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DEPARTMENT OF LABOR AND  
WORKFORCE DEVELOPMENT vs. SHERRIE  
L. DURHAM, Grievant

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

**IN THE MATTER OF:**

**DEPARTMENT OF LABOR AND  
WORKFORCE DEVELOPMENT**

**DOCKET NO: 26.13-096738J**

**V.**

**SHERRIE L. DURHAM**  
**Grievant**

**INITIAL ORDER**

This matter was heard on December 13-14, 2007, February 25-26, 2008, March 25, 27, 2008, October 13-14, 2008, December 2, 4, 2008, before Leonard Pogue, Administrative Judge, sitting for the Tennessee Civil Service Commission in Nashville, Tennessee. Mr. Alfred Smith and Ms. Angela Bonovich represented the Department of Labor and Workforce Development (“Department”). Grievant, attorney Sherrie L. Durham, represented herself. This matter became ready for consideration on April 20, 2009, the deadline for the parties to submit proposed findings of fact and conclusions of law. The Department submitted its proposed findings of fact and conclusions of law on April 17, 2009. Grievant failed to submit proposed findings of fact and conclusions of law.

The subject of the hearing was Grievant’s appeal of her termination of employment by the Department. After consideration of the record in this matter, it is determined that the termination should be **UPHELD**. This decision is based upon the following Findings of Fact and Conclusions of Law:

**PROCEDURAL HISTORY**

The subject of this case is the termination of Grievant’s employment with the Department. On June 7, 2007, Michael Thomason, Director of the Appeals Operation Unit, recommended that Grievant be terminated. The grounds for termination were for violating Department of Human Resources Rules

1120-10-.06(4) failure to maintain satisfactory and harmonious working relationships with fellow employees; Rule 1120-10-.06(18) refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination); and Rule 1120-10-.06(24) for the good of the service as outlined in T.C.A. § 8-30-326. Commissioner James Neeley subsequently upheld the recommendation for termination following a predecision discussion and Grievant was terminated effective June 22, 2007.

### **FINDINGS OF FACT**

1. Grievant was employed by the Department as an Unemployment Hearing Officer II. Her duties involved conducting administrative hearings on unemployment compensation claims and writing decisions.

2. Beginning in February, 2002, Grievant worked under the supervision of Lynda McDaniel, chief hearing officer. Ms. McDaniel is responsible for supervising the hearing officers and support staff. Before 2005, Grievant received near perfect performance reviews.

3. Prior to January 18, 2005, Grievant's official duty station was McMinnville, Tennessee although she generally worked in Cookeville, Tennessee three days per week. She was allowed travel time during normal working hours and was paid mileage when she traveled from her official duty station to another location to work.

4. In December 2004, Grievant had safety concerns regarding a party to one of her hearings in Cookeville (Miller case). She requested assistance from Mr. Thomason in arranging that the hearing be rescheduled in a manner to avoid her having to be alone with this individual. Mr. Thomason forwarded this request to Ms. McDaniel. Ms. McDaniel arranged for another hearing officer to be sent to Cookeville to hear the case when it was rescheduled and Grievant to be sent to conduct hearings at her official duty station in McMinnville on that date. As a result, Grievant would not be paid for mileage and would not have an allowance for travel time. Grievant complained about this to the Employment

Security Administrator, Don Ingram. As he investigated the matter, Mr. Ingram determined that since Grievant was only in McMinnville one day a week it was not Grievant's proper duty station and it should be changed to the location where she performed the majority of her duties as defined by the Department of Human Resources as the official duty station. Cookeville became Grievant's official duty station effective January 18, 2005.

5. Following the change of duty station, Grievant became argumentative and confrontational with Ms. McDaniel and other supervisors. This conduct of Grievant continued until her termination.

6. During the time frame that the rescheduling of the Miller case was occurring, Grievant questioned the Department's rescheduling and notice of hearing policies. Grievant believed the policy to be in violation of state statutes. However, Grievant had been following the policy for approximately a year. From 2005 until her termination, Grievant alleged on a number of occasions that the Appeals Tribunal conducted hearings in violation of laws. When asked by supervisors to provide information to support the allegations, Grievant did not directly respond.

7. Beginning in 2005 and until her termination, Grievant's performance evaluations and interim reviews show a decline in performance. However, some areas for which Grievant was marked down, such as rescheduling, was sometimes the result of staff errors and not Grievant's actions. Grievant was generally argumentative during her reviews.

