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TENNESSEE DEPARTMENT OF HEALTH, vs. ANDERSON HUTSELL, Grievant.

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
HEALTH,**

v.

ANDERSON HUTSELL,
Grievant.

DOCKET NO: 26.17-112684J

INITIAL ORDER

The Step V civil service appeal in this matter was filed with the Administrative Procedures Division on June 14, 2011. On July 18, 2011, the Tennessee Department of Health (Department) moved to dismiss the instant civil service appeal. The Grievant filed a brief in opposition on August 26, 2011. The Department filed a reply brief on September 2, 2011. A pre-hearing telephone conference was held in this matter on September 14, 2011, during which the parties presented arguments pertaining to the Department's Motion to Dismiss. Additional briefing was then requested. The Grievant filed a supplemental brief on September 26, 2011. The Department filed a supplemental brief on October 21, 2011. A second pre-hearing telephone conference was held in this matter on October 28, 2011, during which the parties presented additional arguments pertaining to the Department's Motion to Dismiss. At the time of the October 28, 2011, telephone conference, the Grievant had not yet received the Department's supplemental brief. Since that time, the Grievant's counsel has informed the undersigned Administrative Judge that the Grievant does not wish to file a response to the Department's October 21, 2011, supplemental brief.

The Department argues that this appeal should be dismissed because the Grievant has appealed a non-grievable issue. After consideration of the record and the arguments presented, it is determined that the motion to dismiss should be GRANTED. This decision is based upon the following.

FINDINGS OF FACT

1. On October 25, 2010, the Grievant was notified that he was being removed from his duties as the County Director of Meigs County Health Department and suspended for ten (10) days. The Grievant appealed this disciplinary action.

2. At the Step III review of this appeal, the Commissioner of the Department of Health reduced the suspension from ten (10) days to five (5) days.

3. On April 27, 2011, at the Step IV review of this appeal, the Commissioner of the Department of Health reinstated the Grievant as the County Director of the Meigs County Health Department with full back pay and benefits and overturned the five (5) day suspension. The Commissioner reduced all of the disciplinary actions to a written warning, which was hand delivered to the Grievant on May 16, 2011.

4. The Grievant returned to work as the County Director of the Meigs County Health Department on May 16, 2011.

5. In the written warning, which was hand delivered to the Grievant on May 16, 2011, the Grievant was informed that he could appeal the written warning to the Commissioner. To date, the Grievant has not filed a separate appeal of the written warning.

ANALYSIS and CONCLUSIONS OF LAW

The Department argues that the instant appeal should be dismissed as moot because the Grievant won his appeal at the Step IV appeal level. DEPARTMENT OF HUMAN RESOURCES RULE

1120-11-.07(6) provides that the following types of actions, among others, are “non-grievable”:
“[o]ral and written reprimands.”

At the time this appeal was initially filed, the appeal was proper because the Grievant had been notified that he was being removed from his duties as the County Director of Meigs County Health Department and suspended for ten (10) days, both of which were grievable disciplinary actions under DEPARTMENT OF PERSONNEL RULES 1120-11-.06 (1) & (2). The Grievant won his appeal of these two disciplinary actions at the Step IV level of this appeal process. Pursuant to DEPARTMENT OF HUMAN RESOURCES RULE 1120-11-.07(6), the remaining disciplinary action – that of a written warning – is not grievable to the Step V level of the grievance process. It is determined that now that the termination and suspension have both been reduced to a written warning, no grievable matter exists for review by the Civil Service Commission. Hence, the current appeal is moot.

The Grievant argues that his reinstatement was effectively a demotion. If that is the case, the Grievant should have filed a separate grievance pertaining to his alleged demotion. The alleged demotion was not argued before the appointing authority at the lower levels of this appeal process and therefore is not ripe for review by the Civil Service Commission.

Accordingly, the Department’s Motion to Dismiss is GRANTED and this case is DISMISSED.

It is so ORDERED.

This INITIAL ORDER entered and effective this the _____ day of _____, 2012.

MARY M. COLLIER
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the _____ day of _____ 2012.

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, looped initial 'T' and 'S'.

**THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE**