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Department of Safety, Respondent, v. Robert Eckerman, Grievant

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BEFORE THE TENNESSEE CIVIL SERVICE COMMISSION

IN THE MATTER OF: **Department of Safety** ***Respondent,*** **v.** **Robert Eckerman** ***Grievant***	**DOCKET NO: 26.19-101696J**

ORDER GRANTING MOTION TO DISMISS

Now pending in this matter is a "Motion to Dismiss Grievance," filed by the Tennessee Department of Safety ("Department") on March 16, 2009. Deborah Martin is Counsel for the Department of Safety. The Grievant is represented by Arthur Knight, Esq.

After consideration of the record and the arguments of the parties, it is determined that the Department's Motion should be granted. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The issue in this matter concerns an appeal filed by the Grievant on January 5, 2009. In his appeal the Grievant stated that he "received a written warning from Major John Savage," and requests that "the written warning issued to me on December 17, 2008 be removed from my record.

Prior to the filing of the Motion to Dismiss, a pre-hearing conference was convened in February, 2009, in order to set a date for the contested case hearing. The parties agreed that the

contested case would be heard on June 25, 2009. Subsequently, the Department filed a Motion to Dismiss. The Department's Motion to Dismiss is based upon the personnel rule indicating that verbal and written reprimands are non-grievable matters. The Grievant failed to file any response to the Department's Motion to Dismiss.

ANALYSIS AND CONCLUSIONS OF LAW

Even though the Grievant has not filed a response to the Department's Motion to Dismiss, this Motion is ready for disposition under Rule 1360-4-1-.09(3), Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies, which provides, in relevant part, as follows:

> Each opposing party may file a written response to a motion, provided the response is filed within seven (7) days of the date the motion was filed. A motion shall be considered submitted for disposition seven (7) days after it was filed, unless oral argument is granted, or unless a longer or shorter time is set by the administrative judge.

Since the Motion to Dismiss was filed over a month ago, the Grievant has had ample time to respond and has failed to do so. Consequently, the Motion is "considered submitted for disposition."

This appeal is governed by the provisions of Chapter 1120-11 of the Rules of the Tennessee Department of Personnel ("DOP Rules"). Under this chapter, certain state employees have a right of appeal in specified areas: disciplinary action against the employee, certain geographic transfers, actions in violation of specified rules, and other matters that are within the discretion or control of the appointing authority or the Civil Service Commission. DOP Rule 1120-11-.07. A number of subjects are also specifically excluded from the grievance process, including supervisory counseling, verbal and written reprimands, work schedules, reasonable

work assignments, job classification and salary issues, most actions on leave requests, lawful agency rules or policies, and decisions within the agency's discretion. DOP Rule 1120-11-.08.

In the Grievant's appeal, he claimed that he received a written reprimand resulting from a retaliatory investigation. Grievant further states that he is aware that a written warning is considered non-grievable; but states that there are mitigating circumstances. Grievant then includes a lengthy and detailed description of how due process protections must ensure that no one is deprived of life, liberty, or property. However, any deprivation of the Grievant's life, liberty, or property is purely speculative. Other than the written reprimand, which is by definition a non-grievable matter, there has been no adverse action taken by the Department. Since DOP Rule 1120-11-.08(5) specifically lists verbal and written reprimands as non-grievable matters, the Grievant is not entitled to a hearing on this basis.

Based upon the law and analysis discussed above, the Grievant clearly is not entitled to proceed to a Level V hearing on these facts. Accordingly, since the relief requested cannot be granted through this proceeding, it is hereby **ordered** that the Department's Motion to Dismiss be **granted**.

This Initial Order entered and effective this 17th day of April, 2009.

_____
Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 17th day of April, 2009.

Thomas G. Stovall, Director
Administrative Procedures Division