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

Tennessee Department of State, Opinions from the Administrative Procedures Division

Law

11-24-2008

RONALD N. HAYNES, Grievant v. TENNESSEE DEPARTMENT OF TRANSPORTATION, Respondent

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

CIVIL SERVICE COMMISSION
STATE OF TENNESSEE

IN THE MATTER OF:	)	
	)	
RONALD N. HAYNES,	)	
Grievant	)	
	)	
V.	)	**DOCKET NO. 26.22-096341J**
	)	
TENNESSEE DEPARTMENT	)	
OF TRANSPORTATION,	)	
Respondent	)	

INITIAL ORDER

This contested administrative proceeding was heard on May 19, 2008, before Rob Wilson, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, sitting for the Tennessee Civil Service Commission in Nashville, Tennessee. Tremecca D. Doss, Assistant General Counsel for the Tennessee Department of Transportation ("Department" or "TDOT") was present and represented the State. Grievant Ronald N. Haynes was present and represented by Attorney Randall Larramore.

The subject of this proceeding is the Grievant's termination from employment as a Highway Incident Response Operator 2 with the Department. After consideration of the entire record and the arguments of counsel, it is DETERMINED that the dismissal is UPHELD, based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Grievant, Ronald N. Haynes, was employed as a Highway Incident Response Operator 2, also known as a HELP Operator. He started working for the HELP Program in 2000.

2. HELP Operators work as First Responders but do not provide medical care beyond first aid.

3. Mr. Haynes was employed in the Department of Transportation's Region II Incident Response Unit located in Chattanooga, Tennessee.

4. In 2006 the Grievant allowed his First Responder certificate to expire.

5. It is TDOT's policy that all HELP Operators possess and maintain active First Responder certificates. Mr. Haynes was aware of this requirement. There is no exemption from the First Responder certification requirement under TDOT policy.

6. Mr. Haynes is an Emergency Medical Technician (EMT). In addition to the EMT certification, Mr. Haynes kept a current First Responder certificate until April 2006.

7. Henry F. House formerly supervised the Grievant as a Supervisor 2 in Region II's Highway Response Unit.

8. Lacy P. Word is a Highway Response Supervisor in Region II. Mr. Word works in a supervisory capacity in the HELP Unit, but ordinarily does not directly supervise Mr. Haynes. Mr. Haynes would occasionally work during Mr. Word's shift, and Mr. Word would supervise him during those times. Mr. Word instructed the Grievant to get his First Responder certificate renewed. Mr. Word was also present during a meeting in 2007 with Mr. Haynes, Mr. House, and Mr. VanHorn where the Grievant said that he had all the proper documentation, and that he would renew the First Responder certificate. The Grievant failed to do so.

9. Robert VanHorn is the Regional Incident Management Coordinator for Region II. Mr. VanHorn supervises the HELP Shift Supervisors as part of his job responsibilities. The Grievant worked in Mr. VanHorn's supervisory chain until his employment termination.

10. Robert B. Brown is the Department's Region II Director. Mr. Brown oversees all work that goes on within the twenty-four county area consisting of maintenance, construction, right-of-way buying, and disciplinary actions.

11. As Region II Director, Mr. Brown is also responsible for enforcing TDOT policies. Mr. Brown conducts Due Process hearings and makes disciplinary recommendations to the Commissioner of Transportation and/or his designees.

12. The Grievant, as a Highway Incident Response Operator, was required to obtain and maintain an active First Responder certificate.

13. The First Responder certification is a job requirement for the HELP Operator position. Employees working in probationary Operator 1 positions who fail to obtain an active First Responder certificate within the first ten months of their hire dates are dismissed from employment with TDOT. Additionally, HELP Operators who successfully pass their probationary periods but later fail to maintain First Responder certification are subject "to termination from employment as a Highway Response Operator with the Tennessee Department of Transportation."

14. The Grievant allowed his First Responder certificate to expire in April 2006. Prior to April 2006, Mr. Haynes made no effort to renew his certificate to prevent it from lapsing.

