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8-6-2009

# DEPARTMENT OF SAFETY, Agency vs. MAURICE C. DEVORE, Grievant

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

**IN THE MATTER OF:**

**DEPARTMENT OF SAFETY,  
Agency**

**v.**

**MAURICE C. DEVORE  
Grievant**

**DOCKET NO: 26.19-101612J**

**INITIAL ORDER**

This Fifth-Step Civil Service administrative proceeding was heard on August 6, 2009 in Nashville, Tennessee, before John Hicks, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Civil Service Commission. Deborah Martin, Staff Attorney for the Tennessee Department of Safety, represented the State. Grievant Maurice C. Devore appeared pro se.

The subject of the hearing was whether a three-day suspension of Grievant was the appropriate level of discipline based on Grievant's September 10<sup>th</sup> and 15<sup>th</sup>, 2008 conduct.

After consideration of the record and argument of counsel, it is DETERMINED that the three-day suspension was the appropriate level of discipline based on Grievant's September 10<sup>th</sup> and 15<sup>th</sup>, 2008 conduct and that the three-day suspension should be UPHELD. This determination is based on the following Findings of Fact and Conclusions of Law:

## **FINDINGS OF FACT**

1. During April 2008, Grievant Wayne Wilkerson was assigned as Grievant Maurice DeVore's supervisor.
2. On May 28, 2008, Grievant received a written warning for failure to follow directives and complete assigned tasks on the Pupil Transportation Project.
3. On June 5, 2008, Grievant received a second written warning for failure to follow directives and to complete assigned tasks on the Pupil Transportation Project.
4. On September 10, 2008, immediate supervisor Wayne Wilkerson went to Grievant's cubicle to request Grievant to come to Wilkerson's office to discuss Grievant's annual Performance Evaluation.
5. Grievant complied and followed Wilkerson to his office.
6. Prior to the discussion of the Performance Evaluation, Wilkerson expressed that Grievant might not be happy with his ratings and that he hoped they could get through it and make improvements.
7. The first rating discussed was attendance and punctuality. Wilkerson had rated Grievant a "2" on the evaluation for attendance and punctuality. Wilkerson advised Grievant that he was required to be at work at 9:00 a.m. and was required to work a 7.5 hour shift.
8. Grievant questioned why his driving to and from work or his walking around the grounds thinking about projects should not be part of the required 7.5 hour shift.
9. Grievant became agitated and called Wilkerson an "idiot and a fool."
10. Wilkerson told Grievant that he felt that Grievant was insubordinate and again Grievant called Wilkerson and "idiot and a fool."

11. Grievant told Wilkerson that he did not have a tape recorder running so it would just be Wilkerson word against Grievant's.

12. Grievant stated that he was going to address the situation and left the room.

13. On September 15, 2008, Wilkerson and his supervisor Robert Battenfield again attempted to discuss the annual Performance Evaluation with Grievant. Again Grievant refused to cooperate and refused to sign the Performance Evaluation.

14. The Performance Evaluation form provides a place for Grievant to check if he disagreed, partially agreed or agreed with the evaluation ratings.

15. Grievant refused to sign the Performance Evaluation and walked out.

16. Department of Human Resources rules and Department of Safety general orders require employees to sign Performance Evaluation forms and provide grievance procedures to allow an employee to protest an evaluation.

17. Grievant did not comply with either of the Department's grievance procedures.

18. As a result of Grievant's conduct on September 10<sup>th</sup> and 15<sup>th</sup>, 2008, Grievant received a written warning for tardiness, disregard of Department management directives, disregard of Department requirements and unprofessional conduct.

19. Grievant received a prior written warning for tardiness, disregard of Department management directives, disregard of Department requirements and unprofessional conduct on December 13, 2004.

20. Grievant received a "Not Acceptable" rating on his annual Performance Evaluation and refused to sign the evaluation on January 20, 2005.

## CONCLUSIONS OF LAW

1. Upon review of the record and the argument of the parties, it is CONCLUDED that the Department met its burden of proof, by a preponderance of the evidence, to show that a three-day suspension was the appropriate level of discipline based on Grievant's September 10<sup>th</sup> and 15<sup>th</sup>, 2008 conduct.

2. **1120-10-.06 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.

- (8) Gross misconduct or conduct unbecoming an employee in the State service.

3. It is CONCLUDED that Grievant's conduct on September 10<sup>th</sup> and 15<sup>th</sup>, 2008 was gross misconduct and conduct unbecoming an employee in State service pursuant to Rule 1120-10-.06 (8). This conclusion is based on Grievant calling his supervisor an "idiot and fool" Grievant walking out of the performance evaluation meeting and Grievant refusing to sign the performance evaluation rather than contesting the ratings through the established grievance procedures.