8. On February 1, 2006, assistant administrator Melinda Williams issued a written warning to Grievant for failing to maintain satisfactory and harmonious working relationships with fellow employees and for refusing to accept a reasonable and proper assignment from an authorized supervisor. This written warning was based upon Grievant's unresponsive, argumentative and disagreeable interactions with her supervisor and other employees and her failure to follow instructions to provide

information to support her allegation that she the Appeals Tribunal and Board of Review conducted hearings in violation of the law.

9. On October 24, 2006, Mr. Ingram recommended a disciplinary suspension because of Grievant's conduct ("rude, demanding, argumentative and uncooperative with [Grievant's] supervisors and co-workers and demonstrat[ing] a persistent unwillingness to accept normal and reasonable supervision"). Following a pre-decision discussion with Deputy Commissioner Bob Henningsen, the recommendation was accepted (the number of days suspended was reduced), and Grievant was suspended for failure to maintain satisfactory and harmonious working relationships with fellow employees and refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).

10. Between December 2006 and June 2007, approximately 200 e-mails were exchanged between Grievant and primarily Ms. McDaniel. The e-mails demonstrate Grievant's unwillingness to accept or follow requests or instructions from her supervisors as well as indicate an unnecessary argumentative and uncooperative nature. During this period, Grievant's situation was occupying over fifty percent of Ms. McDaniel's time which prevented Ms. McDaniel from performing other job duties and also interfered with the effectiveness of the support staff. According to Grievant, the only way for the relationship between Ms. McDaniel and herself to have returned to a constructive working relationship would have been for Ms. McDaniel to have been disciplined.

11. On June 7, 2007, Mr. Thomason recommended that Grievant be terminated. Grievant was advised of this recommendation by letter dated June 7, 2007 and by e-mail which she opened on that date. Grievant was advised that Mr. Thomason would send the e-mails referenced in the letter by mail. Grievant already had copies of these e-mails. In the letter recommending her termination, Grievant was advised that she could request a pre-decision discussion before a decision was made on the

recommendation by notifying the Personnel Director of her desire for such discussion by June 11, 2007. On June 15, 2007, Grievant met with Commissioner Neeley for a pre-decision discussion. Commissioner Neeley subsequently upheld the recommendation for termination and Grievant was terminated effective June 22, 2007.

### **CONCLUSIONS OF LAW**

1. Tennessee Department of Human Resources Rule 1120-10-.06, **EXAMPLES OF DISCIPLINARY OFFENSES**, lists the following as examples of disciplinary offenses:

- (4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees.
- (18) Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).
- (24) For the good of the service as outlined in T.C.A. 8-30-326.

2. Tennessee Department of Human Resources Rule 1120-10-.05, **CAUSES FOR DISCIPLINARY ACTION**, fall into two categories:

- (1) Causes relating to performance of duties.
- (2) Causes relating to conduct which may affect an employee's ability to successfully fulfill the requirements of the job.

3. Tennessee Department of Human Resources Rule 1120-10-.07, **PROGRESSIVE DISCIPLINARY ACTION**, states in relevant part:

- (1) The supervisor is responsible for maintaining the proper performance level, conduct and discipline of the employees under his supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the appropriate step as described.
- (2) Oral Warning
- (3) Written Warning
- (4) Suspension Without Pay

(5) Dismissal

- (a) After minimum due process is provided, an employee may be dismissed by the appointing authority from his position for unacceptable conduct or performance of duties....

(6) Transfer or Demotion

4. T.C.A. § 8-30-330, Progressive Discipline, states in relevant part:

- (a) The supervisor is responsible for maintaining the proper performance level, conduct, and discipline of the employees under the supervisor's supervision. When corrective action is necessary, the supervisor must administer disciplinary action beginning at the lowest appropriate step for each area of misconduct.
- (b) ....
- (c) When corrective action is necessary, the supervisor must administer disciplinary action beginning at the step appropriate to the infraction or performance. Subsequent infractions or poor performance may result in more severe discipline in accordance with subsection (a).

5. T.C.A. § 8-30-326, Dismissal, states in relevant part:

- (a) An appointing authority may dismiss any employee in the authority's division when the authority considers that the good of the service will be served thereby....
- (b) Whenever an employee is dismissed "for the good of the service," the notice of termination must outline in detail how the service will be benefited by such termination.

6. Tennessee Department of Human Resources Rule 1120-10-.03, MINIMUM DUE

PROCESS, states in relevant part:

- (1) Career employees have a "property right" to a position in the classification in which they currently hold career status. Therefore, no suspension, demotion, dismissal or any other action which deprives a regular (career) employee of his "property right" will become effective until minimum due process is provided as outlined below.