15. During a certification audit in July 2006, the Grievant's supervisors became aware that Mr. Haynes' First Responder certificate had expired.

16. On several occasions, Henry House spoke to the Grievant and instructed him to get his First Responder certificate renewed.

17. The Grievant felt that he should not have to have a First Responder certificate because of his status as an Emergency Medical Technician (EMT).

18. Between July and December 1, 2006, the Grievant failed to renew his First Responder certificate.

19. On December 1, 2006, Robert VanHorn issued a Written Warning to Ronald Haynes directing him to obtain his First Responder certificate or face further disciplinary action. As part of the Written Warning, Mr. Haynes was given a deadline of December 15, 2006 to provide Mr. VanHorn with copies of the documentation necessary to renew his First Responder certificate. Mr. Haynes provided no documentation to Mr. VanHorn on that date.

20. Mr. VanHorn gave the Grievant the benefit of the doubt and allowed him more time to complete the recertification process.

21. David Cobleigh is a HELP Operator 2 with the Department. He holds the same employment position the Grievant once held. Mr. Cobleigh traveled with the Grievant from Chattanooga, Tennessee to Nashville, Tennessee to attend First Responder recertification training, which was held on December 11 and 12, 2006. Mr. Haynes and Mr. Cobleigh attended the same training course.

22. The Grievant received a Verification of Training form for this training course. The form is dated December 11-12, 2006, contains the course number, and is signed by the Grievant and Instructor Brian McKinley.

23. After completing the training course, First Responders can renew their certificates online with a debit or credit card.

24. Mr. Cobleigh successfully renewed his First Responder certificate online. The Grievant did not renew his First Responder certificate after the December 11-12, 2006 training course.

25. On January 22, 2007, Mr. VanHorn met with the Grievant regarding the status of his First Responder application. Mr. Haynes had not renewed the certificate.

26. Mr. Haynes' supervisors made multiple efforts to assist by obtaining documents and certification information on the Grievant's behalf.

27. After January 2007, Mr. Haynes still did not renew his First Responder certificate. Robert VanHorn continued to work with the Grievant, again giving him the benefit of the doubt, and withheld recommending further discipline.

28. Over the following months, the Grievant persisted in his refusal and failure to obtain an active First Responder certificate.

29. On April 23, 2007, Region II Director Robert B. Brown issued Ronald Haynes a Due Process letter for the Grievant's failure to maintain a current First Responder certificate and insubordination.

30. Mr. Brown instituted Due Process for the Grievant because Mr. Haynes was afforded every possible opportunity to obtain his First Responder certificate. He failed to do so, and as such, there was no alternative at that point but to proceed with disciplinary action.

31. On April 25, 2007, the Grievant participated in a Due Process hearing with Mr. Brown regarding the pending disciplinary charges. The Grievant still had not renewed First Responder certificate.

32. After conducting the Due Process hearing, Mr. Brown made the recommendation that Ronald Haynes' employment with the Department be terminated.

33. The Commissioner of Transportation terminated Mr. Haynes' employment effective May 14, 2007.

APPLICABLE LAW

1. Department of Human Resources Rule 1120-10-.06(7) and (18): **EXAMPLES OF DISCIPLINARY OFFENSES.** The following causes are examples of those considered for disciplinary action and should not be considered the only causes of action:

(7) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment.

and

(18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

2. TENNESSEE DEPARTMENT OF TRANSPORTATION, HELP PROGRAM, OPERATIONS MANUAL, Page 43:

First Responder and CPR certifications must be kept up-to-date by the employee.

The Department of Transportation has carried its burden of proof by a preponderance of the evidence that Ronald N. Haynes' dismissal from state service should be upheld based upon his unwillingness or refusal to renew his First Responders Certificate.

3. The first disciplinary action taken against Mr. Haynes based on his failure to obtain or maintain a current First Responder certificate was a Written Warning. Mr. Haynes did not appeal this disciplinary action.