4. It is CONCLUDED that the three-day suspension was the appropriate level of discipline based on Grievant's September 10<sup>th</sup> and 15<sup>th</sup>, 2008 conduct and prior disciplinary actions.

5. Department of Safety, General Order 216-1, IX, 3:

3. UNBECOMING CONDUCT:

- a. Employees shall conduct themselves at all times, on and off duty, in a manner as to reflect most favorably upon themselves and/or the Department.

(1) Unbecoming conduct shall include any conduct which tends to bring the Department into disrepute; or which reflects discredit upon the Department or any employee(s) of the Department; or which tends to impair the operation and efficiency of the Department or an employee; or which violates Departmental policy.

6. It is CONCLUDED that Grievant's September 10<sup>th</sup> and 15<sup>th</sup>, 2008 conduct was not unbecoming conduct pursuant to Department of Safety, General Order 216-1, IX, 3. This conclusion is based on Grievant calling his supervisor an "idiot and fool", Grievant walking out of the performance evaluation meeting and Grievant refusing to sign the performance evaluation rather than contesting the ratings through the established grievance procedures.

7. It is CONCLUDED that Grievant's conduct on September 10<sup>th</sup> and 15<sup>th</sup>, 2008 had the tendency to impair the operation and efficiency of the Department and violated Departmental policy.

8. It is CONCLUDED that the three-day suspension was the appropriate level of discipline based on Grievant's September 10<sup>th</sup> and 15<sup>th</sup>, 2008 conduct and prior disciplinary actions.

9. Department of Safety, General Order 216, IX, 16.

16. INSUBORDINATION:

a. Employees shall promptly obey any lawful order of a supervisor.

(1) This will include orders relayed from a supervisor by a supervisor or equal or higher rank.

c. Any Disrespectful, insulting, mutinous, threatening, loud, insolent, profane, or abusive language, conduct, or

attitude directed toward a supervisor shall be considered insubordination.

- d. Any employee who is being insubordinate or disrespectful shall be informed of their behavior before any action is taken. Continuation of insubordination will result in disciplinary action up to and including termination.

10. It is CONCLUDED that Grievant's conduct on September 10<sup>th</sup> and 15<sup>th</sup>, 2008 was insubordinate conduct pursuant to Department of Safety, General Order 216, IX, 16. This conclusion is based on Grievant calling his supervisor an "idiot and fool" Grievant walking out of the performance evaluation meeting and Grievant refusing to sign the performance evaluation rather than contesting the ratings through the established grievance procedures.

11. It is CONCLUDED that the September 10<sup>th</sup> and 15<sup>th</sup>, 2008 conduct justified Grievant's three-day suspension.

12. Department of Safety, General Order 209-1 IV:

IV. PROCEDURES:

A. Job Performance Plan:

1. Each manager/supervisor shall prepare a job performance plan for each employee under his or her immediate supervision.
2. The job performance plan shall define and identify performance standards and ensure that each employee has a clear understanding of the expectations and requirements of their position.
4. After reviewing the job performance plan with the employee, the plan shall be signed by the employee and the manager/supervisor.

C. Performance Evaluation:

7. Each employee shall be given the opportunity to make written comments to supplement the formal evaluation report.

8. Employees may contest evaluations under certain conditions. Contested evaluations may be appealed in accordance with the provisions contained in General Order 216-3, entitled "Grievance Procedure."
9. After discussion of the formal evaluation with the employee, the evaluation shall be signed by the employee, manager/supervisor, reviewer, and Commissioner.

13. It is CONCLUDED that Grievant's conduct on September 10<sup>th</sup> and 15<sup>th</sup>, 2008 violated the Department's annual Performance Evaluations procedures set forth in Department of Safety, General Order 209-1 IV. This conclusion is based on Grievant calling his supervisor an "idiot and fool", Grievant walking out of the performance evaluation meeting and Grievant refusing to sign the performance evaluation rather than contesting the ratings through the established grievance procedures.

14. It is CONCLUDED that that a three-day suspension is the appropriate level of discipline based on Grievant's September 10<sup>th</sup> and 15<sup>th</sup>, 2008 conduct.

15. It is CONCLUDED that Grievant's the three-day suspension is the appropriate level of discipline and the three-day suspension should be upheld. This conclusion is based on the severity of Grievant's September 10<sup>th</sup> and 15<sup>th</sup>, 2008 conduct and Grievant's past progressive disciplinary actions.

16. It is ORDERED that Grievant's three day suspension is UPHELD.

This Order entered and effective this 4th day of December, 2009.

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John Hicks  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the  
\_\_\_\_\_ day of \_\_\_\_\_ 2009.

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'.

Thomas G. Stovall, Director  
Administrative Procedures Division