



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

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

3-10-2009

Tennessee Department of Children's Services vs. Althea Bradshaw, Grievant

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:

**Tennessee Department of Children's
Services**

v.

Althea Bradshaw
Grievant

DOCKET NO: 26.43-101357J

ORDER OF DISMISSAL AND REMAND

This civil service appeal was filed to contest the termination of the Grievant's employment by the Department of Children's Services (DCS or the Department). The Department is represented by Julie Randall Pablo, Assistant General Counsel. K. Robert Barlowe, of the Nashville bar, represents the Grievant Althea Bradshaw.

On January 9, 2009, the Tennessee Department of Children's Services filed a Motion to Dismiss this matter. On February 6, 2009, the parties presented oral argument on the issues involved in the motion. At the conclusion of the conference, counsel for DCS requested leave to file written argument; the Department filed its Brief in Favor of Dismissal by facsimile transmission on February 20, 2009, followed by a hard copy on February 24, 2009. Counsel for the Grievant was allowed to file any response by March 2, 2009; to date, no response has been filed.

Procedural History and Findings of Fact

The procedural history of this case is undisputed. By memorandum dated September 22, 2008, the Grievant was notified that she had been recommended for termination of employment with DCS. In response, the Grievant submitted a memorandum dated October 8, 2008, to her supervisor in answer to the charges.¹ The Department hand-delivered a termination letter to the Grievant on October 31, 2008. The letter contained a provision stating that any appeal must be filed “within 15 workdays (Monday – Friday, 8:00 a.m. – 4:30 p.m.) from the receipt of this memorandum.” The effective date of the termination was November 10, 2008, which was the Grievant’s last official day of work; the Grievant received her salary through that date. The Grievant filed a grievance requesting a Level IV hearing on the termination; the grievance was received by DCS on November 25, 2008. The Department denied the Grievant’s request for a Level IV hearing on the basis that it was not timely filed and therefore invalid.

The Grievant requested a Level V hearing before the Civil Service Commission to determine whether she should have been granted a Level IV hearing regarding her termination of employment. The appeal specifically stated that the Grievant is “appealing the termination of the above employee, Althea Bradshaw.” The relief she requested is a remand of the case to the Department for a Level IV hearing. The parties agreed that if this case is remanded, the Level V proceeding should be dismissed.

Arguments of the Parties

The Department contends that the last date upon which the Grievant could file her grievance, requesting a Level IV hearing, was November 24, 2008, which is 15 business days

¹ Although the subsequent termination letter, dated October 31, 2008, indicated on Page 3 that a “Due Process Hearing” was conducted on September 22, 2008, the parties agreed that the “hearing” consisted of this written exchange between the Grievant and her supervisor. This correspondence constitutes a “predecision discussion” as outlined in Tenn. Code Ann. § 8-30-331, and also referenced in Tenn. Code Ann. § 8-30-326(a).

from October 31, 2008. In support of this argument, the Department notes that the termination notice, hand-delivered on October 31, 2008, specifically requires that any appeal must be filed within 15 workdays “from the receipt of this memorandum.” Since the grievance was not filed until November 25, 2008, it was untimely and therefore properly denied.

The Grievant offered several different arguments in support of her position, first contending that the letter was confusing and that the last day for filing an appeal was November 25, 2008. Later, during oral argument on February 6, 2009, counsel for the Grievant argued that the subject of the Grievant’s appeal was her termination, not the letter notifying her of this action. Since the termination became effective on November 10, 2008, any grievance had to be filed within 15 workdays of the termination, or by December 4, 2008.

Legal Authority

1. TENN. CODE ANN. § 8-30-326(a) contains the following relevant provisions:

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. No dismissal of a regular employee shall take effect unless, at least ten (10) days before the effective date thereof, the appointing authority gives notice to such employee and files a written statement with the commissioner [of Human Resources]. The employee shall have an opportunity to file with the appointing authority a written statement regarding the proposed dismissal, a copy of which shall be filed with the commissioner. A regular employee who is disciplined shall have the right to file a grievance as provided in § 8-30-328

2. TENN. CODE ANN. § 8-30-328(a)(1) provides that the “department [of Human Resources], with the concurrence of the [Civil Service] commission, shall promulgate regulations establishing a grievance procedure for regular employees.”

3. The Department of Human Resources (previously Personnel) has promulgated grievance procedures in Chapter 1120-11, TENN. COMP. R. & REGS., May, 1999 (Revised).

4. Rule 1120-11-.04(8) states that “[g]rievances concerning dismissal should be appealed directly to the appointing authority, warden, or superintendent.”

5. A Step IV grievance is one that is submitted to “the appointing authority or designee.” Rule 1120-11-.05(4)(a).

6. Rule 1120-11-.04(1) provides as follows:

A complaint or grievance must be filed at the appropriate step in the grievance procedure within fifteen (15) workdays (Monday – Friday, 8:00 a.m. – 4:30 p.m.) of the action which is the basis for the grievance, otherwise it will be considered untimely and invalid.

Analysis and Conclusions of Law

The Grievant has appealed her termination of employment by the Department of Children’s Services. According to the provisions of Rule 1120-11-.05(4)(a), a dismissal of a regular employee, such as the Grievant, should be appealed to the “appointing authority,” which in this case is the Commissioner of the Department of Children’s Services. The Grievant appealed to the Commissioner of DCS on November 25, 2008, and requested a Level IV hearing, the appropriate step to begin the appeal process in a case of termination. The request was considered untimely and invalid; it was denied since, according to the calculation of DCS, the appeal was due on or before November 24, 2008. This date is 15 workdays from the hand-delivery of the termination letter on October 31, 2008.

According to Rule 1120-11-.04(1), a grievance should be filed within 15 workdays of “the action which is the basis for the grievance,” which in this case is the termination. Since the termination was effective on November 10, 2008, the grievance was due by December 4, 2008.² Although the termination letter stated that the grievance must be filed within 15 workdays of the date of the letter, October 31, 2008, this requirement is in contravention of Rule 1120-11-.04(1),

² This calculation takes into account three days of intervening state holidays between November 10, 2008, and December 4, 2008.

since the basis of the appeal is the termination itself, not the letter notifying the Grievant of this action. The parties agreed that the termination was effective upon November 10, 2008; this was the Grievant's last official workday, and she received a salary through this date. For this reason, the Department's contention that the grievance was due on or before November 24, 2008, is without merit or legal basis. The Department lacks authority to supersede a duly promulgated rule by imposing its own policy or requirement.

Based upon this analysis, it is concluded that the grievance filed on November 25, 2008, was valid. Accordingly, it is hereby **ordered** that the Grievant's request for a Level IV hearing before the appointing authority should be **granted**. This matter is hereby **remanded** to the Department of Children's Services for a Level IV hearing, and the civil service Level V proceeding is hereby **dismissed**.

This Initial Order entered and effective this 10th day of March, 2009.

Ann M. Johnson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 10th day of March, 2009.



Thomas G. Stovall, Director
Administrative Procedures Division