4. The record establishes that Mr. Haynes' First Responder certificate expired on April 30, 2006. Mr. Haynes admitted to failing to renew his First Responder certificate before the expiration date. Even after the Grievant's supervisors brought the issue of the lapsed certificate to Mr. Haynes' attention in July 2006, the Grievant failed to reactivate his First Responder status. Mr. House, Mr. Word, and Mr. VanHorn gave the Grievant the benefit of the doubt on several occasions over several months, and despite their repeated instructions to the Grievant to get his First Responder certificate renewed, Mr. Haynes failed to do so.

5. TDOT has established by a preponderance of the evidence, pursuant to Rule 1120-10-.06(18), that Mr. Haynes engaged in insubordinate behavior, which is defined as the "[r]efusal to accept a reasonable and proper assignment from an authorized supervisor." The record proves that Mr. Haynes was insubordinate due to his repeated and purposeful failures to abide by his supervisors' instructions to renew his First Responder certificate. Mr. Haynes was aware that a current First Responder Certification was a condition of his employment.

Mr. Haynes' failures to renew the First Responder certificate were intentional. This is reflected throughout the record. Additionally, there is no valid reason or cause to explain why Mr. Haynes did not obtain his First Responder Certificate renewal.

6. The Grievant's claim that he made every reasonable attempt to reactivate his First Responder status is not credible. Mr. Haynes repeatedly testified at the Step V hearing that he never received or even saw a Verification of Training form for the December 11 and 12, 2006 First Responder course he attended in Nashville, Tennessee. The Grievant also testified that the

lack of this document was preventing him from successfully renewing his First Responder certificate. However, Exhibit 6 consists of a Verification of Training form issued by the Department of Health's EMS Services. The form displays Course Number 1506R46, it is dated December 11 and 12, 2006, and it is signed by Instructor Brian McKinley and the Grievant. The Grievant authenticated this document and identified his own signature and that of Brian McKinley.

The record proves that all the required information the Grievant needed to renew his First Responder certificate was in his possession no later than January 2007. However, Mr. Haynes failed to include either a course number or a Verification of Training form with his renewal application to the Department of Health dated February 1, 2007. (See Exh. 9). While Mr. Haynes had possession of both a course number **and** a Verification of Training form, he refused to send either to the Department of Health in order to successfully renew his First Responder certificate. Mr. Haynes clearly intended not to complete the recertification process in contravention of TDOT policy and his supervisors' directives.

7. Any testimony or argument that Ronald Haynes was unaware of or unclear regarding the Department of Health's requirements for renewing the First Responder certificate cannot be accredited. The record reflects that Mr. Haynes successfully renewed his First Responder certificate with the Department of Health in the past. The Grievant was thus familiar with the First Responder certificate renewal process.

On November 15, 2006, two weeks prior to the December 1, 2006 Written Warning, the Department of Health's EMS Division issued Ronald Haynes a letter specifying every item of documentation necessary for renewal of his First Responder certificate. (See Exh. 3).

Enclosed with the letter are written "Lapsed Certification Requirements" for the First Responder certificate and a blank renewal form containing instructions. Also included in the correspondence from the Department of Health are a street address, a telephone number, and an Internet website address for the EMS Division. Mr. Haynes could have, at any time after receiving this letter, contacted the Department of Health with questions regarding completion of his application.

The Department of Health issued the Grievant two additional notices subsequent to the November 15, 2006 letter. They are dated December 13, 2006 (See Exh. 8) and March 28, 2007 (See Exh. 10). Therefore, prior to his employment termination, Mr. Haynes was notified at least two (2) more times by the EMS Division. Each of these notices clearly states what the Grievant needed to submit in order to renew his First Responder certificate.

