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James Sexton

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

**IN THE MATTER OF:**

**James Sexton**

**DOCKET NO: 26.19-103395J**

**INITIAL ORDER**

This matter was heard on October 13, 2009, in Nashville, Tennessee, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State to sit for the Civil Service Commission of the State of Tennessee. Deborah Martin, Staff Attorney, represented the Tennessee Department of Safety (hereinafter referred to as the "Department"). James Sexton (hereinafter referred to as "Grievant") represented himself.

The issue in this hearing is whether the State carried its burden of proof of preponderance of evidence that Grievant's conduct warranted his two (2) day suspension with the Department of Safety.

Grievant properly appealed this disciplinary action, and this hearing constituted Grievant's 5<sup>th</sup> step hearing before the Civil Service Commission.

After consideration of all of the evidence, arguments of counsel and the entire record in this matter, it is **determined** that Grievant's two (2) day suspension is **proper** and should be **UPHELD**.

This decision is based upon the following:

## PROCEDURAL HISTORY

Respondent received a two-day work suspension on June 11, 2009 and June 12, 2009 because of his failure to perform a minimum of thirty-two (32) inspections per year on trucks, as he is required to do by General Order 900323.

Commercial vehicles over 26,001 pounds are required by Federal Law to be inspected. Every trooper has to have thirty-two (32) inspections in order to maintain their certification. If a member fails to complete the annual required thirty-two (32) inspections, this will be cause for disciplinary action, and the member will be required to attend the necessary training to regain certification.

## FINDINGS OF FACT

1. Grievant only completed **twenty-eight (28)** of the required thirty-two (32) inspections.
2. Grievant received three (3) e-mails encouraging him to do more inspections. He had also been asked to do one (1) inspection per week so that he would have fifty-two (52) for the year. Sometimes the trucks don't meet the standards of a level three inspection, and these inspections will not be counted as part of the required thirty-two (32).
3. **There is a place where troopers can call so that they can get an accurate count of their inspections.** The record does not indicate that Grievant did this. Grievant relied on the secretary's count.
4. Through "ASPEN", a computer based tracking program, troopers can go in and look at their **official** inspection count at any time. Troopers are told to keep a **copy** of each inspection.
5. Although the captain asked the troopers to do fifty-two (52) inspections per year, **Grievant was disciplined for not having done the required thirty-two (32) inspections.**
6. Grievant only completed **twenty-eight (28) inspections** for the calendar year 2008.

7. **It is the Department of Safety's policy and procedure that troopers take responsibility for ensuring that they have done their (thirty-two) 32 inspections each year.**
8. Grievant is **very familiar** with the rules for doing the required inspections.
9. Because the Department does not want a trooper to repeat the training, the Department makes reasonable efforts to notify and remind troopers to complete their required inspections.

### APPLICABLE LAW

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.
2. The Department bears the burden of proof, which is a preponderance of the evidence standard, to show that Grievant's suspension was proper.
3. **Department of Safety, General Order 216-1: 1X, 2, a:**
  2. VIOLATION OF RULES:
    - a. Employees shall not commit any act or fail to perform any act, which would constitute a violation of any of the Directives, Orders, policies, and/or procedures of the Department and State Department of Human Resources Rules, whether or not they are stated in this Order.
      - (1) Ignorance of Departmental Directives, Orders, policies, or procedures shall not justify any such violation.
      - (2) Employees shall be responsible for their own acts, and they shall not unjustly attempt to shift to others the responsibility for executing or for failing to execute a lawful order or duty.
4. **Department of Safety, General Order 900: III, (2) (3):**
  - F. Annual Certification:
    2. After initial certification, each member is required to complete thirty-two (32) inspections annually to maintain certification.

3. If a member fails to complete the **annually required thirty-two (32) inspections**, this will be cause for disciplinary action and the member will be required to attend the necessary training to regain certification. Upon completion of this training, the member shall complete thirty-two (32) inspections to gain full certification.

5. **Department of Personnel Rule 1120-10-.06 (2): Examples of Disciplinary Offenses:**

(2) Negligence in the performance of duties.

**ANALYSIS**

Having considered and reviewed the entire record in this case, and having carefully evaluated the testimony of each and every witness, it is determined that the Department **has proved**, by a preponderance of the evidence, that Grievant's conduct warranted his two-day suspension. Grievant **received adequate notice** that it was his responsibility to ensure that he had thirty-two (32) truck inspections per year. Grievant was notified both by **e-mail** and **verbally**.

It is the troopers' responsibility to **perform** these thirty-two (32) inspections, and it is the troopers' responsibility to **keep up** with the number of inspections they have. Each trooper was told to be sure to keep copies of their inspections, in case there is a discrepancy in the count.

**CONCLUSIONS OF LAW**

1. It is **concluded** that the Department has proved by a preponderance of the evidence that Grievant did not complete the required thirty-two (32) inspections per year. If the trooper does not complete the thirty-two (32) inspections, that trooper is subject to disciplinary action.

2. Based on the above, it is determined that Grievant's two-day suspension for policy violations was **proper**.

3. Therefore, it is **ORDERED** that Grievant's two-day suspension be **UPHELD**.

This Initial Order entered and effective this 15th day of December, 2009.

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Joyce Carter-Ball  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 15th day of December, 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'.

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Thomas G. Stovall, Director  
Administrative Procedures Division