Grievant actually *did* commit a crime. The OPR investigator

concluded that Grievant had been “charged” with certain crimes. Colonel Trott notes in his 3/29/10 memorandum to Colonel Mike Walker:

I have reviewed the OPR summary on the child abuse case against Trooper Marvin Norfolk...Trooper Norfolk admitted striking his son and the pictures show bruising and welts consistent with abuse. Trooper Norfolk lied to investigators during the first interview...[.]

18. Colonel Trott relied on the OPR report in making his recommendation. Colonel Trott did not make a finding that Trooper Norfolk had committed a crime. Rather, he based his recommendation for termination on “gross misconduct” and “the good of the service.”

19. In the absence of a finding by the Department of Safety that Grievant *actually* committed the crimes with which he was charged, and considering that all criminal charges against Grievant have been dismissed, the Department has failed to prove, by a preponderance of the evidence, that Grievant violated DEPARTMENT OF SAFETY, GENERAL ORDER 216-1, IX, B, 1, a (1) and (4).

***Charge of DEPARTMENT OF SAFETY,  
GENERAL ORDER 216-1, IX, B, 5, a ---Truthfulness.***

20. The Department also charges Grievant with violation of its GENERAL ORDER 216-1, IX, B, 5, a ---Truthfulness. This departmental order states:

Truthfulness.

Employees shall be truthful in all written and oral communications, reports, and testimony. No employee shall report any inaccurate, false, improper, or misleading information.

21. Clearly “GENERAL ORDER 216-1, IX, B, 5, a” which addresses “Truthfulness” applies to communications, reports, and testimony given *within the course and scope*



of an employee's employment with the Tennessee Highway Patrol. While the undersigned does not condone Grievant's lack of truthfulness in the information he first gave the Tipton County Sheriff's Department, it would be a great stretch to hold that the Department of Safety's "General Order 216-1,IX, B, 5, a" applies to an employee outside the course and scope of his employment with the Department of Safety.

### **Termination "For the good of the service"**

22. Finally, the Department of Safety contends that Grievant must be terminated "for the good of the service" as outlined in T.C.A. §8-30-326. RULE 1120-10-.06(24), TENNESSEE DEPARTMENT OF HUMAN RESOURCES (MAY 1999, REVISED). The undersigned agrees.

23. T.C.A. §8-30-326 (a) provides as follows:

An appointing authority may dismiss any employee in the authority's division when the authority considers that the good of the service shall be served thereby.

24. T.C.A. §8-30-326(b) requires:

Whenever an employee is dismissed "for the good of the service," the *notice of termination must outline in detail how the service will be benefited by such termination.* (Emphasis added.)

25. "The good of the service" may, in proper cases, justify or require 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. Reece v. Tennessee Civil Service Commission, 699 S.W. 2d 808, 813 (Tenn. Ct. App. 1985).

26. It is noted that law enforcement officers, including police officers and state troopers, are expected to have a higher standard of personal conduct than that of the average public or governmental employee. Lee v. Personnel Merit Bd. of City of Dyersburg, 1986 WL 3368, p. 5 (Tenn.Ct. App.); Watts V. Civil Service Board for Columbia, 606 S.W. 2d 274, 282 (Tenn. 1980.) Such officers are expected to maintain law and order in our society. Id. at 282. The Lee court stated: “[The officer] represents law and order to the people and must present an image of personal morality and honesty to have the respect of the citizenry.” at 5.

27. The Department of Safety has shown, by a preponderance of the evidence, that Grievant’s credibility, effectiveness, and usefulness in his position as a Highway Patrol State Trooper has been seriously impaired by the publicity surrounding his failure to tell the truth during the course of the Tipton County Sheriff’s Department’s initial investigation, and by the publicity surrounding the criminal charges lodged against Grievant.

28. Grievant admitted he did not tell the truth to the Tipton County Sheriff’s Department’s investigator.

29. Regardless of whether or not the criminal charges were dismissed against Grievant, the extremely negative publicity surrounding Grievant’s criminal charges of child abuse and filing a false police report, and Grievant’s admission that he did not give accurate information to the Tipton County Sheriff’s Department, has essentially ruined Grievant’s credibility, effectiveness, and usefulness as a State Trooper.

