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**BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION**

IN THE MATTER OF:

Sharon A. Carpenter

DOCKET NO: 26.41-099796J

INITIAL ORDER

This matter was heard on March 17, 2009, before Bettye Springfield, Administrative Judge, assigned by the Secretary of State, and sitting for the Tennessee Civil Service Commission. Karen Tolbert, Assistant General Counsel for the Board of Probation and Parole, represented the State. Grievant Sharon Carpenter was present and represented by Murray Wells, with the Shelby County bar.

This matter became ready for a decision after Proposed Findings of Fact and Conclusions of Law were filed on May 28, 2009.

The subject of this hearing was the Grievant's appeal of the termination of her employment by the Board of Probation and Parole, for violation of Tennessee Department of Personnel Rule No. 1120-10-.06 - (4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees; (8) Gross misconduct or conduct unbecoming an employee in the State service; (12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, Board or any other segment of the State service or that would interfere with the ability of management to manage; (15) Acts that would endanger the lives and property of others; (24) For the good of the service, and also violation of the Board's Policy 202.01, Code of Ethics.

After consideration of the record, argument, and all the evidence, it is determined that the Grievant's employment should not have been terminated, and the Grievant should be **reinstated** to her position, with a **five (5) day suspension**.

This determination is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Grievant Sharon Carpenter was employed by the Tennessee Board of Probation and Parole from September 15, 1982 until her termination, effective May 26, 2008. At the time of her termination, she was a Probation and Parole Officer 2, at the District Office on South Third in Memphis, Tennessee. Her duties included supervision of parolees and probationers.

2. Mary Cole was employed with the Board as a Probation and Parole Officer 2 for approximately fifteen (15) years. She was a co-worker of the Grievant, had known her for a few years, and got along well with her. She considered the Grievant a "beautiful co-worker." Ms. Cole worked at the same office as Grievant, and usually covered the front desk in the mornings until the secretaries arrived.

3. On May 6, 2008, Ms. Cole was sitting at the front desk when she overheard the Grievant and her supervisor, Ernestine Taylor, having a disagreement about the way that Ms. Taylor wanted casework handled and case files closed. The Grievant had responded that she "can't deal with this right now."

4. After the Grievant left Ms. Taylor's office, she subsequently called her about the issue of closing cases, and later walked into Ms. Taylor's office and threw some files down on Taylor's desk. The Grievant then informed another supervisor that she was leaving the office because of chest pains.

5. Approximately 15 to 20 minutes after the Grievant had left Ms. Taylor's office, she walked from the back of the office toward the front door, seeming "very upset." As she walked through the lobby, Ms. Cole, still at the front desk, heard her say "I'll kill that bitch" or "I will kill that bitch." She said it loud enough for others to hear.

6. The Grievant and Taylor have a history of problems, and both had shared their problems or situations with Ms. Cole. Cole submitted a written statement to District management about what she had heard and observed on May 6, 2008.

7. Ernestine Taylor was the Grievant's supervisor at the time of this incident. She supervised the Grievant for less than six (6) months, while another supervisor was on leave at South Memphis office. During this time, the Grievant often questioned Ms. Taylor about her method of doing things, such as closing files. The Grievant was accustomed to doing things the way her previous supervisor had handled them, and Ms. Taylor expected her to close files in a different manner.

8. Ms. Taylor was informed about the Grievant's threat, reported the matter, and also filed an Incident Report. Ms. Taylor testified that she felt fear when she learned of Grievant's statement, and that she continued to feel fearful. She considered what the Grievant said to be a threat.

9. Helen Ford is the Board's District Director in Shelby County, with the ultimate supervisory responsibility for all of Board employees working in the county. She was initially contacted in May 2008 by Ernestine Taylor about this incident. Ms. Taylor sent her an e-mail regarding the comment that the Grievant made.

10. Ms. Ford considered the comment by the Grievant to be a threat that violated the Board's Code of Ethics, Policy #202.01, which governs employee conduct. She noted the importance of maintaining community trust and avoiding any disharmony and disrespect within the agency. She supported the Grievant's termination.

11. The Grievant acknowledged the May 6, 2008 disagreement with Ms. Taylor, but testified that she did not recall saying anything as she left the office. She later stated that she might have been mumbling, although she could not remember what she might have said.

12. In a letter dated May 7, 2008, the Board informed Grievant of its intent to terminate her employment for making audible threats against a fellow Board employee on May 6, 2008. The Board charged Grievant with the following disciplinary offenses under Department of Human Resources Rules 1120-10-.06: (4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees; (8) Gross misconduct or conduct unbecoming an employee in the State service; (12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, Board or any other segment of the State service or that would interfere with the ability of management to manage; (15) Acts that would endanger the lives and property of others; (24) For the good of the service, and also violation of the Board's Policy 202.01, Code of Ethics.

13. The Grievant's due process hearing was held on May 16, 2008, and the Board upheld her termination.

14. The Grievant had received previous disciplinary actions that included three (3) oral warnings between July 2004 and July 2005; and a written warning in September 2005. However, the written warning was to be removed from her personnel file after two (2) years.

CONCLUSIONS OF LAW

1. The Board has the burden to prove, by a preponderance of the evidence, that the Grievant engaged in the alleged conduct and termination of her employment is the appropriate discipline. Administrative Procedures Division, Rule 1360-4-1-.02(3)(7).