It was not incumbent upon Mr. VanHorn, Mr. Word, or Mr. House to instruct the Grievant as to how he should submit a successful application to the Department of Health for renewing a First Responder certificate. Mr. Haynes could have at any time obtained information and clarification directly from the licensing authority itself. As the HELP Operations Manual states, "First Responder and CPR certifications must be kept up-to-date by the employee." (Exh. 17, pp. 43, 44). Mr. Haynes is solely responsible for renewing his First Responder certificate.

8. TDOT has demonstrated by a preponderance of the evidence that Mr. Haynes was aware of the Department's policy requiring HELP Operators to obtain and maintain a First Responder certificate, and purposely failed to comply with his job requirements.

Mr. Haynes was aware that he needed an active First Responder certificate to be promoted from the probationary position of HELP Operator 1 to HELP Operator 2. The

Grievant knew that the First Responder certificate was a job requirement for continued employment with the Department.

CONCLUSIONS

9. Ronald N. Haynes clearly engaged in behavior that violated TDOT's HELP Operations Manual, the Notice of TDOT Conduct Standards, and his supervisors' instructions. The Grievant was appropriately dismissed.

10. The Department's decision to terminate the Grievant's employment is appropriate. Tennessee Code Annotated § 8-30-326(a) 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." "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 . . . ." DOHR Rule 1120-10-.02.

11. The law prescribes progressive discipline for State of Tennessee employees, and it also provides that disciplinary action must be administered at the appropriate step for misconduct. (See Tenn. Code Ann. § 8-30-330(a); DOHR Rule 1120-10-.07(1)). As Tennessee's Court of Appeals has held:

> . . . [T]he key word in the statute is 'appropriate.' . . . [T]he language of these provisions does not mandate application of discipline in a routine fashion without regard to the nature or severity of the behavior it is intended to address. The supervisor has discretion to determine what punishment fits the offense.

Berning v. State, 996 S.W.2d 828, 830 (Tenn. Ct. App. 1999).

Berning acknowledges there are some acts of employee misconduct that are of such an extensive or aggravated nature, a supervisor must pass over lesser discipline in favor of a higher level of discipline, even where the employee has no prior history of disciplinary action. In this case, progressive discipline was followed: Mr. Haynes received a written warning on December

1, 2006, and was terminated from employment for refusing to follow his supervisors' multiple directives and his persistence in failing to obtain an active First Responder certificate. "Supervisors have discretion on how to discipline an employee. . . . [D]ismissal is appropriate when a lesser disciplinary action will not end the behavioral problem." Sanford, 992 S.W.2d at 414.

12. The record in this case establishes that although Mr. Haynes had a six-year service record with one other instance of prior discipline, he nevertheless engaged in conduct on multiple occasions that under the Department's policy, subjects him to termination from employment. See Lynn v. Camp, 2003 WL 22401280 at *7 (employee's "superior" work performance was not a factor in determining whether he had violated policy and whether termination was appropriate).

13. The evidence in this case proves that Ronald N. Haynes allowed his First Responder certificate to lapse in April 2006. He then repeatedly and intentionally failed to comply with his supervisors' instructions to get the certificate renewed. Even after he received a disciplinary action in December 2006, Mr. Haynes continued in his refusals and failures to renew the First Responder certificate. These events occurred despite the fact that the Grievant had all the information, documentation, and resources necessary to renew his certificate. The evidence proves that the renewal process takes a relatively short time to complete. Even after a year had passed, Mr. Haynes still did not obtain an active certificate. The only obstacle to renewing the First Responder certificate was the Grievant himself. As such, Mr. Haynes created a series of circumstances resulting in multiple violations of State Rules and Department policies. Accordingly, TDOT has established by a preponderance of the evidence that Ronald N. Haynes

engaged in misconduct warranting disciplinary action, and that dismissal from employment is the appropriate form of discipline in this case.

It is CONCLUDED that Mr. Haynes' termination from State employment is UPHELD, and this matter is DISMISSED.

This Initial Order entered and effective this 24th day of November, 2008.

Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 24th day of November, 2008.

Thomas G. Stovall, Director
Administrative Procedures Division