



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

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

4-29-2009

Eric T. Moody

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

**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

IN THE MATTER OF:

Eric T. Moody

DOCKET NO: 26.43-101360J

INITIAL ORDER

This contested case is before Joyce Carter-Ball, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division. Julie Randall Pablo, Staff Attorney for the Tennessee Department of Children's Services (the "Department"), represents the State. The Grievant, Eric T. Moody, is represented by his legal counsel, Howard L. Upchurch.

On March 9, 2009, the State filed the "Motion for Summary Judgment." On April 22, 2009, the Grievant filed the "Grievant's Response to Motion for Summary Judgment." The Department's Response to Grievant's Response to Department's Motion for Summary Judgment was filed on April 27, 2009.

The Grievant has raised the issue in his complaint that the Pre-Trial Diversion agreement referred to in the Department's Motion and Memorandum of Law are not convictions and do not preclude the Grievant from employment with the Department at Taft Youth Center or other facilities operated by the Department.

In reviewing the provisions of the Tennessee Rules of Civil Procedure (56) and the circumstances under which a summary judgment will be granted, the United States Supreme Court stated in *Celotex Corp. v. Catrett*:

Once a moving party has carried its burden with regard to the sufficiency of the non-moving party's evidence, the burden of production shifted to the non-moving party (1) to point to evidence overlooked or ignored by the moving party that establishes a material factual dispute, (2) to rehabilitate the evidence attacked by the moving party, (3) to produce additional evidence showing the existence of a genuine issue for trial, or (4) to submit an affidavit explaining why further discovery is necessary. *Celotex Corp. v. Catrett*, 477 U.S. at 332-33 & n. 3, 106 S. Ct. 2548.

The non-moving party, in this case, the Grievant, admitted Statement Numbers 1 through 5 in the Grievant's Response to the Department's Statement of Undisputed Material Facts. The Grievant also admitted Statement of Undisputed Material Fact Number 6 insofar as the Grievant was arrested after indictments were returned against the Grievant for official oppression and assault of the Department's children.

The Grievant admits that he entered into a Pre-Trial Diversion Agreement with the Circuit Court of Bledsoe County, Tennessee and that he was ordered **not to be involved with employment which involves the supervision of minors for a one (1) year period from and after February 23, 2009.**

Tennessee Department of Human Resources Rule 1120-10-.03 (1) provides that "career employees have a "property right" to a position in the classification in which they currently hold career status." It is the opinion of the undersigned that the **Grievant has no "property right" to any other position.**

The allegations made against the Grievant are obviously no longer pending as the Grievant admits that the above mentioned Pre-Trial Diversion has already been entered as

well as the Internal Affairs Investigation being completed before the Grievant was ever actually terminated.

As soon as an Internal Affairs Investigation is completed the “outside of the fence” status of the employee changes to either returning to his or her job due to unfounded allegations, or disciplinary action which removes the employee from the presence of the children by either demotion or termination, when involving abuse of a child, such as in the case at hand.

The Grievant is clearly **court ordered not to be involved with employment which involves the supervision of minors for a one (1) year period from and after February 23, 2009.** The Grievant has not provided any proof that the Department has an obligation to **create** work for someone who has been terminated and court ordered to not work around children.

After consideration of the entire record in this matter and argument of the parties, it is ORDERED that the Department’s Motion for Summary Judgment be GRANTED.

This Initial Order entered and effective this 29th day of April, 2009.

Joyce Carter-Ball
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 29th day of April, 2009.



Thomas G. Stovall, Director
Administrative Procedures Division