30. Any accident report, arrest report, interdiction report, or any testimony by Grievant in either criminal or civil court, which Grievant would be called upon to

provide as a State Trooper in court cases, would be subject to impeachment and could be discredited.

31. The picture painted of Grievant by West Tennessee newspaper articles, television news reports, and on-line news reports was an extremely ugly picture. Articles concerning Grievant's untruthfulness to the investigating officers, and the charges of "filing a false police report", would be available to any person seeking to discredit or impeach Grievant. Any report or testimony offered by Grievant would be subject to such impeachment, and would hamper prosecution of criminal cases and litigation of civil cases, alike.

32. More likely than not, despite the fact that Grievant's criminal charges were dismissed, there will still be members of the public who heard the news reports and read the news articles and will be convinced of Grievant's commission of the charged crimes, regardless of the dismissal of the criminal charges, or the jury verdict of "not guilty". While this is one factor to be considered in the Department's charge that Petitioner should be terminated "for the good of the service", it is not the only factor.

33. Most damaging is Grievant's admission that he did not give accurate or truthful information to the investigating officers from the Tipton County Sheriff's Department at his initial interview. Once a law enforcement officer's reputation for truthfulness has been tarnished, it is very difficult to re-establish that reputation.

#### **Appropriate Discipline for Grievant**

34. It is true that Grievant has had "excellent" job performance evaluations. It is also true that Grievant has been a long-time state employee.

35. This case is extremely troubling because Grievant is a long time employee of the state of Tennessee and the Department of Safety. This case is also very troubling because Grievant has received “exceptional” job ratings. Because of these facts, there is a hesitancy to terminate Grievant’s employment.

36. The fact that Grievant has been a long-time employee of the State/Department of Correction, and the fact that he has received “exceptional” job ratings is considered in determining the appropriate discipline in this matter.

37. However, due to the extremely serious nature of Grievant’s position, which involves the protection and safety of the citizens of Tennessee and other drivers using Tennessee’s roadways; and in light of the fact that Grievant has received other disciplinary measures in the past for serious misconduct, all the facts and circumstances of this case preponderate in favor of termination being the appropriate discipline.

38. It is noted that Grievant, less than a year prior to the December 26, 2009 incident, received a three day suspension in April 2009 for a February 6, 2009 incident in which Grievant abused his position as a State Trooper by reacting improperly to a motorist’s seeking emergency medical attention for her husband. Further, in 2002, Grievant received a two day suspension for a “domestic assault” arrest following a physical altercation with his then-wife *at the highway patrol station*.

39. In determining whether or not termination is the appropriate discipline for Grievant, it is necessary to consider whether there is “just cause” to terminate Grievant.

40. Considering all the circumstances of this matter, including Grievant's employment record, and Grievant's disciplinary record, it is determined, by a preponderance of the evidence, that the Department has "just cause" for terminating the Grievant.

41. It is clear that if Grievant remained employed with the Department of Safety as a State Trooper, it would subvert the "good of the service". Grievant's accident reports, arrest reports, and testimony would be subject to attack, and Grievant's ability to perform his job as a State Trooper would be seriously impaired.

42. As the Lee court emphasized, "[The officer] represents law and order to the people and *must present an image of personal morality and honesty to have the respect of the citizenry.*" at 5. Lee v. Personnel Merit Bd. of City of Dyersburg, 1986 WL 3368, p. 5 (Tenn.Ct. App.). (Emphasis added.)

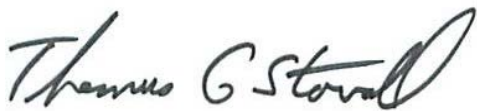
43. For the good of the service, Grievant must be **TERMINATED**.

It is ordered that **TERMINATION** is the appropriate discipline in this matter. However, Grievant's "re-hire" status for non-trooper jobs within the Department of Safety or other State Departments shall be changed to "eligible for re-hire."

The Department's decision shall be **UPHELD**, and this matter is **DISMISSED**.

It is so ordered.

Entered and effective this 8th day of November, 2011.



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Thomas G. Stovall, Director  
Administrative Procedures Division