2. Tennessee Department of Personnel Policy No. 1120-10-.06 lists Examples of Disciplinary Offenses, which include:

(4) Failure to maintain satisfactory and harmonious working relationships with the public and fellow employees;

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

(12) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, Board or any other segment of the State service or that would interfere with the ability of management to manage;

(15) Acts that would endanger the lives and property of others; and

(24) For the good of the service.

3. The Board of Probation and Parole Code of Ethics Policy No. 202.01 states in pertinent part:

V. POLICY: The Board has resolved to abide by and require Agency employees to abide by the highest standard of professional conduct...any violation or appearance of violation or attempt to cause a violation of the public trust is prohibited.

VI. A. Standards of Conduct. ...It is further intended that the public trust in the conduct of the Board and its employees be ensured by conduct being above reproach.

b. Any conduct that would create a justifiable impression in the public mind that the public trust is being violated is prohibited.

4. Pursuant to Tenn. Code Ann. §8-30-201 (a), the State of Tennessee also established for its employees a system of personnel administration that governs the removal, discipline and other incidents of state employment. Section 8-30-330 provides, in pertinent part, that discipline imposed on state employees must be progressive:

(a) The supervisor is responsible for maintaining the proper 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.

(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. The State contends that the Grievant was properly terminated because a coworker, Mary Cole, overheard her say "I'll kill that bitch or "I will kill that bitch," which the coworker thought was a threat against a supervisor. The Grievant had had a disagreement, regarding closing case files, with the supervisor about twenty (20) minutes earlier. The State argues Cole was a credible witness who had no reason to make up such an incident. The Grievant herself subsequently admitted that she might have "mumbled something," but could not remember what she mumbled. It is concluded that the Grievant made the statement that is attributed to her.

6. The Board carried its burden of proving, by a preponderance of the evidence, that the Grievant failed to maintain satisfactory and harmonious working relationships with a fellow employee, and that her conduct seriously disrupted and disturbed the normal operation of the office in violation of Rule 1120-10-.06(4) and (12).

7. However, the Board failed to establish that the Grievant had any intent to actually carry out any act that would cause harm the personal safety of the supervisor or otherwise endanger the lives and property of others. Thus, the Board failed to carry its burden of proving, by a preponderance of the evidence, that the actions of the Grievant violated the other rules or policies set forth above, such as to warrant her termination.

8. Pursuant to Tennessee Department of Personnel Policy Rule §1120-10-.05, the causes for disciplinary action are:

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

9. While any threat of violence in the work place cannot be excused or ignored, and while the Grievant's statement was clearly inappropriate, the incident has to be examined in context. It is significant to note that the comment was made by Grievant approximately fifteen (15) to twenty (20) minutes after her disagreement with the supervisor. During this time, Grievant left the supervisor's office, returned to her own office for a period, spoke with another supervisor, and was leaving the building when Cole overheard the comment. Due to the lapse of time, it is not clear to whom, if anyone in the work place, the Grievant was referring.

10. The State has not shown that the Grievant's statement was intended to be threatening, and failed to establish that the Grievant's making such statement would have any long-term bearing on her ability to perform her duties or successfully fulfill the requirements of her job with the Board. Likewise, it is concluded there is no violation of the Board's Code of Ethics requiring employees to abide by the highest standard of professional conduct.

11. As for any termination that is done “for the good of the service,” it must also relate to an employee’s performance of duties. In *Reece v. Tennessee Civil Service Commission*, 699 S.W.2d 808 (Tenn.App.1985), the Court addressed the question of what is required to justify a termination "for the good of the service" under T.C.A. § 8-30-326(a), and held:

It must be conceded that the public payroll cannot be made a haven for those who with or without fault have become unable to perform the duties for which they were employed. It must likewise be conceded that "the good of the service" may in proper cases justify or require the discharge of public employees when their efficiency or usefulness in their positions has been seriously impaired by their own fault, by the fault of others, or by blameless misfortune.

12. It is noted that officers employed with the Board of Probation and Parole routinely work with members of society who have committed offenses outside the law. It is unlikely that a supervisor working in such field was genuinely “fearful” as a result of an angry comment, particularly one not necessarily directed at her. Thus, such testimony by Taylor is assigned little weight.

13. The Grievant was employed with the Board for almost twenty-six years prior to her termination. During this time, the only disciplinary actions she received were three (3) oral warnings. The one (1) written warning was not considered because it expired the year before her termination. It is concluded that the State failed to show that the efficiency or usefulness of the Grievant in her position as a public employee with the Board was seriously impaired such that her termination was for the good of the service.

14. However, given that the record contains previous disciplinary actions against her, a five (5) day suspension is the appropriate discipline.

15. Based on the foregoing, it is ORDERED that the Grievant shall be REINSTATED, with a FIVE (5) DAY SUSPENSION, and restored all leave balances, back pay, and other benefits of employment consistent with this Order, and awarded reasonable attorney's fees and costs. See T.C.A. Section 8-30-328 (f).

Entered and effective this 14th day of July, 2009.

Bettye Springfield
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
14th day of July, 2009.

Thomas G. Stovall, Director
Administrative Procedures Division