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Department of Mental Health and Developmental Disabilities, Petitioner, v. Zebedee Johnson, Grievant

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BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION

IN THE MATTER OF: **Department of Mental Health and Developmental Disabilities,** **Petitioner,** **v.** **Zebedee Johnson** **Grievant**	**DOCKET NO: 26.15-099907J**

INITIAL ORDER

This matter came to be heard March 9, 2009, in Nashville, Tennessee, before Rob Wilson, Administrative Law Judge, sitting for the Tennessee Civil Service Commission. The Department of Mental Health and Developmental Disabilities was represented by Dominique Gutierrez, Esq. The Grievant was present and represented by Mark Chapman, Esq.

Grievant, an employee of the Middle Tennessee Mental Health Institute, Department of Mental Health and Developmental Disabilities, is contesting a one day suspension for alleged conduct unbecoming a state employee, failure to maintain harmonious working relationships, and insubordination. Grievant properly appealed this disciplinary action, and this hearing constituted Grievant's 5th step hearing before the Civil Service Commission.

After due consideration of the evidence and the record as a whole it is **DETERMINED** Grievant was justifiably and properly suspended for one day.

This determination is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant, Zebedee Johnson, has been employed as a nurse by Middle Tennessee Mental Health Institute since 2003.

2. On or around January 20, 2008, Grievant had a confrontation with several of his co-workers over an incident of playing chess in the dayroom.

3. The confrontation between Ms. Ralph, R.N., and Grievant began when Ms. Ralph asked Grievant to stop playing chess with another staff member.

4. Grievant and Eric Overton (another staff member) were playing chess on the day in question. Multiple witnesses testified that Grievant became loud and abusive when Ms. Ralph asked Grievant to stop playing chess.

5. Elise Scruggs, another employee, testified that Grievant was loud and abusive to her during an evening shift when she had permission to leave early. Ms. Scruggs stated that Grievant refused to do a medication count with her, and added that he was loud and had an intimidating posture. Ms. Scruggs stated "the way he spoke to me was very threatening."

6. Teresa Oakes is a nurse executive who overseas the nurses and nurse techs. Ms. Oakes testified that she once asked Grievant to attend a training class and he initially refused and said the class wasn't necessary. Ms. Oakes added that Grievant eventually did attend the class. Ms. Oakes testified that she reviewed the incident reports concerning Grievant's actions and concluded that Grievant's behaviors warranted a one-day suspension.

7. John Martins, a Psychiatric Nurse Practitioner also testified that he witnessed Grievant yelling during an argument with a co-worker. Mr. Martins stated that Grievant seemed angry and agitated and that his voice was loud enough to be overheard from sixty feet away.

8. Grievant testified that his interactions with his coworkers were due to the fact that he considers patient safety to be a priority.

9. When asked the question, "If given a directive, do you have to follow it?.... Grievant responded, "No, I have to validate it."

10. As a result of his actions, Grievant was given a one day suspension.

CONCLUSIONS OF LAW AND ANALYSIS

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. T.C.A. §4-5-301.

2 It is a de novo proceeding, and no presumption of correctness attaches to the action of the agency. Big Fork Mining Co. v. Tennessee Water Quality Control Board, 620 S.W. 2d 515, at 521 (Tenn. App. 1981).

3. The burden of proof rests with the agency and the agency must prove by a preponderance of the evidence that 1) the Grievant acted or failed to act as the agency alleges; 2) the Grievant's action constitutes a disciplinary offense; and 3) the recommended discipline is appropriate for the given offense.

4. The Department of Mental Health and Developmental Disabilities bears the burden of proof in this case. The standard of proof is a preponderance of the evidence. TN. Department of State, Administrative Procedures Division, Rule 1360-4-1-.02(3)(7).

5. Preponderance of the evidence simply means "the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion."

6. 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. 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. Disciplinary action must be administered at the most appropriate step based on the misconduct. *See* Rule 1120-10-.07, Tenn. Comp. R. & Regs. And Tenn. Code Ann. § 8-30-330.

7. EXAMPLES OF DISCIPLINARY OFFENSES (Rule 1120-10-.06)

The following causes are examples of those considered for disciplinary action and should not be considered the only causes of action.

(1) Inefficiency or incompetence in the performance of duties.
(2) Negligence in the performance of duties.
(3) Careless, negligent or improper use of State property or equipment.
(4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees.
(5) Habitual improper use of sick leave privileges.
(6) Habitual pattern of failure to report for duty at the assigned time and place.
(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.
(**8) Gross misconduct or conduct unbecoming an employee in the State service.**
(9) Conviction of a felony.
(10) Willful abuse or misappropriation of State funds, property or equipment.
(11) Falsification of an official document relating to or affecting employment.
(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.
(13) Trespassing on the property of any State officer or employee for the purpose of harassment.
(14) Damage or destruction of State property.

(15) Acts that would endanger the lives and property of others.
(16) Possession of unauthorized firearms, lethal weapons, alcohol or illegal drugs on the job.
(17) Brutality in the performance of duties.
(18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).
(19) Reporting to work under the influence of alcohol or illegal drugs, or partaking of such on the job.
(20) Sleeping or failure to remain alert during duty hours.
(21) Betrayal of confidential information.
(22) Garnishment of wages for more than one indebtedness.
(23) Political activity prohibited by T.C.A. Title 2, Chapter 19 (The Little Hatch Act)
(24) For the good of the service as outlined in T.C.A. 8-30-326.

8. The testimony from the State's witnesses clearly established that Grievant has, on more than one occasion, failed to maintain satisfactory and harmonious working relationships with fellow employees. Additionally, Grievant's threatening demeanor and disrespectful and argumentative actions toward his co-workers plainly constitute conduct unbecoming for an employee in the State service.

9. The insubordination allegation seems to have been resolved. Although Grievant initially refused to take the suggested training course, the testimony established that he did eventually attend the training.

10. Grievant's argument stating that his problematic interactions with his co-workers are due to the fact that he considers patient safety to be a priority is without merit. Grievant's care for his patients was never the issue, and there was no testimony that even remotely suggested that patient safety would have been compromised if the grievant had not acted the way he did. Even more troublesome is the fact that Grievant feels that he does not have to follow a directive from a supervisor until he "validates it." This means that the Grievant can disregard directives that, in his opinion, are not valid. Complete chaos and disorder would be the result if every employee acted in such a manner.

Grievant has received the due process afforded him under the Civil Service Statute and promulgating regulations. The Department of Mental Health and Developmental Disabilities has carried its burden of proof and shown by a preponderance of the evidence that Grievant has violated the above-mentioned Department of Personnel Rules. The Department's determination in this matter was proper, and Grievant's one day suspension without pay is **UPHELD.**

This Initial Order entered and effective this 7th day of April, 2009.

_____
Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 7th day of April, 2009.

Thomas G. Stovall, Director
Administrative Procedures Division