- (2) Minimum due process consists of the following:
  - (a) The employee shall be notified of the charges against him. Such notification shall detail times, places, and other pertinent facts concerning the charges and should be in writing.
  - (b) The notification will provide for the employee to have a predecision discussion with an appropriate manager and will state the mechanism through which such a discussion may be arranged. The employee should be given a reasonable period of time to prepare to answer charges and present information which might influence the manager's decision.
  - (c) The manager conducting such discussions must be an appointing authority or manager who has direct access to an appointing authority for this purpose.
  - (d) The meeting outlined above shall be for the purpose of allowing the employee to present information to the manager regarding the disciplinary action under consideration
  - (e) The discussion shall be informal. The employees shall have the right to present written statements of witnesses or any other information with regard to the charges. Attendance and participation by persons other than the manager and the employee shall be at the discretion of the manager.
  - (f) If the employee declines the opportunity to have the discussion or present information, the provisions of this section are deemed to have been met.
- (3) The commission shall determine as a preliminary matter to the merits of a grievance, a grievant's allegation that he or she was denied minimum due process.

T.C.A. § 8-30-331, Minimum due process, sets forth almost identical language as Rule 1120-10-.03. The Department of Labor and Workforce Development Policy Directive: DA7, Disciplinary Action, also addresses due process.

7. Grievant asserts that she was denied due process because she was not given ample time to prepare for the predecision discussion and because a decision was predetermined before Grievant's meeting. Grievant was advised on June 7, 2007 of the recommendation to terminate and that she could

request a predecision discussion by June 11, 2007. A predecision discussion took place on June 15, 2007. Although she did not ultimately obtain requested copies of the emails referenced in the June 7, 2007 recommendation until a few days before June 15, she already had the emails in her possession. The Department's Policy Directive, DA7, allows the employee ten days to request a meeting. However, this alone does not mean that 7 days is not a reasonable amount of time to prepare for the predecision discussion. As to the allegation of predetermination, it was not established by the proof that a decision was made before the predecision discussion. It is determined that the requirements of due process were met in this instance and Grievant was not denied minimum due process.

8. Grievant asserts that after she alleged in the Miller case that the Department's rescheduling and notice of hearing policies were in violation of state statutes that the Department systematically engaged in retaliatory conduct toward her. Grievant's initial concern in the Miller case was her personal safety in a hearing. As logistical discussions in the Miller case ensued, Grievant's attention then focused on travel time issues when it appeared she would have to travel to McMinnville rather than Cookeville. She also began raising concerns about the Department's notice of hearings and the hearing process itself despite having following the policies herself for a year. When Grievant continued to request management review the decision to send her to McMinnville rather than have her do the rescheduled Miller hearing, it was determined that her proper duty station should be Cookeville. There was no proof that the duty station change was not proper or not in conformance with the rules regarding duty station. Likewise, there was no evidence that the duty station change was done for retaliatory reasons.

9. The change of duty station affected Grievant's travel reimbursement and required her to report to work earlier since the travel time allowance was also impacted. After the duty station change, there is no question that Grievant's relationship with her supervisors deteriorated. Grievant became

increasingly argumentative, confrontational, and uncooperative. Because of Grievant's conduct, she received a written warning and a three day suspension. Also, Grievant's performance evaluations and interim reviews graded lower although portions of some reviews seem overly critical. However, Grievant was not terminated because of inefficiency or incompetency in the performance of duties.

10. Grievant was fired for failure to maintain satisfactory and harmonious working relationships with fellow employees, insubordination, and for the good of the service. Prior to and at the time of termination, it is indisputable that the relationship between Grievant and her co-workers, her supervisors and the management of the Department had reached a level of dysfunction that could not be allowed to continue. Grievant was constantly challenging the supervision, decisions and the authority of her supervisors and Department management. She was unwilling to accept reasonable supervision and direction. Her conduct was draining resources from the Department and undermined and interfered with the operation of the Department. Grievant was confrontational and adversarial regardless of the issue and had become unmanageable and disruptive. Progressive discipline did not resolve the problem. Under these circumstances, the decision to terminate Grievant was justified and warranted.

11. The Department has met its burden of proof and has established that each basis for termination (failure to maintain satisfactory and harmonious working relationships with fellow employees, insubordination, and for the good of the service) was proper.

It is **ORDERED** that the decision by the Department to terminate Grievant's employment with the Department be **UPHELD**.

This Initial Order entered this 20th day of July, 2009.

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Thomas G. Stovall, Director  
Administrative Procedures Division